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International Law and the Politics of Diplomatic Recognition of States and Government: Crtical Discuss

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Abstract- A new state is born out from an existing State or an old State which disappeared and comes with a new name or by splitting an existing State into two States. If a new state enjoys certain rights, privileges and obligations then it must get recognition as a state, which is very essential. However, there are some minimum criteria required before a State is considered to be a State. A State must get the De Jure (when a state is legally recognized) recognition for considering a State as a sovereign State. Political thought plays an important role in this decision whether to grant recognition or not. For recognition as a State, it must enter into relations with the other existing States. Recognition is a unilateral act performed by the recognizing State's government. The creation of states and their subsequent recognition remain among the most problematic, yet important, aspects of international law and politics. It may be express or implicit. The act of recognition does not necessarily require the use of the terms recognition or recognize. Recognition is more than a word. A State may simply say that it acknowledges, regards, considers, deals with, or treats a group in a certain capacity, in order to convey its recognition.

Keywords: international law, politics, diplomacy, recognition of state and government.

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Vincent O.S. Okeke

Abstract- A new state is born out from an existing State or an old State which disappeared and comes with a new name or by splitting an existing State into two States. If a new state enjoys certain rights, privileges and obligations then it must get recognition as a state, which is very essential. However, there are some minimum criteria required before a State is considered to be a State. A State must get the De Jure (when a state is legally recognized) recognition for considering a State as a sovereign State. Political thought plays an important role in this decision whether to grant recognition or not. For recognition as a State, it must enter into relations with the other existing States. Recognition is a unilateral act performed by the recognizing State's government. The creation of states and their subsequent recognition remain among the most problematic, yet important, aspects of international law and politics. It may be express or implicit. The act of recognition does not necessarily require the use of the terms recognition or recognize. Recognition is more than a word. A State may simply say that it acknowledges, regards, considers, deals with, or treats a group in a certain capacity, in order to convey its recognition. Recognition will be stalled indefinitely and only granted once domestic sovereignty is definitively and irreversibly established. It is only under these circumstances that the international legal criteria, however ambiguous, rather accurately determine secessionist success (though recognition's timing will remain uncertain). In sum, the international politics of recognition are essential in understanding which actors among the scores of potential new members will be accepted into the international community of States. To an important extent, nascent states are either elevated to State membership or excluded from it by powerful, existing members. In all, the essence of this paper is x-ray, among other things the position of law and politics in the diplomatic recognition of states and government in Africa. The paper addresses the concept of're-cognitionality' to capture the reality and adequate nature of recognition practices in world politics. Finally the elements, theories, and processes of recognitions are reflected in this paper for purposes of clarity.

Keywords: international law, politics, diplomacy, recognition of state and government.

I. Introduction

State recognition is one of the oldest practices in international law and relations, and one of the most vexed concepts in international law. Since the middle Ages, political communities have interacted with each other as sovereign territorial states under an accepted system of rules (Brierly, 1955, Gëzim, 2021, Neff 2005, Schoiswohl 2004, Shaw 2003). To determine which entities are to be recognized as states subject to these rules has hence been a basic component of international relations? With the recent secession of South Sudan, the long-running discussion of state recognition is once again a pressing concern of foreign offices and topic of interest for international lawyers and political theorists. State recognition is currently a matter handled exclusively by the UN Security Council. In order for a political entity to be recognized as a state, a majority of members in the Council must vote in favor of recognition, without any of the permanent members vetoing this decision. As others have pointed out, the veto power as it presently works is morally arbitrary in that it distributes decision-making power inequitably. Furthermore, it prevents constructive deliberation by freezing discussions about recognition whenever it is clear that a permanent member will veto the decision (Keohane and Buchanan, 2004, Baylis, Steve; and Patricia, 2008). The question of the legal effect of recognition of new entities claiming to be "States" has been characterized for over a century by the "great debate" between the "constitutive" and "declaratory" schools of thought. While the former contends that a State only becomes a State by virtue of recognition, the latter - which is now widely accepted - argues that a State is a State because it is a State, that is, because it meets all the international legal criteria for statehood. In the first case recognition is status-creating; in the latter it is merely status-confirming. International lawyers and States do not always distinguish clearly between the requirements for recognition of an entity *as* a State (the criteria for statehood) and the requirements for recognition of a State, that is, the preconditions for entering into optional or discretionary - diplomatic, political, cultural or economic - relations with the entity (the conditions for recognition). While the former are prescribed by international law, the latter may vary from State to State (Talmon, 2008, Neff 2005, Schoiswohl 2004, Shaw 2003, Lauterpacht, 1947, Talmon, 2004). The subject of recognition has been complicated by the use of several variants of the term, such as "*de facto* recognition," "diplomatic recognition," "*de jure* recognition," and "full recognition". Like "recognition," these terms can be given meaning only by establishing the intention of the State using them within the factual and legal context of each case. "Diplomatic recognition" is usually used to indicate a willingness to enter into formal diplomatic relations (i.e., exchange ambassadors, establish embassies, and so forth)

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(Talmon, 2011, Neff 2005, Schoiswohl 2004, Shaw 2003, Evans & Capps, 2009, Dugard, 1987, James, 1986). On the basis of the above analysis, this paper set to interrogates the position of law and politics in diplomatic recognition of states and government with special reference to Africa. Accordingly, the elements, theories, and processes are reflected in this paper for purposes of clarity.

II. Understanding Recognition of states and Government in International Law and Politics

The right of a *people* to self-determination is a cardinal principle in modern *international law* (commonly regarded as a *jus cogens* rule), binding, as such, on the *United Nations* as authoritative interpretation of the *Charter's* norms (*McWhinney, Edward* 2007). Despite the fact that many ethnic groups, movements and regions have sought to create their own sovereign state, only a very small fraction of ethnic groups seeking independence have managed to become internationally recognized states (*Griffiths, 2016,* 2019). In addition to 193 UN Member States, we have over 10 de facto and partially recognized states, and over 40 partially independent and non-self-governing territories (*Caspersen, 2014*). The term "recognition," when used in the context of recognition of States and governments in international law, may have several different meanings. While there is no exact definition of state recognition in a broad sense recognition entails, As (Gëzim, 2021) has noted, 'the resulting fragmented body of knowledge on state recognition has prevented the development of more comprehensive and reality-adequate accounts that take into account the politics, law, history, sociology and economics of state recognition in theory and practice.' The concept of recognitionality can be useful as a heuristic to look at state recognition as a process not entirely shaped by power, legal norms, institutions and material condition, but also constituted through diplomatic discourses, performances and entanglements (Gëzim, 2021) As *Ryan D Griffiths (2019)* argues, "there is an international regime which 'determines when an applicant has the right to withdraw from an existing state and join the club of sovereign states. Yet, making sense of diplomatic recognition requires looking at the micro-moves and everyday practices, spaces, emotions and personal diplomacy. It is not sufficient to only look at the legal and institutional rules. It requires acknowledging the multidimensional nature of recognition and opening up to different scale, forms and varieties of recognition, as well as capturing the contextual and temporal nature of such practices. By un-raveling the techniques and politics of re-cognitionality,.." is to capture the reality-adequate for recognition practices in world politics today.

Most importantly, existing literature lacks a critical outlook of state recognition as an un-codified norm and scattered practice in world politics. In a more inclusive sense 'the practice of states conferring recognition upon newcomers, which is considered to be an important element of independent statehood and a crucial blessing for admission to the international community of sovereign states' (*Visoka et al., 2020*). It denotes under international law, a process whereby certain facts are accepted and endowed with a certain legal status, such as statehood, sovereignty over newly acquired territory, or the international effects of the grant of nationality or 'a *unilateral* declarative political act of a *state* that acknowledges an act or status of another state or *government* in control of a state (may be also a recognized state).' Furthermore, 'recognition of states plays a central role in shaping world politics. It can be a cause of state death, birth, or resurrection. It can be a source of conflict and peace, a source of justice but also of discrimination and subordination. It can be a safeguard to state expansion and international order, but also can be a source of collective self-determination and liberation. It can reproduce the existing state system but also open up space for normative change and emancipation.' (Gëzim, 2021). International recognition plays a vital role in the political, security, legal, economic and socio-cultural development of states (*Rezvani, 2015*). It enables states protection under international law, 'access to multilateral bodies and the possibility to develop diplomatic and trade relations with other states. It may also indicate the recognizing State's willingness to enter into official relations with a new State or government, or manifest its opinion on the legal status of a new entity or authority, or both. While, international recognition might not guarantee successful statehood, its absence certainly poses many challenges for surviving an inhospitable international environment' *(Craven and Parfitt, 2018)*. States which lack full international recognition are more likely to become subject to foreign military occupation and hybrid wars *(Fabry, 2010)*. Limited diplomatic relations – an inherent condition of unrecognized states – undermines the capacity of these entities to enhance their political, security and trade relations with other recognized states, leading to economic stagnation, poverty and social isolation *(Geldenhuys, 2009)*. Although the subject of state recognition is widely studied in law, comparative politics and area studies, there is still no consolidated research programme which critically interrogates the recognition of states in theory and practice. So far, the subject of state recognition has remained a sub-category of other research programmes, such as those examining international norms, sovereignty, secession, self-determination, international intervention, great power politics, preventive diplomacy, violent conflicts, ethnicity, identity politics and conflict resolution, economic diplomacy (Gëzim, 2021).

