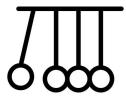


TURKEY'S UNHEARD VOICES

Montevideo Criteria and Theories in International Law

LAW

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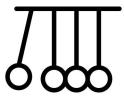
Abstract

The state is the most fundamental subject of international law and the only entity capable of possessing rights, powers, and responsibilities. The definition of the state was first formulated systematically with the 1933 Montevideo Convention, which identified four basic elements: a permanent population, a defined territory, an effective government, and the capacity to conduct independent foreign relations. These elements are accepted in international law as the “minimum conditions of statehood.” However, merely possessing these criteria is not always sufficient to be recognized as a state in the international arena. At this point, the declaratory theory and the constitutive theory come into play. According to the declaratory theory, a community is a state once it satisfies the criteria; recognition is not required. The constitutive theory, on the other hand, argues that statehood is completed through recognition by other states. Today, these two views are combined, with a declaratory understanding in terms of existence and a constitutive understanding in terms of effectiveness. Although the Montevideo criteria continue to maintain their validity in the modern world, factors such as recognition, legitimacy, respect for human rights, and democratic governance have also become contemporary indicators of statehood.

The Definition of the State in International Law

The State is the most fundamental subject of international law. It is the primary entity capable of possessing international rights and obligations, concluding treaties, and establishing diplomatic relations. In international law, there is no single, comprehensive definition of the “state.” However, the generally accepted definition is set out in the 1933 Montevideo Convention through four criteria.

The criteria of having a permanent population, a defined geographical territory over which sovereignty is exercised, a political organization exercising effective authority over the territory, and the capacity to conduct independent external relations together constitute, in brief, the definition of the “state” in international law.



Of course, the definition of a “state” is not limited to these elements alone. Factors such as sovereignty, legitimacy, and recognition are also determinants of statehood. In particular, the concept of sovereignty represents both the internal and external independence of the state. Internal sovereignty ensures that the state is the supreme authority within its own territory. External sovereignty, on the other hand, refers to the absence of any other state or international organization claiming authority over it.

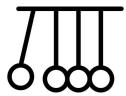
As a subject of international law, the State possesses international legal personality. This means that it has the capacity to become a party to international treaties, to be a member of international organizations, and to bear international responsibility. However, even if a State fulfills the Montevideo criteria, the practical exercise of its legal personality may be limited if it is not recognized by other States.

For example, Taiwan and the Turkish Republic of Northern Cyprus are able to operate only to a limited extent in international law because they are not recognized by some States. From this, it can be understood that a State’s legal personality enables it to take an active role in international affairs. Accordingly, a State asserts rights, assumes obligations, and becomes part of the international order. A State that lacks legal personality, on the other hand, possesses limited rights in the international sphere.

Montevideo Convention (1933)

The Montevideo Convention was adopted during the Pan-American Conference. It was prepared in particular to guarantee the independence and sovereign equality of Latin American states. The main purpose of the Montevideo Convention is to define the minimum conditions required for an entity to be recognized as a “state” within the international system. In this way, it determines which entities may possess rights and obligations under international law. In addition, the Convention strengthened the principle of non-intervention in the internal affairs of states.

Article 1 of the Montevideo Convention clearly defines the criteria for statehood. According to this article, four elements must be present for an entity to be considered a state. These elements are a permanent population, a defined territory, a government, and the capacity to enter into relations with other states. These four elements are still accepted as the

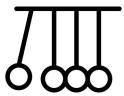


fundamental criteria of statehood in international law. If we look at the other important articles of the Convention, Article 3 states that “the political existence of the state is independent of recognition by other states.” This provision forms the basis of the declarative theory. In summary, a state is considered a “state” even if it is not recognized, as long as it satisfies the Montevideo criteria.

