Page 1425 - 1432 **DOI:** *https://doij.org/10.10000/IJLMH.114222*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 1

2023

Statehood in International Law

BHAVNA DAHIYA[1]

ABSTRACT

There were an estimated fifty recognised States at the start of the 20th century. This figure grew to precisely 192 States by 2005. One of the most significant political events of the 20th century was the establishment of numerous new States. Among the most significant causes of global conflict, it has altered the nature of international law and the way that international organisations operate. In view of the ever-increasing climate change, a new question emerges around the existence of the states that are under serious threat of sinking. There is speculation about how these affected states will be reconciled within International law. The pacific states are facing the question of whether they would be expected to renounce their Statehood and legal status in the global order as an obligation. This theme starts a new debate in the realm of statehood in the 21st century. Under the influence of globalisation and the volatile nature of vulnerabilities (the "potential challenges," like terrorism, and its accompanying variables), it is also anticipated that the topic of statehood will acquire prominence. When viewing a world map, it looks as though practically the whole world is precisely split into various portions, each of which represents a distinct territorial unit called a State. A detailed look demonstrates that the idea of "statehood" is surrounded by several uncertainties underneath this perfectly split surface. What, for instance, qualifies a territory or an area as a State? This article will excavate the criterion to establish 'statehood' in International law. The Montevideo Convention provides both a constitutive theory and a declarative theory of statehood and I will use it in analysing the theme of the paper.

Keywords: *International law, Statehood, Governance.*

I. INTRODUCTION

There were an estimated fifty recognised States at the start of the 20th century. This figure grew to precisely 192 States by 2005. One of the most significant political events of the 20th century was the establishment of numerous new States. Among the most significant causes of global conflict, it has altered the nature of international law and the way that international organisations operate. In view of the ever-increasing climate change, a new question emerges around the existence of the states that are under a serious threat of sinking. There is a speculation around how these affected states will be reconciled within the International law. The pacific states are

[1] Author is a student at St Stephen's College, India.

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facing a question of whether they would be expected to renounce their Statehood and legal status in the global order as an obligation. This theme starts a new debate in the realm of statehood in the 21st century. Under the influence of globalisation and the volatile nature of vulnerabilities (the "potential challenges," like terrorism, and its accompanying variables), it is also anticipated that the topic of statehood will acquire prominence. When viewing a world map, it looks as though practically the whole world is precisely split into various portions, each of which represents a distinct territorial unit called a State. A detailed look demonstrates that the idea of "statehood" is surrounded by several uncertainties underneath this perfectly split surface. What, for instance, qualifies a territory or an area as a State ? This article will excavate the criterion to establish ‘statehood’ in International law. The Montevideo Convention provides both a constitutive theory and a declarative theory of statehood and I will use it in analysing the theme of the paper.

The Declarative theory explains statehood as reliant on four components.

- A permanent population
- A defined territory
- Government
- Capacity to enter into relations with other states

The Montevideo Convention on the Rights and Duties of States of 1933 formalises these four standards for statehood [Montevideo Convention, 1934]. Statehood is autonomous of recognition by other states, according to Art. 3 of the Montevideo Convention. According to the declaratory hypothesis, acknowledging the preexisting criteria of statehood is all that is required for existing States to indicate their desire to establish relations with a new state. The "constitutive hypothesis," in contrast, contends that a State only acquires the status of a State by the acknowledgement of other States. The declaration theory's three factual requirements must first be satisfied before its "factuality" may be validated by the current States. Since there is no universal entity with the power to recognise states' identity on behalf of the whole community of States, this idea has proven to be impracticable in reality. As a result, each State has the discretion to determine whether or not a new State has been created (and recognise it).