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The subject matter has been complicated by the introduction of several variants of the termologies in internatioal law and relations. More eloborately, the 'seeking state recognition as diplomatic performance challenges the solid and reified accounts of recognition as an intentional act and opens up the possibility for exploring different agencies, stages and tactics involved in the practice of state recognition' (Gëzim, 2021). Here distinctions between "*de facto* recognition," "diplomatic recognition" and "*de jure* recognition" may be traced back to the secession of the Spanish provinces in South America in early 19th century. Like "recognition," these terms can be given meaning only by establishing the intention of the authority using them within the factual and legal context of each case (Talmon, 2000, Crawford, 2006, 1977, Guilhot Nicolas, ed. 2011).

Recognition is a unilateral act performed by the recognizing State's government. It may be express or implicit. There is probably no other subject in the field of international law in which law and politics are more closely interwoven. However, that does not mean that recognition, in the sense of expressing an opinion on the legal status of an entity or authority, is a purely political act that is within the discretion of the recognizing State.

Recognition, if unfounded in law (such as premature recognition) and backed by State activity, may constitute an internationally wrongful act which gives rise to State responsibility. Recognition of States must be distinguished from recognition of governments, each form having its own theories and practices (Talmon, 2000, Grant 1999, Hobach, Lefeber & Ribbelink 2007). But the term "recognition," when used in the context of recognition of governments, rebels or *de facto* authorities in international law, may have several different meanings. It may indicate the recognizing State's willingness to enter into official relations with a new group, or manifest its opinion on the legal status of the group, or both. Alternatively, recognition may simply be a means of expressing political support or approval (Talmon, 2011, Hobach, lefeber & Ribblink, 2007).

Therefore, the recognition exchanged between States can take both implicit and explicit forms. By using the conduct of normal diplomacy, Statesmen might implicitly acknowledge others' status. These practices include the extension of diplomatic privileges, like exemption from prosecution, the signing of treaties, and the direct provision of aid according to international law. Most Statesmen however, disagree that the extension of diplomatic privileges implies recognition when none has been formally granted. Indeed, Statesmen often explicitly reaffirm that recognition has not been extended when their behavior seems to imply otherwise (Herbst, 2000). Explicit formal recognition then, rather than implicit recognition, presents the most incontrovertible evidence of external recognition and international acceptance. Formal recognition can be granted by means of formal public statement or through formal documentation transmitted to the government of a new State. This method of recognition also activates a number of observable legal consequences, embassies are often established, members of diplomatic corps exchanged, etc. It is therefore also easily discernable when it has or has not occurred. In most cases, recognition is the unique purview of the executive and a State's leader will publicly declare that recognition has been granted (Herbst, 2000, Weber, 2004, Neff 2005, Shaw, 2003,). There are two traditional doctrines that provide interpretations of when a de jure sovereign state should be recognized as a member of the international community. The declarative theory defines a state as a person in international law if it meets the following criteria; one, a defined territory; two, a permanent population; three, a government; and tour, a capacity to enter into relations with other states. According to declarative theory, an entity's statehood is independent of its recognition by other states. By contrast, the constitutive theory defines a state as a person of international law if it is recognised as such by another state that is already a member of the international community (Grant, 1999, Braumoeller, 2013). Several entities reference either or both doctrines in order to legitimise their claims to statehood. There are, for example, entities which meet the declarative criteria (with de facto complete or partial control over their claimed territory, a government and a permanent population), but their statehood is not recognised by one or more other states. Non-recognition is often a result of conflicts with other countries that claim those entities as integral parts of their territory. In other cases, two or more partially recognised entities may claim the same territorial area, with each of them de facto in control of a portion of it (as have been the cases of the Republic of China and People's Republic of China, and North and South Korea). Entities that are recognised by only a minority of the world's states usually reference the declarative doctrine to legitimise their claims (Grant, 1999, Neff 2005, Shaw 2003,). In many situations, international non-recognition is influenced by the presence of a foreign military force in the territory of the presumptive, self-declaring independent entity, so to make problematic the description of the country de facto status. The international community can judge this military presence too intrusive, reducing the entity to a puppet state where effective sovereignty is retained by the foreign power. Historical cases in this sense can be seen in Japanese-led Manchukuo or German-created Slovakia and Croatia before and during World War II. In 1996-case *Loizidou vs. Turkey*, the European Court of Human Rights judged Turkey for having exercised authority in the territory of Northern Cyprus (Grant, 1999). There are also entities which do not have control over any territory or do not unequivocally meet the declarative criteria for statehood but have been

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recognised to exist de jure as sovereign entities by at least one other state. Historically this has happened in the case of the Holy See (1870–1929), Estonia, Latvia and Lithuania (during Soviet annexation), among other cases. The recognition of the State of Palestine by over one hundred states is a contemporary example. Some states do not establish relations with new nations quickly and thus do not recognise them despite having no dispute and sometimes favorable relations (Neff 2005, Shaw 2003, Grant, 1999). Yet some states maintain informal (officially non-diplomatic) relations with states that do not officially recognise them. The Republic of China, that is, Taiwan is one such state, as it maintains unofficial relations with many other states through its Economic and Cultural Offices, which allow regular consular services. This allows the ROC to have economic relations even with states that do not formally recognise it. A total of 56 states, including Germany, Italy, the United States, and the United Kingdom, maintain some form of unofficial mission in the ROC. Kosovo, the Nagorno-Karabakh Republic, Turkish Republic of Northern Cyprus, Abkhazia, Transnistria, Sahrawi Republic, Somaliland, and Palestine also host informal diplomatic missions, and/or maintain special delegations or other informal missions abroad. In the U.S., such offices by unrecognized entities are required to be registered as foreign lobbyist organizations under the Foreign Agent Registration Act (FARA) and act as regular lobbyists (Grant, 1999).

The question of recognition of government normally arises only with regard to recognized States. When a State recognizes a new "government," it usually acknowledges a person or group of persons as competent to act as the organ of the State and to represent it in its international relations. The only criterion in international law for the recognition of an authority as the government of a State is its exercise of effective control over the State's territory. States may, however, continue to recognize a government-in-exile if an incumbent government is forced into exile by foreign occupation or the *de facto* government *in situ* has been created in violation of international law. Despite a trend in the literature to the contrary, there is still no rule of general or regional customary international law that a *de facto* government, to be a government in the sense of international law, must be democratically elected. Attempts to introduce such a requirement either by treaty (Central American Treaties of Peace and Amity of 1907 and 1923) or as a matter of national (Tobar, Wilson and Betancourt doctrines) or regional policies (Santiago Commitment to Democracy and the Renewal of the Inter-American System, OAS General Assembly Resolution 1080 of 5 June 1991) have failed (Dugard 1987, Evans & Capps 2009, Talmon, 1998). States may be roughly divided into three groups according to their recognition policy: States (such as the United Kingdom before 1980) that formally recognize governments; States (such as the United States) that generally do not formally recognize governments but do so in exceptional circumstances for political reasons; and States (such as the United Kingdom since 1980, and other member States of the European Union) that formally recognize only States, not governments. The policy is reminiscent of the "Estrada doctrine" according to which States issue no declarations in the sense of grants of recognition in cases of change of regime but confine themselves to the maintenance or withdrawal, as they may deem advisable, of their diplomatic agents. Those States have not completely abolished the recognition of governments, only the making of official statements of recognition. They still have to decide whether a person or group of persons qualifies as the government of another State, especially where there are competing "governments" in the same recognized State or when there is an attempted secession and issues of governmental status and statehood are linked. In the case of the British government, its opinion on the legal status of a claimant may be determined on the basis of the nature of the dealings (non-existent, limited or government-to-government dealings) which it has with a claimant (Talmon, 2008, Evans & Capps 2009).