Although the Montevideo Convention is a regional agreement, its content has become part of customary international law. This means that even states that are not parties to the Montevideo Convention accept these criteria today as general principles of law. In particular, the United Nations has applied the Montevideo criteria in practice. In general terms, the Montevideo Convention is important because it is the first document to define the state in a systematic manner in international law. It established the legal criteria of statehood. By emphasizing the principles of equality and independence of states, it laid the foundation of the United Nations system.

Today, in newly emerging or disputed territories, the Montevideo criteria remain a fundamental reference point. However, in modern international relations, these criteria alone are not considered sufficient. This is because elements such as political recognition, legitimacy, and membership in international organizations have also gained importance. In other words, even if a state legally satisfies the Montevideo criteria, it cannot fully take its place in the international system without political recognition.

The Montevideo Convention established the standard framework of statehood in international law by defining the concept of the state through four fundamental elements. Even today, these criteria are taken as the basis when assessing the emergence, recognition, or disputed status of states. However, in the contemporary international order, alongside the Montevideo criteria, factors such as recognition, effective governance, respect for human rights, and democratic legitimacy are becoming increasingly important.

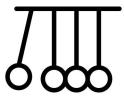


Montevideo Criterias

The Montevideo criteria are the four fundamental conditions set out in Article 1 of the Montevideo Convention. These criteria define the minimum elements required for an entity to be accepted as a “state” under international law. This provision of the Convention constitutes the most basic framework determining both the legal existence of a state and the conditions of its recognition in the international arena.

The first of these criteria is a permanent population. For this reason, the existence of a state requires a permanent people. The size of the population is not important; what matters is its continuity. This community must be subject to the authority of the state and live under its sovereignty. As an example, although the population of the Vatican is very small, it is considered a state because it possesses a permanent population. The reason why population is so important is that it represents the internal structure of the state and shows to whom sovereignty is applied, since state sovereignty is exercised over this community. The second criterion is the existence of a defined territory, because territory constitutes the material element of the state. It is sufficient for the state to exercise continuous control over this area; its borders do not need to be precisely defined. Moreover, any border dispute does not eliminate this element. For example, Israel's recognition as a state by the international community despite ongoing border disputes over certain territories demonstrates that borders do not need to be fully settled.

The third criterion is the existence of political authority, and this authority must be effective. This represents the organized structure of the state. Whether a government is democratic or authoritarian does not affect statehood. Even if the regime changes, the existence of the state does not come to an end; only the form of government changes. For instance, in a country experiencing civil war, there may be more than one authority, but the international community generally recognizes the party that effectively governs the territory as the government. Finally, the fourth criterion is the capacity of a state to conduct an independent foreign policy. This reflects the international independence of the state, and a territory under the sovereignty of another state cannot satisfy this criterion. As an example, although Taiwan displays de facto independent governance, it cannot establish full relations with international organizations due to the lack of recognition by many states and therefore fulfills this criterion only in a limited manner.



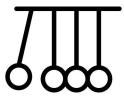
These four elements are accepted as the minimum conditions of statehood, and the criteria are based on the factual existence of a state rather than on political recognition. For this reason, even if a community fulfills the Montevideo criteria, it may not fully find its place in international law without political recognition. The Montevideo criteria have established objective and universal standards for statehood in international law. Although international relations have become more complex over time, these four elements remain the fundamental basis for recognizing the existence of a state.

State Theories

Even if a community fulfills the Montevideo criteria, this does not always mean that it will be accepted as a state by the international community. At this point, State Theories come into play. These theories explain whether the recognition of an entity as a state is a legal or a political process. Basically, there are two main theories. These are divided into the declarative theory and the constitutive theory.

According to the declarative theory, if an entity fulfills the Montevideo criteria, it is already a state. Whether other states recognize it does not affect its status as a state. The legal consequence of this view is that a state possesses international legal personality and may exercise its sovereign rights even if it is not recognized by other states. For example, although Kosovo is not recognized by many countries, it exercises effective authority over its own territory. Another example is the Turkish Republic of Northern Cyprus, which, although it de facto fulfills the Montevideo criteria, is not accepted as a “state” by some states due to the lack of widespread international recognition. In general, declarative theory renders international law more objective.

