

PUBLIC INTERNATIONAL LAW

UNIT – II

States as Subjects of International Law Recognition • Territorial Sovereignty

20 Slides | Expanded Explanatory Edition

ROADMAP

Full Coverage of UNIT-II

1. States as primary subjects

2. Montevideo criteria explained

3. Population & territory requirements

4. Government & capacity to enter relations

5. Meaning of recognition

6. Declaratory theory

7. Constitutive theory

8. Types of recognition

9. Recognition of governments

10. Legal effects of recognition

11. Territorial sovereignty concept

12. Modes of acquiring territory

13. Occupation in detail

14. Prescription in detail

15. Cession, accretion, conquest

16. Airspace sovereignty

17. Outer space regime

18. Landmark cases

19. Contemporary issues

20. Key takeaways

States as Primary Subjects of International Law

States are the original and most complete subjects of International Law. They alone possess the full range of rights and duties under IL, including the capacity to make treaties, bring international claims, and bear international responsibility.

Original Personality

States have personality from the moment they come into existence as states. It is not derived from any other entity.

Full Capacity

They can create law (treaties & custom), enforce rights, and be held responsible.

Sovereign Equality

Art. 2(1) UN Charter – all states are equal in legal status despite differences in power or size.

Continuity

A state continues to exist despite changes in government, constitution, or even loss of some territory.

Montevideo Convention 1933 – Criteria of Statehood

Article 1 of the Montevideo Convention on the Rights and Duties of States (1933) is the most widely cited statement of the criteria that an entity must satisfy to be regarded as a state under international law.

1. Permanent Population

There must be people living in the territory on a permanent basis. No minimum number is required. Micro-states such as Monaco or Nauru satisfy this criterion.

2. Defined Territory

There must be a territorial base. Borders may be disputed or unsettled; what matters is that there is some area under the entity's control.

3. Government

There must be an effective political authority that exercises control over the population and territory. The form of government is irrelevant.

4. Capacity to Enter into Relations

The entity must be capable of conducting foreign relations independently – i.e., it must possess a degree of independence.

Population and Territory – Detailed Requirements

Size of Population

No minimum. Vatican City has a few hundred residents and is still a state. The requirement is permanence, not size.

Nomadic Populations

Traditional view required settled population, but modern practice is more flexible if there is a clear community.

Territory – Disputes

Many states have disputed borders (India-China, Israel, etc.) yet remain states. Complete delimitation is not required.

Territory – Size

No minimum area. Micro-states are accepted. What matters is exclusive control over some territory.

Failed States

When government collapses completely (Somalia in the 1990s), statehood is generally considered to continue; the criterion is not applied rigidly to extinguish existing states.

New Entities

For new entities claiming statehood, effective control and independence are examined more strictly.

Government and Capacity to Enter Relations

Effective Government

The government must be able to maintain law and order and provide basic administration. It need not be democratic or recognised by all.

Independence

The capacity to enter into relations implies a degree of independence from external control. Puppet regimes may fail this test.

External Sovereignty

Ability to conduct foreign policy, conclude treaties, and join international organisations without requiring permission of another state.

Internal Sovereignty

Supreme authority within the territory – the government is not subordinate to any other authority inside the state.

Recognition Practice

Even if Montevideo criteria are met, widespread non-recognition can affect practical capacity to act internationally.

Declaratory Approach

Most writers treat the four criteria as factual; recognition is evidence rather than a fifth legal requirement.

Meaning and Nature of Recognition

Recognition is a unilateral act by which one or more states acknowledge that a particular entity possesses the criteria of statehood (or that a particular government is the effective government of a state) and that they are willing to deal with it as such.

Political Act

Recognition is primarily a political decision, although it has important legal consequences.

Unilateral

Each state decides for itself whether to recognise; there is no duty to recognise.

Revocable in Theory

Recognition of governments can be withdrawn; recognition of states is more permanent.

Collective Recognition

Sometimes states act together (e.g., through international organisations) in recognising new entities.

Declaratory Theory of Recognition

According to the declaratory theory, recognition does not create statehood. It merely declares or acknowledges a pre-existing fact. An entity that satisfies the Montevideo criteria is a state whether or not it is recognised.

Logical Consequence

Statehood is a question of fact, not of the will of other states.

Montevideo Art. 3

The political existence of the state is independent of recognition by other states.

Modern Preference

Most contemporary writers and practice lean towards the declaratory view.

Practical Nuance

Even under declaratory theory, recognition has major practical effects on the ability of the new state to act internationally.

Constitutive Theory of Recognition

According to the constitutive theory, an entity becomes a state in international law only when it is recognised by other states. Recognition is a necessary condition for international personality.

Older View

Popular in the 19th and early 20th centuries when recognition was more tightly controlled by existing powers.

Criticism

It makes the existence of a state dependent on the political decisions of other states, which can be arbitrary.

Problem of Non-Recognition

If no state recognises an entity, does it have no rights or duties under IL? This is difficult to accept.

Modern Residual Role

In borderline cases (very weak effectiveness or contested secession), recognition still carries heavy weight.

Types of Recognition

De Facto Recognition

Provisional acknowledgement of effective control. It can be withdrawn more easily and usually does not involve full diplomatic relations.

De Jure Recognition

Full and formal recognition of the legality and permanence of the state or government. It is regarded as definitive.

Express Recognition

Clear and open statement or formal act (note, declaration, treaty) indicating recognition.