III. Approaches, Theories and Perspectives of International Recognition

Recognition of statehood grants an entity international legal personality and binds it to comport itself according to the rules established by international law in its relations with other states and peoples. At the same time, it makes the entity eligible to enter into treaties and alliances with other states, as well as to participate in the development and enforcement of international law. Most importantly, recognition is an affirmation of an entity's right to territorial sovereignty and integrity, and its right to exercise coercive jurisdiction within this territory (Brierly, 1955, Burchill, et al. eds. 2005, Chernoff, Fred. 2007). The rights and powers attached to statehood make it desirable for political entities to attain such a status. At the same time, the expectation that each new state will abide by the rules of international law makes it desirable to include as many qualified political entities as possible, insofar as this will further the goals of peace and stability. The Montevideo Convention of 1933 was a preliminary attempt to codify specific descriptive criteria for statehood: (i) a permanent population, (ii) a defined territory, (iii) a functioning government able to control the territory in question, and (iv) the capacity to enter into relations with other states on its own account (Brierly, 1955, Talmon 2004, Pettman, 2010, Weber, 2004, Shaw, 2003). Together, these four requirements defined a state, and presumably any entity aspiring to independent statehood that met these criteria would

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automatically be regarded as a state under international law. This 'declaratory approach' is objective in the sense that whether or not an entity is considered a state depends on the empirical characteristics possessed by that entity. Furthermore, it is retrospective in that the international community is not actually granting the entity this status, but merely acknowledging what is already a fact (Chen, 1951, Talmon 2004, Shaw, 2003). Most scholars agree, however, that the present practice of recognition is not declaratory but constitutive. According to the 'constitutive approach,' an entity is considered a state to the extent that other states recognize it as such, since a new state cannot exercise rights and obligations against states that do not recognize it. In general, the present practice of recognition follows the constitutive approach. Consider the case of Palestine. Applying the Montevideo criteria for statehood, it becomes clear that Palestine should be considered a state, as it has a permanent population concentrated in a defined territory, a functioning representative authority (the PLO), and has already entered into various agreements with other foreign entities (Menon, 1994, Chernoff, Fred. 2007, Pettman, 2010, Weber, 2004).

However, as was already noted, its statehood bid is bound to be frustrated unless Israel and the United States choose to alter their policy of non-recognition. Regardless of whether or not the United States and Israel are right in denying recognition, it is clear that recognition in this case is a matter of policy discretion from the part of states on both sides of the controversy. As this example shows, the practice of recognition is often an opportunity for powerful states to express their approval or disapproval of a political entity, and thus, recognition ends up being a highly selective and strategic policy decision. Neither the declaratory nor the constitutive theory of recognition is entirely satisfactory. On the one hand, the constitutive theory lends itself to strategic manipulation by powerful states that have a vested interest in recognizing or not recognizing a political entity (Naticchia, 2000; Spears, 2004, Van der Pijl, 2014). Furthermore, there are logical and practical difficulties in asserting that an entity is a state according to some members of the international community (i.e. those who confer recognition) and not a state according to the rest. In this case, the entity would be subject to international law according to some states but would exist in a legal vacuum according to others. These inadequacies of the constitutive approach signal a need to establish an objective and impartial procedure for state recognition (Buchanan, 1999; Spears, 2004). On the other hand, the criteria established under the declaratory approach are too weak. Given that the new state is to be granted full sovereignty and international protection of its territorial integrity, the international community has reason not to welcome into the community of states entities that practice injustice, internally or externally. A state that repeatedly engages in aggressive war against other states or systematically commits human rights violations against other peoples should not be granted the sovereignty rights and legal powers that come with being a member of the international community, because these acts are antithetical to the core principles of the international legal system. Likewise, by conferring statehood status to entities that employ their coercive powers internally to oppress their populations, the international community would in effect be acting as an accomplice in injustice (Buchanan, 1999; Spears, 2004, Neff 2005, Schoiswohl 2004, Shaw 2003,). In both cases, the international community would be undermining the commitments to peace and justice that underlie the bulk of international law, and therefore recognition does not make sense in these instances. It is worthwhile to also mention a third approach to recognition proposed by Chris Naticchia. Naticchia (2000) advances a 'pragmatic' approach whereby the international community extends recognition only if such an act is expected to further peace and stability in the long run. This approach is act-consequentialist in the sense that the only consideration it regards as relevant in the decision of whether or not to grant recognition is the maximization of overall peace and stability. In this calculation, the extent to which the entity in question conforms to international standards of justice is a relevant factor only insofar as this behavior tends to further long-term peace and stability (Keohane, and Buchanan, 2004; Spears, 2004). As Buchannan (1999) correctly points out in his rejoinder to Naticchia, a rule-consequentialist approach whereby substantive rules are established is more likely to lead to peace and stability in the long-run than a case-by-case approach, which is not only prone to erroneous calculations but also bound to be politicized. Moreover, peace and stability cannot be pursued at any cost. Just like considerations of overall human welfare cannot trump individual rights in the domestic sphere, considerations of peace and stability cannot override the commitment to securing the basic rights and freedoms of a population (Keohane, and Buchanan, 2004; Spears, 2004).

IV. The Bases, Criteria and Processes of International Recognition

Each state conducts its relations with other states on the basis of particular understandings of the legal status of those other states. In many instances, such understandings are uncontroversial and amount to a recognition of the *status quo*: the UK and its dealings with France, for example. Sometimes, however, a state can take a position which challenges the existing order, such as recognizing a new state, for example the claim of Kosovo in 2008 to constitute a state comprising territory formerly part of Serbia, or take a position which

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rejects a claim itself challenging the *status quo*. For example, that of the Turkish Republic of Northern Cyprus to constitute a state comprising territory formerly part of Cyprus. Recognition, then, can be an attempt to alter or reaffirm the existing order (Wilde, Cannon and Wilmshurst, 2010, Birdsall 2009, Brownlie 2008, Crawford 1977, Crawford, 2006). There are two main international law aspects to the recognition process. One, recognition can play a role in the international legality of the object of recognition. Sometimes, a state is or is not a state legally because, amongst other things, other states have decided to treat it as such. Two, the recognition itself is regulated by international law, in that states are sometimes constrained in their choices when comes to recognition. These two aspects are related, and can come into tension insofar as states seek through recognition to create a new sovereignty arrangement which challenges the legal *status quo* and thereby is potentially at odds with their obligations to another state or group of states whose entitlements are being altered by this change (Wilde, Cannon and Wilmshurst, 2010, Brownlie 2008, Crawford 1977, Crawford, 2006).

The starting point for understanding the legalities of any regime of recognition or non-recognition, then, is to consider what the object of that recognition or non-recognition itself claims to be. In the words a government is only recognized for what it claims to be. One cannot determine fully what the legal significance of recognition is to that being recognized, and whether this recognition is itself lawful, without first focusing more closely on the legalities surrounding the claim itself. As for self-determination, if the claimant state constitutes a self-determination unit (SDU), an entity that has a lawful right to external self-determination, then it may be regarded to lawfully constitute a state even if in some respects its conformity to the viability criteria is somewhat deficient. This would be the case, for example, with certain newly independent former colonial states in the post-Second World War era of decolonization, for example, the Congo (Wilde, Cannon and Wilmshurst, 2010). By contrast, if the existence of the new state would involve a violation of self-determination, whether internal or external, then this may operate as a bar to statehood that would otherwise be valid on the basis of conformity to the viability criteria. So, for example, the claim of Rhodesia to independent statehood was invalid because, amongst other things, being constituted on the basis of an *apartheid* system of white minority rule, it violated internal self-determination (Wilde, Cannon and Wilmshurst, 2010, Neff 2005, Schoiswohl 2004, Shaw 2003, Evans & Capps, 2009, Dugard, 1987, James, 1986).

Moreover, the existence of the international law rules restricting the use of military force have led to a position suggesting that the creation of a new state, or the extinction of an existing state or the loss of its territory, will be invalid if brought about through the use of force and/or the conduct of military occupation. There are important difficulties and uncertainties, however, in distinguishing between lawful and unlawful uses of force, and considering circumstances where force is used to support the exercise of a claim to external self-determination, for example India in relation to Bangladesh. The UN Security Council also sometimes takes positions on these issues, although usually it is questionable whether this amounts merely to reinforcement rather than an alteration of the position that would exist anyway as a matter of general international law (Hobach, Lefeber & Ribbelink, 2007, Wilde, Cannon and Wilmshurst, 2010).

