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STATE AS A SUBJECT OF INTERNATIONAL LAW AND THEORIES OF ITS RECOGNITION

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According to Dixon, to be a subject of international law means to be able to acquire and enjoy the rights and duties under international law, thus to have an opportunity to make valid international treaties and to bear responsibility before the world community [1]. In the system of international law, there are a number of subjects possessing an international legal personality. The majority of authors of textbooks on international law highlight states, international organizations, nations fighting for their independence, transnational corporations, and even individuals as an example of the subjects of international law. Continuing the thought of Dixon, these entities can be divided into original (states once they satisfy the criteria of statehood) and derived groups (those entities, whose existence is directly related to the will of the primary subjects).

The emergence of international law as a branch of law has a direct connection with the voluntary will of states to enter into relations with other states. That is why it can be said that states are the main and traditional subjects of international law. This begs the question, what does it mean to be a state? Are there certain criteria that define a state as a state? Well, it is a daunting task to identify the universally accepted criteria for statehood. Many authors rely on Montevideo's Convention on Rights and Duties of States of 1933 while describing characteristics of the statehood [2]. According to the first Article of Convention, a state to be a subject of international law should fulfill four criteria such as a permanent population, a defined territory, a government, and a capacity to enter into relations with other states. The *permanent population* and *defined territory* are essential features of the state. The population and the size of the territory do not affect the international legal personality of the state. The permanent population is about having a fixed number of inhabitants linked to a specific territory, no matter whether they have the same race, ethnicity or language. Dixon writes that the state should have definite physical existence which marks it out clearly from its neighbors, but it does not mean that there must be complete certainty

over the extent of territory. However, Aust argues, that nor do the land or maritime boundaries have to be defined definitively. Nevertheless, both authors agree with the fact of never-ending disputes in the world between some states over the territorial boundaries (India and Pakistan) [3]. *Government*, or a system of public authorities, implies that the sufficiently effective control and management of the population and territory are carried out by certain public authorities and that these bodies represent the state in the international arena. The last one is the *capacity to enter into legal relations*. Shaw claims that for the ability to enter into legal relations, it is vital to the state to be recognized by other countries [4]. He continues that a sovereign state needs to create legal relations as it sees fit. However, it is not about non-interference or absence of pressure by the other side, it is more about the possessing of competence to enter into legal relations. Besides these four criteria of statehood, Vylegzhanin describes sovereignty as an additional requirement for the state as for the subject of international law [5]. He defines sovereignty as the supremacy of the state within its territory and independence beyond its borders, that is, in international relations. It is interesting that some authors do not make a clear distinction between “sovereignty” and “independence”. Thus, one can notice a correlation between the words of Vylegzhanin and Shaw. The first distinguishes as its criterion for the international legal personality of the state its sovereignty, as the *independence* of the country outside its territory. British legal academic Shaw as a separate criterion, notes the independence of the state, manifested in the fact that it is not influenced by other sovereignty. Aust combines these two terms and defines them as one criterion named independence in external relations.

Ignatenko and Tiunov subdivide the rights and obligations of subjects of international law into two groups: individual (usually establishes by signing international treaties) and fundamental [6]. The latter, in turn, are divided into basic general subject rights inherent in all categories of subjects and basic subject-specific rights inherent in a certain category of subjects. The second group is applied specifically to states and includes: the right to participate in the creation of international legal norms, primarily through the conclusion of international treaties; the right to establish diplomatic and consular relations with other states, to exchange diplomatic and consular missions; the right to be a member of universal and regional international organizations and have their own representative offices with them; the right to defend one's legal personality, including the right to individual and collective self-defense. The main obligations of the state are determined by the content of the basic principles of international law and include cooperation with other states, non-interference in their internal affairs, abstinence from the threat or use of force, etc.

Recognition. In international law, special attention is paid to the recognition of the state by other countries as a subject of international legal relations. Oxford Online Dictionary suggests the following definition for the word recognition, so it is the act of accepting that something exists, official or true [7]. In other words, recognition is accepting under international law by existing states of the new states or governments or other bodies, allowing to establish official relations with them. Ignatenko and Tiunov, like many other authors, consider two historically developed theories of recognition: declarative and constitutive. As they point, the declarative theory is based on the fact that the state has been a subject of international law since its inception. Recognition does not endow the state with international legal personality, but merely states such legal personality and facilitates the entry of the new state into the system of interstate relations. The opposite of this idea is the constitutive theory, according to which the emergence of a state is not equivalent to the emergence of a subject of international law; it becomes such only after receiving recognition from other states. This theory made the international legal personality of the state-dependent on its recognition by other states. Yes, constitutive theory threatens the state's sovereignty and independence in the management of internal affairs. However, it is the act of recognition that allows the new state to fully exercise its rights and obligations as a subject of international law. As an example, the principle of cooperation requires the newly emerged and existing states to develop stable relations through cooperation, which is impossible without recognition. It is noteworthy that until now there is no specific rule obliging one state to recognize another, i.e. even if the newly formed state meets all the requirements of statehood described above, it remains at the discretion of a country to