Implied Recognition

Inferred from conduct – for example, concluding a bilateral treaty that can only be made with a state, or exchanging ambassadors.

Conditional Recognition

Recognition granted subject to the fulfilment of certain conditions (e.g., respect for minority rights).

Collective Recognition

Recognition extended by a group of states acting together, sometimes through an international organisation.

Recognition of Governments

Recognition of a government is different from recognition of a state. The state continues to exist; the question is which authority is entitled to represent it and claim its rights.

Effective Control Test

Does the government exercise effective control over the territory and population of the state?

Legitimacy Considerations

Some states also look at democratic legitimacy or constitutional continuity (Tobar doctrine).

Estrada Doctrine

Mexico's policy of not issuing formal declarations of recognition of governments in order to avoid intervention.

Practical Effects

A recognised government can claim state property abroad, sue in foreign courts, and enter treaties.

Legal Effects of Recognition

Capacity to Sue

A recognised state/government can generally bring claims in the courts of the recognising state.

Diplomatic Relations

Recognition is normally a prerequisite for the establishment of formal diplomatic relations.

Treaty-Making

Recognised states can more easily conclude and implement treaties.

Immunities

State immunity and diplomatic immunity flow more readily once recognition is granted.

Property

Recognised governments can claim state property located abroad.

Non-Recognition

Deliberate non-recognition is sometimes used as a political tool (e.g., non-recognition of territorial acquisitions by force).

Territorial Sovereignty – Concept

Territorial sovereignty is the exclusive competence of a state to exercise the functions of a state within a particular portion of the globe. It is the legal expression of the state's exclusive authority over its territory and the people and resources within it.

Exclusive Authority

Only the territorial state may prescribe and enforce law as a general rule.

Respect by Others

Other states must not exercise enforcement jurisdiction or interfere in the territory.

UN Charter Art. 2(4)

Prohibition on the threat or use of force against the territorial integrity or political independence of any state.

Limits

Sovereignty is limited by international obligations voluntarily assumed and by peremptory norms.

Modes of Acquisition of Territory

Occupation

Appropriation of territory that is terra nullius (belongs to no state) through effective control and intention to act as sovereign.

Prescription

Acquisition of title through long, continuous and peaceful display of sovereignty, even if the origin of possession was uncertain or wrongful.

Cession

Transfer of territory from one state to another by treaty (sale, gift, exchange, or post-war settlement).

Accretion

Natural and gradual increase of territory through geological processes (alluvion, delta formation).

Conquest / Annexation

Formerly a mode of acquisition; now prohibited by Art. 2(4) UN Charter and customary law.

Adjudication

Title determined by a binding decision of an international court or arbitral tribunal.

Occupation – Requirements in Detail

Terra Nullius

Territory not under the sovereignty of any state. Today almost no land territory is terra nullius.

Intention (Animus)

The state must intend to act as sovereign, not merely as a temporary occupant.

Effective Control (Corpus)

Actual display of state authority – legislation, administration, enforcement.

Island of Palmas

Arbitrator Huber: continuous and peaceful display of state functions is the key.

Discovery Alone

Mere discovery without effective occupation is insufficient to create title.

Critical Date

In disputes, the date on which the dispute crystallised is often decisive for assessing evidence.

Prescription, Cession and Conquest

Prescription

Requires long possession that is continuous, peaceful and public. Protest by the original sovereign can prevent prescription.

Cession

Must be made by a competent authority and is usually embodied in a treaty. The population's wishes may be relevant politically but not always legally required.

Accretion

Slow and natural addition of land. Sudden changes (avulsion) may follow different rules.

Conquest

Illegal as a mode of acquiring title since the outlawry of war. Annexation following aggression does not create good title.

Stimson Doctrine

Non-recognition of territorial acquisitions obtained by force (1932, later generalised).

Modern Practice

UN Security Council often calls for non-recognition of territorial changes brought about by force.

Airspace and Outer Space

Airspace

Every state has complete and exclusive sovereignty over the airspace above its territory (Chicago Convention 1944).

Outer Space

Outer space, including the Moon and other celestial bodies, is free for exploration and use by all states and is not subject to national appropriation (Outer Space Treaty 1967).

Boundary

There is no agreed precise altitude where airspace ends and outer space begins.

Liability

Launching states are internationally liable for damage caused by their space objects.

Peaceful Purposes

Military uses of outer space are restricted; weapons of mass destruction in orbit are prohibited.

Exam Point

Always contrast complete sovereignty in airspace with the freedom of outer space.

Landmark Cases – UNIT II

Island of Palmas (1928)	Effective, continuous and peaceful display of state authority is the decisive criterion for title to territory.
Legal Status of Eastern Greenland (1933)	Denmark's title upheld; Norway's competing claim based on occupation failed.
Western Sahara (Advisory Opinion)	Concept of terra nullius examined; self-determination principles applied.
Security Council Practice	Collective non-recognition of unilateral declarations or annexations in several situations.
Nottebohm (related)	Genuine link concept developed in the context of nationality, with implications for recognition of claims.
Modern Secession Cases	Practice after break-up of Yugoslavia and Soviet Union illustrates recognition politics.

Key Takeaways – UNIT II

01 Montevideo Criteria

02 Recognition Theories

03 Types of Recognition

04 Territorial Sovereignty

05 Acquisition of Territory

06 Essential Cases

End of UNIT – II

States • Recognition • Territorial Sovereignty

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