V. The Relevance and Consequence of Recognition in International Law

The view of most international lawyers is that the position taken by other states, whether recognition or non-recognition; as to the creation of a new state or the continuance of an existing state is merely declaratory, not also constitutive of, the legal position in this regard. In other words, the usual position is to apply the criteria reviewed above, irrespective of the view taken on this matter by other states. However, most of those who adopt this 'declaratory' theory of recognition accept that recognition can have a constitutive role in certain marginal cases: it is capable of pushing things further in favour of a particular outcome towards which the existing criteria are pointing but which itself is not reached by considering them alone (Wilde, Cannon and Wilmshurst, 2010, Jackson, and Georg, 2013). Thus, if an entity claims to be a new state, but is somewhat deficient in conformity to the viability criteria, recognition by other states in favour of its claim to statehood may tip the balance. This is especially significant given the presumption mentioned earlier against the creation of new states. In order for recognition to have this constitutive effect, however, it needs to be of a certain quantum, since this effect is based on the general notion that international law is made, and altered, only if one can identify a general trend across most, if not all, states. One would have to see, therefore, considerable recognition by states generally, ideally, although not necessarily, manifest through a decision by the United Nations to admit the claimant entity as a new member, something which presupposes statehood (Wilde, Cannon and Wilmshurst, 2010, Neff 2005, Schoiswohl 2004, Shaw 2003, Evans & Capps, 2009, Dugard, 1987, James, 1986). The juridical significance of this recognition is relatively straightforward when focusing only the viability criteria. However, things are more difficult, when considering the policy-based criteria, since there is a potential for the two. The outcome suggested by these criteria, on the one hand, and that

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suggested by recognition, on the other hand to be at odds with each other; for example, if recognition was at odds with the law of self-determination. On the one hand, entities can attain what amounts to external self-determination even if they don't have a right to this, and such an outcome, and its recognition, would be lawful provided other areas of international law are complied with (Wilde, Cannon and Wilmshurst, 2010, Alexandrowicz, 2017).

However, if an outcome involves a violation of self-determination, it is at least arguable that recognition cannot have a constitutive effect. This is because self-determination is regarded as one of those special areas of international law that have *jus cogens* status, that is, it is non-derogable, incapable of being limited by other rules of international law other than rules which have the same status. As a result, even if, then, a significant number of states recognize such an arrangement, this will not have the legal role that, all things being equal, it would have in circumstances where there would be no clash with the law of self-determination (Wilde, Cannon and Wilmshurst, 2010, Buchanan, 2004). In many cases of violations of self-determination, the violation itself leads to non-recognition (e.g., as previously mentioned, Rhodesia), and so a contradiction does not present itself. But, looking forward, this may be an issue, one hopes not, in the case of future arrangements with respect to the Palestinians and the people of the Western Sahara. One interesting and uncertain issue here is whether all aspects of the law of self-determination are relevant in the same respect. More generally, active non-recognition, that is, not just failing to recognize, but actively rejecting the validity of that which is being claimed can have a constitutive effect in de-legitimizing claims to statehood or alterations in the territorial entitlements of existing states. Just as states will often refrain from recognizing situations that are illegal, so the active rejection of such claims may not make much difference, if at all, to the legality of that being claimed; it is already illegal even if it may have significance in other respects (Wilde, Cannon and Wilmshurst, 2010, Alexandrowicz, 2017, Buchanan, 2004). So the widespread international rejection of Iraq's claim to title over Kuwait in 1990, for example, amounted to the reinforcement of the existing position as a matter of international law. In circumstances where the law is less clear, however, recognition may perhaps bring clarity to the situation. When states are recognizing a situation, e.g. a claim to statehood, which directly implicates issues of sovereignty-as-title, the legal position depends in part on a distinction between matters which are mandatory in international law, and those which are left to the state's discretion (Wilde, Cannon and Wilmshurst, 2010, Shaw 2003, Alexandrowicz, 2017, Buchanan, 2004). States are bound to respect the sovereignty of other states, which includes their territorial integrity and political independence. If, then, an entity is a state as a matter of international law, all other states are bound to 'recognize' this, even if they object in some way to that state's legitimacy or some aspects of its policy. Equally, if an entity claims to be a state, but is not, and is formed of the territory that forms part of an existing state, then other states are bound not to recognize this because of their obligations owed to the existing state (Neff 2005, Schoiswohl 2004, Shaw 2003, Evans & Capps, 2009, Dugard, 1987, James, 1986, Wilde, Cannon and Wilmshurst, 2010). Certain other core obligations also operate on this basis, including, most obviously, the international law relating to the use of force. But in many areas of international relations, states remain free to limit their mutual relations. In these areas, then, states can, in effect, choose not to 'recognize' another entity as a state, even if, as a matter of the basic contours of their relationship, they are actually bound to do so. Sometimes such a policy is concerned with a political objection to what may ultimately be a lawful arrangement (Wilde, Cannon and Wilmshurst, 2010, Evans & Capps, 2009, Dugard, 1987, James,1986).

When, however, states in their recognition or non-recognition practice are taking a clear stand on the question of status itself, this has to be in conformity to the legal position of the entity in question in order to be lawful. Given the constitutive role that recognition can play, the possibility arises whereby, in effect, states are seeking through recognition to render lawful something that would otherwise be unlawful. It is doubtful that states can through recognition alone render lawful something that would be unlawful as a matter of the law of self-determination, because of the *jus cogens* nature of that law. Just as, and indeed because, the recognition would not itself alter the illegality of the situation, so the recognition would itself be unlawful (Wilde, Cannon and Wilmshurst, 2010, Shaw 2003). Recognition has many positive consequences for its recipients. Recognized States benefit from assets unavailable to unrecognized actors. These can take the form of both tangible goods and political influence. Only recognized States may make treaties with other States, military, economic or otherwise. Only recognized States can be full members of Intergovernmental Organizations (IGOs) like the United Nations, the IMF and the World Bank. Recognized States are also uniquely able to bring grievances against other States for believed transgressions of international law at the International Court of Justice (ICJ). Similarly, only recognized States may receive loans from organizations like the IMF and World Bank. Foreign direct investment (FDI) is almost exclusively limited to the recognized States; and international trade flows and foreign aid tend to be filtered though recognized governments and States as well. All States benefit from their peers' recognition.

Recognition's practical import has also recently gained prominence regarding African States. External

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recognition and the opportunities that come along with it allow new, weak States to consolidate their domestic power base where little existed before. These States did not enter into the system fully established. Instead, new States entered only partially formed in terms of capability and governance, but through the external legitimacy and substantive benefits provided by membership, those States become increasingly similar to the Weberian ideal. Thus in Africa, where independent Statehood is a relatively new phenomenon, borders have been highly resistant to change and new States have not emerged due to the powerful effects of legitimacy accorded existing States by widespread external recognition (Herbst, 2000). Recognition of a rebel group as the legitimate representative of the people, as a rule, confers several advantages: (1) it legitimizes the struggle of the group against the incumbent government; (2) it provides international acceptance; (3) it allows the group to speak for the people in international organizations and represent it in other States by opening "representative offices"; and (4) it usually results in financial aid. In the case of the NTC, there may be an additional advantage.

VI. Law and Politics of Recognition in International Law

First and foremost, recognition is a political act whereby a subject of international law, whether a state or any other entity with legal personality, expresses its unilateral interpretation of a given factual situation, be it the birth of a new state, the coming to power of a new government, the creation of a new Recognition by other States then, rather than (and sometimes in spite of) simple *de facto* control and authority, is an important initial distinction between States and non-State 'others' in the international system. The contemporary dynamics of secession and Statehood might be one of the most dramatic examples of the second image reversed; the international system and its members determine not only the form and function of institutions within States but potentially, who those States are to begin with. It is both theoretically and practically misleading to disregard the important social component of Statehood in favor of purely objectivist definitions. There are very few cases in recent history where new State members unambiguously met the theoretical or legal standards for Statehood, yet States have proliferated. The vagaries of the legal standards are partially responsible for the gap between law and practice, but it is also due to the fact that recognition was intended, and continues to be, a practice of mutual self-interest among States (Jackson, 1987, Jackson, and Georg, 2013). It probably comes as no surprise that recognition, like myriad other decisions statesmen make, might be politically motivated rather than based upon absolute standards of governmental capacity. Indeed, with rare exception political scientists expect that self-interests guide the decisions of Statesmen, even where standards of appropriate behavior exist. Similarly, international lawyers bemoan the overtly political nature of recognition in practice and often attempt to rectify it through greater legal specificity. Perhaps Statesmen use the lure of system membership in order to gain economic or political favors from the new State. Perhaps a historical kinship with a particular secessionist group engenders sympathy and acceptance. Probably, certain systemic conditions within the international system predispose its members to greater and lesser support for recognition (Jackson, 1987, James, 2004, Meijknecht 2001, Milano, 2006).