recognize it or not. Therefore, recognition can be called a voluntary political act of the recognizing state. According to Ignatenko and Tiunov, recognition can be either actual or legal. Authors write that legal recognition is divided into de jure recognition and de facto recognition. De jure is a full recognition, which means an exchange of states' diplomatic missions between them, that is, the establishment of stable political relations. De facto is incomplete recognition since the emerging relations between two states are not brought to the level of diplomatic relations. Actual recognition is carried out in the form of constant or occasional contacts both at the governmental and non-governmental levels.

One of the numerous debates within international law concerns the recognition of the states and the validity of its theories (declarative and constitutive). The proponents of the declarative theory prone to believe that the state acquires international legal personality by the fact of its existence. It becomes a subject of international law as soon as some of the statehood peculiarities are met in this state. Article 1 of the Montevideo Convention which was already mentioned above, indicates the four statehood criteria that endow a state with an international legal personality. The third article of the Convention stipulates that the political existence of the state is independent of recognition by other countries, hence leaving no doubt for the inference that the provisions of the document pinpoint the essence of the declarative theory. Moreover, the constitutive theory under which a state becomes a subject of international law only after receiving recognition from other states contravenes Articles 6 and 8 of the Montevideo Convention whereby no state has the right to intervene in the internal or external affairs of another and the recognition of a state merely signifies that one state accepts the personality of the other, but does not confer legal personality to it in international arena. Ignatenko and Tiunov call constitutive theory an excuse for arbitrariness and interference in the internal affairs of newly emerged states.

The next question to think is why the Montevideo Convention is most referenced when analyzing the legal personality of the state? It is not even universally accepted and not everyone actually knows the origins of its “qualifications”. Thomas D. Grant explains the history of the Convention by saying that in the 19th century a constitutive theory prevailed in the practice of states [8]. At that time European countries dominated on the international arena. They had a privilege to decide whether a state can be a part of their "club" or not, following their political interests. The new codification in the form of the Montevideo Convention should have become a new era for the states to be recognized regardless of other countries' will. Here is the noticeable shift from the constitutive to the declarative theory of recognition. Furthermore, Grant calls the Convention deficient and claims that the meaning of the state has changed in practice since the framing of the Convention. He believes that the criteria proclaimed in the document as the basis of statehood have not been studied to a large extent and they are nothing more than a reflection of the repeated and established ideas of many leading publicists of the half-century leading up to the Montevideo Convention. Making citations on other publicists, Grant also criticizes the fourth criteria of the Convention. Particularly he argues that the capacity to enter into relations with other states cannot be considered as criteria but as a consequence of the statehood and which depends on the status of the state. It is also can be performed by other non-state actors of international law, thus, for instance, international organizations possess the same treaty-making competence as states, so there is no need to be a state in order to have an opportunity to enter into international legal relations.

To sum up, in this article only the most general points regarding the status of states as the main subjects of international law were considered. From the foregoing, it follows that states are paramount and traditional entities with the varieties of rights and obligations in the international arena. In order to have international legal personality, it is necessary to meet certain criteria, as well as have the recognition of the international community. These requirements are interconnected and complementary. However, in our opinion, in the modern world, if the state does not fulfill all of the criteria of statehood according to the Montevideo Convention, but it does have the recognition by other countries, then this state has its international legal personality and no one can deny it. That is why from our point of view recognition by one state of another has a key role in acquiring legal personality. Generally speaking, each of the criteria enunciated in the 1 Article of the Montevideo

Convention can be scrutinized and be a subject of disputes. In the 3 Article, there is a list of state's rights after which it says "The exercise of these rights has no other limitation than the exercise of the rights of other states according to international law". But doesn't this mean that the exercise of rights by one state depends on the rights of another, for example, let's say the right to cooperate, which automatically means the presence of recognition act of the first state by the second as a subject of international law? Doesn't this mean that the Montevideo Convention contradicts the declarative theory and contains some elements of constitutive theory? Anyway, practice shows that even though the idea of constitutive theory violates the sovereignty of the state, an entity is not a state if it is not recognized by the international community. The question of whether international law recognizes the existence of an entity in the absence of recognition is still open.

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