If the constitutive theory were to be used as the foundation for statehood, it would have the unusual result that certain States (those that have acknowledged it) would regard an entity to be a state, while other States would not. To prove the contention between the two theories of statehood, I will make use of the example of Somalia and Somaliland. According to the requirements for statehood, Somaliland may be recognised as a State, and not Somalia, since it

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has a territory (even though its boundaries are in dispute), a population, and a government that effectively controls its area. The declaratory theory of statehood holds that an entity's statehood is devoid of its recognition by other States, like in this example, regardless of whether Somaliland is acknowledged by any other State or not. Thus, before other States can choose to develop relationships with a State, it must first become a State. However, Somalia, unlike Somaliland, is a member of the UN. Additionally, Somaliland might not join the UN as long as other States do not recognise it. The international community continues to recognize Somalia as a sovereign state, despite the fact that it does not meet the factual criteria [Schoiswohl, 2007]. This raises concerns about the concept and nature of statehood.

Having explained the complex nature of statehood, this paper will focus on the criterion of statehood according to International law. The idea of the State as an entity with a defined territory dates back to the 16th and 17th centuries, when it displaced the predominant political structure of the Middle ages known as the "Respublica Christiana" in Western Europe, and the rise of cartography explained the need for divided territory. The Respublica Christiana's concept and feudalism's plurality were progressively replaced by a system of territorially distinct entities with a disproportionately high extent of domestic power centralization. Although it was a long process, the change from the Respublica Christiana to the current system of States is generally recognised as having taken place in 1648, the year the Westphalian Sovereignty, as established by the Peace of Westphalia.

There have been numerous efforts to get consensus on a definition of a state since 1945. A definition of the concept of the State has been attempted during the discussions over the proposal texts for the Declaration of the Rights and Duties of States (1949), the Vienna Convention on the Law of Treaties (1956 and 1966), and the articles on succession of states (1974) [UN 1978]. International law does offer some recommendations on how to address the question of statehood in spite of the lack of a precise definition of what defines a State. The arbitrator in the case of the Deutsche Continental Gas-Gesellschaft stressed that a State does not arise unless it satisfies the requirements of owning a territory, a population residing in that area, and a public authority which is exercised over the people and the territory."[Hobach 2007]. Article 1 of the Montevideo Convention is "the most generally recognised statement of the conditions for Statehood in international law."

(A) A defined territory

States are undoubtedly geographical entities since territorial sovereignty includes the sole authority to proclaim a State's operations. It is therefore not unexpected that there are still

numerous territorial conflicts and disagreements over boundary delineation at the present day given the geopolitical, economic, and symbolic value of territory. Territorial disputes do not, however, prevent a country from becoming a state under international law. For instance, despite its ongoing territorial conflicts with the (mainly Arab) States, Israel was accepted to the UN on May 11, 1949. It has been confirmed that international law does not require that a State's borders be completely delineated and specified in the North Seas Continental Shelf cases [ICJ 1969].

There are no particular prerequisites with respect to territorial size; the global community of States includes both "mini-states," like Liechtenstein and San Marino, and quite big States, like Canada or Russia. Therefore, it appears that simply a significant border or territorial conflict with a new State is insufficient to call into doubt the concept of statehood. The State must only consist of a certain compact region that is efficiently controlled. Mini States are becoming more prevalent, which has sparked debate concerning their position and authority inside the UN. For instance, a few have urged that mini States' ability to vote in the General Assembly should be restricted.

(B) Permanent population

States are collections of people even if they are geographical entities. Consequently, a permanent population is required for statehood, although, as with land, no threshold needs to be set. For instance, San Marino had 20,000 people living there in 1973, whilst the projected population of Nauru was only 6,500. International law also does not specify any requirements regarding the composition of the populace, which could be largely nomadic (as in Somalia), demographically homogeneous (as in Iceland), increasingly diversified (as in the former Soviet Union), poor (as in Sierra Leone, where in 2000s nearly 70% of the inhabitants were below the poverty line), or wealthy (as in the west).

States are able to choose who acquires the state's citizenship. The Convention makes no specific mention of how long this population must remain there or what percentage of the population must reside therein indefinitely. This becomes problematic in situations like Samoa, where 56.9% of the population, according to McAdam, lives beyond the country's borders. It implies that the State still would meet the requirements for the declarative theory of Statehood even if there was just one last Samoan in Samoa.