Although there is little room for political motive within the current legal requirements for recognition in theory, there is little question that politics matter in practice. Self-interest has the potential to explain quite a bit about the determinants of Statehood, but not in the *ad hoc* (and often *post hoc*) manner that it is most commonly employed. States must consider other States' actions and reactions to their policies. While recognition is theoretically a bilateral contract between two States, many States must recognize a new State before it secures full membership in international society. In international relations, the dynamics of recognition can be thought of as a threshold model of sorts. Unanimous recognition is not necessary, but a "critical mass" of acceptance must be reached prior to full participation as a State within the international community. Once past the tipping point, Statehood is almost never revoked (Jackson, 1987, James, 2004, Milano, 2006). Each State's recognition is juridical equivalent, but the most important players constituting this "critical mass" are the Great Powers. Although all States are both members and progenitors of international society, the Great Powers constitute an extremely powerful sub-group within that population. In fact, some argue successful secession is impossible without the support of a powerful patron State. The Great Powers act as the gatekeepers of Statehood. Their decisions play a decisive role in recognition and, consequently, in defining 'Statehood's' meaning for its aspirants. This is true even if Statesmen are not conscious of the precedents themselves. When acting in concert, Great Power recognition decisions are not easily overruled (Jackson, and Georg, 2013, Jackson, 1987). When there is a harmony of opinion over recognition or a lack thereof, the international politics of Statehood will be uncontroversial and the Great Powers will make decisions consistent with the group consensus. States with support will be elevated into the international community and those without it will remain subject to the jurisdiction of other States. In other cases, recognition is more contested. The Great Powers often have competing motives and therefore differ over what constitutes a legitimate claim to Statehood. When there is a lack of consensus among the Great Powers, the

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most important determinant of recognition will be the extent of domestic control and authority exercised by the secessionist regime (Jackson, 1987, Meijknecht 2001, Milano 2006).

In other words, recognition will be stalled indefinitely and only granted once domestic sovereignty is definitively and irreversibly established. It is only under these circumstances that the international legal criteria, however ambiguous, rather accurately determine secessionist success (though recognition's timing will remain uncertain). In sum, the international politics of recognition are essential to understanding which actors among the scores of potential new members will be accepted into the international community of States. To an important extent, nascent states are either elevated to State membership or excluded from it by powerful, existing members (Milano 2006, Neff 2005, Schoiswohl 2004, Shaw 2003, Jackson, 1987).

VII. Cases of Recognition of States and Governments in Africa

The Republic of Somaliland with an estimated population of more than 3.5 million people is located in the Horn of Africa. It became a British protectorate at the end of the nineteenth century when European colonial countries were competing for spheres of influence in Africa. It obtained its independence from Britain on June 26, 1960. More than 35 member states of the United Nations including its Permanent Members and many members of the European Union immediately accorded diplomatic recognition to Somaliland. However, Somaliland voluntarily merged with Somalia on July 1st, 1960 that became independent of Italy. The two countries established then the Republic of Somalia. The hopeful union of the two countries had ended in ten year war (1981-1991) and the utter destruction of Somaliland (Eggers, 2007, Caspersen & Stansfield 2011, Milano 2006). Following the collapse of the Union, Somaliland's political and traditional leaders with popular support decided in May 1991 to annul the Union and to reclaim the political independence of the country. And for the last twenty years, its hardworking people got engaged in a process of re-building the country; first community reconciliation and enhancing peace, repatriation of hundreds of refugees and displaced persons, the setting-up of democratic structures of government and rehabilitation of economic structure of the country. These democratic principles guarantee civil liberties, multi-party competition for elections and wide participation. For the last twenty years, Somaliland had stood the test of time. During this period, it conducted successfully periodic free and fair elections and its change of government was always characterized by Smooth transitions. At present, its economy is thriving with more and more exports to world markets (Eggers, 2007, James, 2004, Meijknecht 2001, Milano, 2006). In May 2001, an overwhelming majority of Somalilanders re-affirmed their support for the separation of Somaliland from Somalia in a constitutional referendum. As is known, self-determination as an important concept allows peoples and nations to have a role in international affairs and supports respect for their democratic choice, contrary to the old fashioned state-sovereignty approach in international dealings (Cassese, Antonio, international law, 2005). Somalilanders are determined more than ever to defend their hard-won independence (Daar, nd, Neff 2005, Schoiswohl 2004, Shaw 2003). Somaliland's claim to self-determination and independence is further strengthened by the application of the principle of *uti possedetis* that is a general principle of international law which supports the maintenance of colonially inherited boundaries. It accepts the sanctity of the boundaries in Africa. Similar to other African countries including Egypt and Syria, Senegal and The Gambia, Eritrea and Ethiopia and so forth, Somaliland withdrew from that Union with Somalia which is in a state of anarchy. Somaliland's declaration of independence is based on its earlier existence as a recognized state with demarcated borders, and is consistent with the Constitutive Act of the African Union. Somaliland's independence is therefore not secession, but a return to sovereignty (Daar, nd, James, 2004, Milano, 2006). The *de facto* independent republic of Somaliland is overwhelmed with problems due to its unrecognized status. Somaliland has been independent since the ouster of former president Siad Barre and the onset of Somalia's civil war in 1991. It conducts independently monitored local and national elections, recently enacted a new constitution, has a functioning police force and governs itself in a far more functional manner than Somalia. Secessionist Somaliland meets the legal criteria for Statehood in virtually every respect, but not recognized by any other State. The problems of unrecognized proto-States like Somaliland range from mundane to high politics. Even seemingly small bureaucratic arrangements between States can have large effects on the unrecognized (James, 2004, Meijknecht 2001, Milano, 2006, Herbst, 2000).

Although the Republic of Somaliland unambiguously meets the legal standards for Statehood, so long as most of the States in international society are not willing to recognize its independence, Somaliland's internal sovereignty means little for its external affairs. It cannot assert itself as a State any further than it already has. Yet it is not a full member of international society. It may be able to defend itself against outside invaders (like those from neighboring Puntland), but it has no legal standing upon which to do so under international law. For outsiders, Somaliland is simply one of many "tribal factions" in Somalia's chaotic civil war. Finally, even maintaining Somaliland's internal sovereignty is fraught with peril without external

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recognition. It will not be afforded the resources, exclusively reserved for States, which might ensure its survival (Herbst, 2000). The Eritrean War of Independence (September 1, 1961 - May 29, 1991) was a conflict fought between the Ethiopian government and Eritrean separatists, both before and during the Ethiopian Civil War. The war started when Eritrea's autonomy within Ethiopia, where troops were already stationed, was unilaterally revoked. Eritrea had become part of Ethiopia after World War II, when both territories were liberated from Italian occupation. Ethiopia claimed that Eritrea was part of Ethiopia. Following the Marxist-Leninist coup in Ethiopia in 1974 which toppled its ancient monarchy, the Ethiopians enjoyed Soviet Union support until the end of the 1980s, when glasnost and perestroika started to impact Moscow's foreign policies, resulting in a withdrawal of help. The war went on for 30 years until 1991 when the Eritrean People's Liberation Front (EPLF), having defeated the Ethiopian forces in Eritrea, took control of the country. In April 1993, in a referendum supported by Ethiopia, the Eritrean people voted almost unanimously in favor of independence. Formal international recognition of an independent and sovereign Eritrea followed later the same year (Connell, 2005).