According to the constitutive theory, a community can become a State only if it is recognized by other States. Under this view, statehood is a legal process that is not fully completed without recognition. Therefore, an unrecognized entity does not possess full international legal personality. Through recognition, a State becomes a member of the international community. As an example, South Sudan acquired state status after declaring independence in 2011 and being recognized by United Nations member States. Another example is Taiwan, which, although it meets the Montevideo criteria, is not recognized by many States due to pressure from China. For this reason, it cannot obtain full membership in international organizations.



Today, many legal scholars adopt an approach that combines these two theories. When an entity satisfies the Montevideo criteria, it is a State in a factual sense. However, recognition enables it to participate effectively in the international system. Therefore, in modern international law, the existence of a State is interpreted as declarative, while its international effectiveness is considered constitutive.

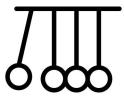
Contemporary Applications of the Montevideo Criteria

The four criteria set out in the Montevideo Convention are still accepted today as the fundamental requirements for statehood in international law. However, modern geopolitical, technological, and political conditions have significantly changed the way these criteria are applied.

When the criterion of a permanent population is examined today, its boundaries have been broadened by concepts such as migration, refugee movements, and dual citizenship. For example, States with very small populations such as the Vatican, or countries like Nauru with populations under 10,000, demonstrate that this criterion is based on continuity rather than numbers. In the case of Palestine, although a large part of its population lives in the diaspora, the criterion is considered to be fulfilled because the identity of the “Palestinian people” maintains its continuity. Moreover, it is no longer necessary for the population to be geographically fixed; what matters is that the State claims sovereignty over a community bound to it by a legal bond of citizenship.

Secondly, when examining the criterion of a defined territory, contemporary practice shows that border disputes do not mean territory must be “clearly and definitively delimited.” As seen in examples such as Israel Palestine, India Pakistan, and Russia Ukraine, States with disputed borders are still regarded as States. In addition, new domains such as maritime areas, cyberspace, and space mining have reopened discussions on the boundaries of State sovereignty.

Thirdly, the government criterion is known as the “principle of effectiveness,” but today many States demonstrate this effectiveness to varying degrees. For example, although central



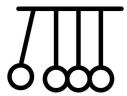
government authority has weakened in countries such as Somalia, Libya, or Syria, the international community continues to recognize them as States. This situation shows that the principle of continuity of the State comes to the fore, meaning that temporary governance gaps do not immediately eliminate the existence of a State.

Finally, the criterion of independence has been weakened today due to globalization and the increase in international organizations. For instance, although member States of the European Union take certain foreign policy and economic decisions jointly, each is still regarded as a separate sovereign State. Another example is Taiwan, which, despite being de facto independent, cannot establish official diplomatic relations with many countries due to pressure from China.

Considering all these factors, the Montevideo criteria still constitute the legal core of statehood; however, in today's world these criteria are applied not as absolute independence but as relative independence due to States' digital, economic, and political interdependencies. Therefore, in modern international law, "statehood" is based not only on these four elements but also on additional factors such as international recognition, legitimacy, popular support, and effective diplomatic participation.

Conclusion

The Montevideo Convention became one of the foundations of international law by clearly defining the concept of the State for the first time. Today, the emergence, recognition, and legitimacy of States are still assessed on the basis of the four fundamental criteria set out in this Convention. However, with globalization, technological developments, and the growing number of international organizations, the concepts of sovereignty and independence have become more flexible, and the boundaries of statehood have been reshaped. For this reason, whether a community is considered a "State" now depends not only on legal elements but also on factors such as international recognition, political legitimacy, and popular support. In short, while the Montevideo criteria constitute the core of statehood, in today's world this core is surrounded by political factors such as recognition and legitimacy.



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