(C) Government

Considering "all the other components depend on it," Crawford admits that this requirement of "Government" is perhaps the most crucial in the concept of statehood. This is because the government, in a literal sense, may carry out the necessary duties of a state.

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Furthermore, there are several notable instances of states that are regarded as states in the international system but do not have a functioning government. In the eyes of the international community, Somalia has long been seen as a "failed" State. The international relations study defined a failed state as one in which "the government, if any, is utterly unable to sustain public services, institutions, or authority, and that central control over territory is absent."

Governance, or "functioning" government, can be a fictitious or subjective concept. The autonomy and statehood elevation of the Republic of Congo in 1960 serves as an example of this. Before it had an opportunity to fully establish an efficient government with legislative, executive, or judicial branches, Republic of Congo was given a "rushed" independence in 1960. Shortly after independence, "the national government was divided into two parts, each claiming to be the legitimate government." The international world nonetheless recognised this entity's assertion to Statehood in 1960, even though it had not yet met this standard for "functioning governance," and its candidacy for membership in the UN "was granted without protest."

Hence, a State should be capable of autonomously and efficiently execute its power inside its boundaries. Therefore, a requirement for the regular operation of international relations is the presence of a government in a certain region.

a. Effectiveness

The standard of effective authority is a topic that comes up frequently while discussing the formation of new States. According to Crawford, a potential state's claim to statehood "could be considered as crucial to its demand that it have an efficient government." The Aaland Islands case, among others, serves as proof of the significance of effective authority. Despite the aforementioned, the implementation of the concept of effectiveness appears to be much less stringent in State practice. For example, during a time when significant portions of its territory were not effectively under the authority of the government, Bosnia-Herzegovina was recognised by the international community as a State and was permitted to join the United Nations.

b. Independence

In addition to the rule of efficiency, the power must be used without intervention from other sources. Furthermore, independence needs to be "formal" and "functional." Formal independence is exercised in situations when the authority to rule a region is conferred in the different State authorities. Functional autonomy exists when the government of a country exercises at least a certain amount of (actual) authority. Crawford adds that "the standard of independence as the fundamental component of Statehood in international law may function differently depending on the requirements for statehood.

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(D) Capacity to enter into relations with other states

It is not just States that have access to international relations; independent national governments, revolutionary groups, and rebels can all continue to have contacts with States and other objects of international law [Ioannidis. 2014].

While States do have such ability, it is a benefit of statehood rather than an obligation. However, ability or competence in this context partly depends on a territory's inherent governing authority. Despite the governmental and administrative difficulties encountered, this community's legal existence is still that of a State. If a State's government is in disarray or its leaders are unable to engage in diplomatic contacts with other States, the State does not automatically disintegrate or lose its international legal identity.

II. CONCLUSION

Ever since formal formulation of the modern State at the Peace of Westphalia in 1648, the idea of the modern State has undergone a variety of significant alterations. The State has evolved over the past two centuries from being largely seen as a "statute" to a "matter of reality." The declarative theory and the constitutive theory are the two opposing ideas that underpin the concept of statehood in modern international law. The essential point in the debate over these ideas is whether or not existing States' recognition of newly formed ones affects their ability to exist (or not). In other words, it concerns the legal implications of statehood and recognition.

A State typically has both a de jure and de facto existence. Such States fit the criteria for statehood and are acknowledged as such by the international community, making them what is known as "ideal-typical" sovereign States. In the ideal-typical state, the requirements of both the declaratory and constitutive theories are satisfied; they do so by meeting the objective standards for statehood, as needed by the constitutive theory for its prestige impact, and by receiving recognition from the other States [Christopher, 1999].

One of the most important issues in contemporary international law that has to be resolved by the global community is the recognition of Taiwan as a sovereign state. The issue of Taiwan's representation at the UN, together with the issues surrounding Taiwan's statehood and the recognition of the two Chinese governments, are examples of fundamental issues in international law. A conflict among international law's notions of statehood may be seen in the example of Taiwan. Additionally, the State has inherent rights and obligations toward itself that are of first importance to international law. The functionality of States inside their own territory and between other States is only possible as a result of such rights and obligations recognised by international treaties and organisations.

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