Biafra, officially the Republic of Biafra, was a secessionist state in south-eastern Nigeria that existed from May 30, 1967 to January 15, 1970, taking its name from the Bight of Biafra (the Atlantic bay to its south). The inhabitants were mostly the Ibo people who led the secession due to economic, ethnic, cultural and religious tensions among the various peoples of Nigeria. The creation of the new country was among the causes of the Nigerian Civil War, also known as the Nigerian-Biafran War. The Land of Rising Sun was chosen for Biafra's national anthem, and the state was formally recognised by Gabon, Haiti, Cote d'Ivoire, Tanzania and Zambia. Other nations which did not give official recognition but which did provide support and assistance to Biafra included Israel, France, Portugal, Rhodesia, South Africa and the Vatican City (Douglas, 1994; Room, 2006). Over a dozen states has recently declared their recognition of the Libyan National Transitional Council (NTC). Germany became the 13th state to "recognize" the NTC following Australia, Britain, France, Gambia, Italy, Jordan, Malta, Qatar, Senegal, Spain, the United Arab Emirates (UAE), and the United States. France became the first country to recognize the NTC as "the legitimate representative of the Libyan people." Similar recognition was accorded by Qatar, the Maldives, Gambia, Senegal, Turkey, Jordan, Spain, and Germany. While a State cannot have two *de jure* governments at the same time, it can have a *de jure* government and a local *de facto* government or a representative of the State's people. This explains why States, which have recognized the NTC as legitimate representative of the Libyan people, can nevertheless continue to recognize the diplomatic role and status of Qaddafi-appointed ambassadors and accept his representatives in international organizations as the representatives of Libya (Talmon, 2011, Caspersen & Stansfield 2011). Italy's statement on April 4, 2011, that it recognized the NTC "as the country's only legitimate interlocutor on bilateral relations," thus seems to have gone beyond the recognition by France and others. This was confirmed later when Italy declared that it recognized the NTC as holding governmental authority in the territory which it controls. France also upgraded its recognition, stating that from now on it considered the NTC as the only holder of governmental authority in the contacts between France and Libya and its related entities. This, in effect, amounted to recognition of the NTC as the government of Libya. On June 12, the UAE also recognized the NTC as a legitimate Libyan government. The country's foreign minister explained: "Based on this, UAE's dealing with the Transitional National Council (TNC) will take the form of a government-to-government relationship in all issues relating to Libya (Talmon, 2011). Whilst politics and law are closely intertwined in the question of recognition, this does not mean that recognition, in the sense of expressing an opinion on the legal status of a rebel group, is a purely political act within the unfettered discretion of the recognizing State. In the 1960s, the Organization of African Unity's Coordinating Committee for the Liberation of Africa developed certain standards, albeit vague, for the recognition of national liberation movements fighting the incumbent government as the sole legitimate representative of a people which, it is suggested, may equally be applied to the recognition of the NTC. Thus, for the NTC to be recognized as the legitimate representative of the Libyan people, it must be the United Action Front against the Qaddafi government, i.e., it must be broadly based, have effective following and popular support throughout Libya, and must have reasonable fighting strength (Talmon, 2011, Verma, 2014,). The main criterion in international law for the recognition of a rebel group as the government of a State is its exercise of effective control over the State's territory. As long as the NTC's control is limited to the eastern parts of Libya, with the capital Tripoli and western parts remaining under the control of Qaddafi forces, it may be recognized only as the local *de facto* government of the territory which it controls. Any recognition of the NTC as the *de jure* government of the State of Libya, while Qaddafi forces are still in control of the capital, seems premature and would arguably constitute an illegal interference in the internal affairs of Libya (Talmon, 2011). As in the first four months of the Libyan civil war the factual and political situation in Libya was uncertain, States were very reluctant to grant any legally relevant recognition to the NTC. This led States to invent a new form of

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recognition of the NTC as a "legitimate and credible interlocutor," "legitimate political interlocutor," or "valid interlocutor" for the Libyan people. These terms apparently signified that the NTC was an "official negotiating counterparty," a "relevant partner for dialogue," a "discussion partner," or a "credible voice for the Libyan people" (Talmon, 2011, Neff 2005, Schoiswohl 2004, Shaw 2003, Verma, 2014). Unlike recognition as the representative of a people or as a government, such recognition is without significance in international law. This becomes clear from the fact that several States, whose policy is to recognize only States, not governments (such as Australia, Canada, Germany, Netherlands, and United Kingdom), had no problem with granting such "recognition." The main purpose of this action seems to have been to express various degrees of political support. While in March 2011 the NTC was initially recognized only as "a" political interlocutor among others, or simply as interlocutors, this denomination was later changed to "the" political interlocutor. The change from indefinite to definite article was interpreted by the United States in June as a signal that its support for the NTC was "deepening". However, any such recognition was still limited "to this interim period" (Talmon, 2011). States that recognize the NTC as the legitimate interlocutor for the Libyan people have sent "special representatives," "diplomatic representatives," "diplomatic envoys," or "special ambassadors" to, and established permanent liaison offices in, Benghazi. While these representatives may have a diplomatic function, they do not have formal diplomatic status (which would require the NTC's recognition as the government of Libya). Thus, the French Foreign Minister told reporters at a conference in London on March 29 that the French diplomat sent to the NTC was "not an ambassador because we have not formally recognised a state through the Transitional National Council". States have also invited the NTC to open a "representative office" in their capital. Such offices are, however, not diplomatic missions and, for that reason, do not enjoy diplomatic status as of right. States are, however, free to grant NTC's representatives working in their territory certain diplomatic privileges and immunities. In most countries, the grant of diplomatic privileges and immunities to non-diplomats requires special legislation. This may explain why the United Kingdom and others have so far granted the NTC only certain "administrative concessions" on minor issues such as access to parking spaces. Unless States recognize the NTC as the government of Libya, they cannot allow the representative of the NTC to set up office in the existing Libyan embassy without violating their obligations towards Libya under the Vienna Convention on Diplomatic Relations. Indeed, several of the States recognizing the NTC as the legitimate interlocutor for the Libyan people continue to recognize the Qaddafi government as the government of Libya and host its diplomatic agents (Talmon, 2011).The Sahrawi Arab Democratic Republic (SADR) was proclaimed by the Polisario Front on February 27, 1976, in Bir Lehlu, Western Sahara. SADR claims sovereignty over the entire territory of Western Sahara, a former Spanish colony; however, at present the SADR government controls only about 20-25% of the territory it claims. It calls the territories under its control the Liberated Territories. As of 2012, the Sahrawi Arab Democratic Republic has been recognized by 85 states. Out of these, 32 have since "frozen" or "withdrawn" recognition. Notably, 84 out of 193 (43.5%) United Nations (UN) member states, 38 out of 53 (72%) African Union (AU) member states, 18 out of 57 (32%) Organization of Islamic Cooperation (OIC) member states, and 5 out of 22 (23%) Arab League (AL) member states have recognised SADR. Several states that do not recognize the Sahrawi Republic nonetheless recognize the Polisario Front as the legitimate representative of the population of the Western Sahara, but not as the government-in-exile for a sovereign state (Coquia and Defensor-Santiago, 2005). The republic has been a full member of the African Union (AU), formerly the Organization of African Unity (OAU), since 1984. Morocco withdrew from the OAU in protest and remains the only African country not within the AU since South Africa's admittance in 1994. The SADR also participates as guest on meetings of the Non-Aligned Movement or the New Asian-African Strategic Partnership, over Moroccan objections to SADR participation. On the other hand, Moroccan "territorial integrity" is favored by the Arab League. Thus, the SADR is not a member of the Arab League, nor of the Arab Maghreb Union, both of which include Morocco as a full member. Besides Mexico, Algeria, Iran, Venezuela, Vietnam, Nigeria and South Africa, India was the major middle power to have ever recognized SADR, having allowed the Sahrawi Arab Democratic Republic to open embassy in New Delhi in 1985. However, India "withdrew" its recognition in 2000 (Coquia and Defensor-Santiago, 2005). Although it has no recognition from the United Nations, the republic has been a full member of the African Union (AU, formerly the Organization of African Unity, OAU) since 1984. Morocco withdrew from the OAU in protest and remains the only African nation not within the AU since South Africa's admittance in 1994. The SADR also participated in a conference of the Permanent Conference of Political Parties of the Latin American and the Caribbean, 2006, the SADR ambassador to Nicaragua participated in the opening conference of the Central American Parliament, 2010, and SADR delegation participated in meeting of COPPPAL and ICAPP in Mexico City, 2012. On July 9, 2011, South Sudan became the world's newest state. Since the time of British colonialism, spanning from the late 19th century to the mid 20th century, the various ethnic groups that populated the country of Sudan enjoyed vastly unequal access to political power and

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economic resources. Notably, the British had established two separate administrations, a progressive and commercial one in the north and a rudimentary and rather dysfunctional one in the South. The north's monopoly over the country's wealth persisted, and was indeed exacerbated, after Sudan's declaration of independence from Britain in 1956 (Grawert, 2008, Caspersen & Stansfield 2011). Emboldened by their superior economic status, the 'Arabs' in Khartoum sought to consolidate their ascendancy by imposing their Islamic culture and legal traditions on non-Arab and non-Muslim populations in the peripheral regions of the country. Southern Sudan, largely possessing a distinctive non-Arab culture, mobilized an armed resistance, the Sudan People's Liberation Army (SPLA), against the 'Arab Center's' marginalization. This grass-roots militia and civilian-based movement fought for a unified, discrimination-free Sudan in a civil war that lasted 17 years, until the signing of the Addis Ababa agreement in 1972 granting limited autonomy to the south (Collins 2010). After 10 years of relative peace, Islamist fundamentalism resurged in the north under the Nimeiri military dictatorship, and the central government's persistent violation of the autonomy agreement reached at Addis Ababa reignited the civil war. This time, however, the south did not demand an end to discrimination but, instead, fought for complete independence. The second civil war lasted until 2005, culminating in the Comprehensive Peace Agreement (CPA), which re-established the south's autonomy until a referendum on independence could be held 11 years later. In January 2011, southern Sudan voted with a 99% majority to secede from the north, resulting in the definitive partitioning of country effective on July 9th of that same year, and the admission of South Sudan into the United Nations three days later (Grawert, 2008; Collins 2010). Finally, president Barrack Obama declared that the United States formally recognized the Republic of South Sudan as a sovereign and independent state on July 9, 2011. This followed the historic January referendum on self-determination for Southern Sudan, demonstrating full implementation of the 2005 Comprehensive Peace Agreement between the North and South.

a) *The Historic Unrecognized or Partially Recognized States with De Facto Control over their Territory in Africa*

These lists of historic unrecognized or partially recognized states or governments in Africa give an overview of extinct geopolitical entities in Africa that wished to be recognized as sovereign states, but did not enjoy worldwide diplomatic recognition. The entries listed here had *de facto* control over their claimed territory and were self-governing with a desire for full independence, or if they lacked such control over their territory, were recognized by at least one other recognized nation. The criteria for inclusion in this list are similar to that of the list of states with limited recognition in Africa. To be included here, a polity in Africa must have claimed statehood, lacked recognition from at least one state, and either; had a population and an organized government with a capacity to enter into relations with other states; or had de facto control over a territory or a significant portion of the territory of an otherwise recognized sovereign state; or have been recognized as a state by at least one other state.

Table 1: List of Historical Unrecognized States in Africa

Name	Period	Today	Notes
Azawad	2012	Recognised as part of Mali, controlled by Ansar Dine	Controlled territory in Northern Mali, it wasn't recognized by any state
Biafra	1967–1970	Part of Nigeria	Controlled territory in eastern Nigeria, recognized by five states (Gabon, Haiti, Ivory Coast, Tanzania, Zambia)
Anjouan	1997–2002, 2008	Now part of Comoros	Joined with the Comoros then seceded twice to gain independence. Anjouan rejoined the Comoros after talks during the first secession. After the second event, the secessionist government was forcefully removed.
Bophuthatswana, Ciskei, Transkei, Venda	1977–1994, 1981–1994, 1976–1994, 1979–1994	Now all part of South Africa	Former apartheid Bantustan homelands, formed and recognized only by each other and South Africa. Israel extended marginal recognition to Bophuthatswana and Ciskei by allowing both polities to build trade missions in Tel Aviv
Jubaland	1998–2001	Now part of Southwestern Somalia	Briefly declared independence in 1998 it rejoined the Transitional Federal Government in 2001.
Katanga	1960–1964	Part of the Democratic Republic of the Congo	Controlled the state of the same name within the former Belgian Congo after decolonisation
Mohéli	1997–1998	Now part of Comoros	Seceded in 1997 but quietly rejoined the next year.
Rhodesia	1965–1979	Now Zimbabwe	British Colony that unilaterally declared independence

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Name	Period	Today	Notes
Republic of the Rif	1921–1926	Part of Morocco	Founded in September 1921, when the people of the Rif (the Riffians) revolted and declared their independence from Spanish Morocco. It was dissolved by Spanish and French forces on 27 May 1926.
Kingdom of Rwenzururu	1963–1982	Now part of Uganda	Was based in the Rwenzori Mountains between Uganda and Congo
South Kasai	1960-1961	Part of the Democratic Republic of the Congo	Controlled the state of the same name within the former Belgian Congo after decolonisation
Zimbabwe Rhodesia	1979	Now Zimbabwe	Short-lived version of Rhodesia (see above) that ended white minority government and introduced biracial government.

Source: http://en.wikipedia.org.

VIII. Conclusion and Recommendations

Recognition is a unilateral act performed by the recognizing State's government. It may be express or implicit. The recognition of the State is an essential procedure, so that the State can enjoy the rights and privileges as an independent community under International law. The recognition is it De Facto and De Jure, both provide rights, privileges and obligations. The act of recognition does not necessarily require the use of the terms recognition or recognize. Recognition is more than a word. A State may simply say that it acknowledges, regards, considers, deals with, or treats a group in a certain capacity, in order to convey its recognition. When a state gets De Facto recognition, its right, privileges and obligations are less but when De Jure is recognized by the State it gets absolute rights, liabilities and privileges. The recognition of the State has some political influence on the International Platform. Recognition will be stalled indefinitely and only granted once domestic sovereignty is definitively and irreversibly established. It is only under these circumstances that the international legal criteria, however ambiguous, rather accurately determine secessionist success (though recognition's timing will remain uncertain).

In sum, the international politics of recognition are essential to understanding which actors among the scores of potential new members will be accepted into the international community of States. To an important extent, nascent states are either elevated to State membership or excluded from it by powerful, existing members. There are many situations where powerful States create difficulties in recognition of a newly formed State. This can be withdrawn when any State does not fulfill the conditions for being a sovereign State. De Jure and De Facto recognition may vary from case to case. De Jure recognition can be given directly to the State; there is no necessity of De Facto recognition even if De Facto is considered as the primary step to achieve De Jure recognition. The mainstream knowledge on state recognition states and government 'seeks to preserve the interests of existing powers at the expense of the rights and freedoms of subjugated peoples who see creation of a new state as a sanctuary for collective emancipation and escape from human rights abuses by the base state. By seeking to reproduce the existing state system and international order, present knowledge on state recognition is predominantly unable to question the ontology and epistemology of state recognition and the political, economic, social and normative multiplicities surrounding it' (Gëzim, 2021, Neff 2005, Schoiswohl 2004, Shaw 2003,). Understandably, existing theories and approaches are deeply committed to preserving existing international order and are sceptical to change the existing recognitionality practices. This makes it difficult perhaps to even take into account or debate, let alone implement, many of the proposed ideas in this paper. Such scepticism should, if anything, motivate critical scholars to uncover the structures and actors as well as types of knowledge which prevent changes to the existing recognition regime and direct future research towards producing more emancipatory knowledge that contributes to global justice and better representation of subjugated states, peoples and communities in world politics (Gëzim, 2021).

Most importantly, future research should rethink the foundational knowledge on state recognition and include other alternative ways of knowing, acting and seeing state recognition in world politics. Such a change requires expanding the analytical tools as well as engaging in interdisciplinary and grounded research which rescales whose voices, interests, needs and rights matter the most. It also requires taking a bottom-up approach to understanding state recognition that is not captured by existing legal, doctrinal and normative knowledge on the subject (Gëzim, 2021).This is a huge task, but not impossible, a new road map much worth pursuing by scholars and practitioners alike.

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References Références Referencias

1. Alexandrowicz, CH (2017 [1952]) The quasi-judicial function in recognition of states and governments. In: Armitage, D, Pitts, J (eds) The Law of Nations in Global History. Oxford: Oxford University Press, 375–383.
2. Brierly, J.L. (1955) *The Law of Nations*, Oxford: Clarendon Press.
3. Baylis, John; Steve Smith; and Patricia Owens. (2008) *The Globalisation of World Politics*, OUP, 4th edition.
4. Buchanan, A (2004) Justice, Legitimacy, and Self-determination: Moral Foundations for International Law. Oxford: Oxford University Press.
5. Birdsall, A. (2009.) *The international politics of judicial intervention: creating a more just order,* New York & Oxon: Routledge.
6. Brownlie, I. (2008.) *Principles of public international law*, Oxford: Oxford University Press
7. Buchanan, A. (1999) "Recognitional Legitimacy and the State System" *Philosophy and Public Affairs* 28: 46-78.
8. Braumoeller, Bear. (2013) *The Great Powers and the International System: Systemic Theory in Empirical Perspectives,* Cambridge University Press.
9. Burchill, Scott and Andrew Linklater (2005). "Introduction," in *Theories of International Relations*, ed. by Scott Burchill et al., New York: Palgrave Macmillan: 1.
10. Fred. (2007), *Theory and Meta-Theory in International Relations: Concepts and Contending Accounts*, Palgrave Macmillan.
11. Caspersen N. & G. Stansfield, (2011), *Unrecognized States in the International System*, London & New York: Routledge.
12. Craven, M, Parfitt, R (2018) Statehood, self-determination and recognition. In: Evans, M (ed.) International Law (5th edn). Oxford: Oxford University Press.
13. Crawford, J. (1977), The Criteria for Statehood in International Law", *British Yearbook of International Law*, (Vol. 48): 93-182.
14. Crawford, J. (2006), *The creation of states in international law*, Oxford, Oxford University Press
15. Caspersen, N (2014) Unrecognized States. Cambridge: Polity Press
16. Chen, T.C. (1951) *International Law of Recognition*, London: LC Green.
17. Collins, R.O. (2008) *A History of Modern Sudan*, New York: Cambridge University Press.
18. Connell, D. (2005) *Building a New Nation: Collected Articles on the Eritrean Revolution (1983–2002)*, New York: Red Sea Press.
19. Coquia, J.R. and Defensor-Santiago, M. (2005) *International Law and World Organizations* New York: Central Lawbook Publishing.
20. Daar, M.A. (nd) "Somaliland Qualifies for Diplomatic Recognition under International Law", A Paper Submitted to the 20th Anniversary Conference of UNPO at the Hague, the Netherlands.
21. Dugard, J. (1987) *Recognition and the United Nations*, Cambridge: Grotius Publications.
22. Douglas, J. (1994) *Biafra, Secession, and Recognition in International Law*, Washington DC: American University.
23. Evans, M. & Capps P (red.), (2009), *International Law: Volume II*, Farnham: Ashgate Publishing: 58
24. Eggers, A.K. (2007) "When is a State a State? The Case for Recognition of Somaliland" *Boston College International and Comparative Law Review* 30 (1): 211-222.
25. Fabry, M (2010) Recognizing States: International Society and the Establishment of New States since 1776. Oxford: Oxford University Press.
26. Griffiths, RD (2016) Age of Secession: The International and Domestic Determinants of State Birth. Cambridge: Cambridge University Press: 5
27. Griffiths, RD (2019) Kurdistan, the international recognition regime and the strategy of secession. In: Danilovich, A (ed.) Federalism, Secession, and International Recognition Regime. London: Routledge, 111–126.
28. Gëzim Visoka (2021) 'Statehood and Recognition in World Politics: Towards a Critical Research Agenda', Cooperation and Conflict SAGE Publications in Cooperation and Conflict Cooperation and Conflict , Volume 57, 133-151; https://doi.org/10.1177/00108367211007876
29. Guilhot Nicolas, ed. (2011) The Invention of International Relations Theory: Realism, the Rockefeller Foundation, and the 1954 Conference on Theory.
30. Grant, T. (1999), The *Recognition of States: Law and Practice in Debate and Evolution*, Westport: Greenwood Publishing Group.
31. Grant, T.D. (1999) *The Recognition of States: Law and Practice in Debate and Evolution* Westport, Connecticut: Praeger.
32. Geldenhuys, D (2009) Contested States in World Politics. Basingstoke: Palgrave Macmillan.
33. Grawert, E. (2010) "After the Comprehensive Peace Agreement in Sudan" in *Eastern Africa Series*, Rochester: James Currey.
34. Hobach, N. Lefeber R. & Ribbelink, (2007), *Handboek Internationaal Recht*, Den Haag: Asser Press 2007.
35. Herbst, J. (2000) *States and Power in Africa: Comparative Lessons in Authority and Control* Princeton, NJ: Princeton University Press.
36. Jackson, Robert H., and Georg Sørensen (2013) *Introduction to International Relations: Theories and Approaches*, Oxford, OUP, 5th ed.

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37. James, A (1986), *Sovereign Statehood: The Basis of International Society*, London: Allen & Unwin.
38. Jackson, R.H. (1987) "Quasi-States, Dual Regimes and Neo-Classical Theory: International Jurisprudence and the Third World" *International Organization* 41 (4): 519-549.
39. Keohane, R. and Buchanan, A. (2004) "The Preventive Use of Force: A Cosmopolitan Institutional Proposal" *Ethics and International Affairs* 18: 1-22.
40. Lauterpacht, H (1947) Recognition in International Law. Cambridge: Cambridge University Press.
41. Meijknecht, A. (2001), *Towards International Personality: the Position of Minorities and Indigenous Peoples in International Law*, Antwerpen/Groningen/ Oxford: Intersentia.
42. Milano, E. (2006), *Unlawful Territorial Situations in International Law: Reconciling Effectiveness, Legality and Legitimacy*, Leiden: Brill Academic Publishers.
43. McWhinney, Edward (2007). Self-Determination of Peoples and Plural-Ethnic States in Contemporary International Law: Failed States, Nation-Building and the Alternative, Federal Option. Martinus Nijhoff Publishers. 8
44. Menon, P.K. (1994) *The Law of Recognition in International Law: Basic Principles*, New York: Edwin Mellen Pr.
45. Naticchia, C. (2000) "Recognition and Legitimacy: A Reply to Buchanan" *Philosophy and Public Affairs* 28: 242-257.
46. Neff, S *(2005) War and the Law of Nations*, Cambridge: Cambridge University Press.
47. Pettman, Ralph (2010) 'World Affairs: An Analytical Overview'. World Scientific Press.
48. Room, A. (2006) *Placenames of the World: Origins and Meanings of the Names for 6,600 Countries, Cities, Territories, Natural Features and Historic Sites*, New York: McFarland & Company.
49. Schoiswohl, M. (2004) *Status and (Human Rights) Obligations of Non-Recognized De Facto Regimes In International Law: The Case of 'Somaliland*, Leiden/Boston: Martinus Nijhoff Publishers.
50. Shaw, M. (2003) *International Law,* Cambridge: Cambridge University Press: 59
51. Spears, I. (2004) "Debating Secession and the Recognition of New States in Africa" *African Security Review* 13 (2): 35-48.
52. Rezvani, DA (2015) Surpassing the Sovereign State: The Wealth, Self-rule, and Security Advantages of Partially Independent Territories. Oxford: Oxford University Press, 1.
53. Talmon, S. (2004), The Constitutive versus the Declaratory Theory of Recognition: *Tertium Non Datur*?", *British Yearbook of International Law*, (Vol. 75). 101-181.
54. Talmon, S. (1998) *Recognition of Governments in International Law: With Particular Reference to Governments in Exile*, Oxford: Clarendon Press.
55. Talmon, S. (2000). *Recognition in International Law: A Bibliography*, The Hague: Martinus Nijhoff.
56. Talmon, S. (2008) Recognition of States and Governments in International Law, Azerbaijan Diplomatic Academy.
57. Talmon, S. (2011), "Recognition of the Libyan National Transitional Council", *Insights* 15 (16).
58. Visoka, G, Newman, E, Doyle, J (2020) Introduction: Statehood and recognition in world politics. In:
59. Doyle, G, J, Newman, E (eds) Routledge Handbook of State Recognition. London: Routledge, 1–21
60. Visoka, G, Doyle, J, Newman, E (eds) (2020) Routledge Handbook of State Recognition. London: Routledge.
61. Van der Pijl, Kees, (2014), *The Discipline of Western Supremacy: Modes of Foreign Relations and Political Economy, Volume III*, Pluto Press.
62. Verma S.K, (2014), Introduction to Public International Law, 2nd Edition.
63. Wilde, R., Cannon, A. and Wilmshurst, E. (2010) "Recognition of States: The Consequences of Recognition or Non-Recognition" in UK and International Law Summary of the International Law Discussion Group Meeting Held at Chatham House on February 4.
64. Weber, Cynthia. (2004), *International Relations Theory. A Critical Introduction*, 2nd edition, Taylor & Francis.

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