International Journal for Multidisciplinary Research (IJFMR)
E-ISSN: 2582-2160 ● Website: www.ijfmr.com ● Email: editor@ijfmr.com

Recognition of States and Governments in International Law: Doctrinal Foundations and India's Response to Emerging Issues

Anuraj Tiwari

Student

Abstract

The question of how states and governments are recognized has always stood at the edge of law and politics. International law offers a set of rules, most famously through the Montevideo Convention of 1933, which defines statehood in terms of territory, population, government, and the ability to enter into relations with others. Yet in reality, these rules are rarely applied in a vacuum. Recognition is less a technical checklist and more a political decision, often influenced by strategic interests, regional pressures, or the balance of power.

This paper revisits the main theories and doctrines that have shaped the law of recognition. The constitutive theory holds that recognition itself creates international legal personality, while the declaratory theory insists that statehood exists once objective criteria are met, regardless of recognition. Alongside these are doctrines such as Estrada, Tobar, and Stimson, each reflecting attempts by states to ground recognition in principles, whether it be non-interference, constitutional legitimacy, or opposition to territorial conquest. These doctrines reveal the tension between law's aspiration for consistency and politics' demand for flexibility.

A distinction must also be made between the recognition of states and of governments. Recognition of states goes to the very existence of a political entity, whereas recognition of governments concerns legitimacy and representation. The long-standing categories of de facto and de jure recognition illustrate this difference: the former acknowledges effective control as a matter of fact, while the latter confirms legal and permanent acceptance. International case law, particularly the International Court of Justice's advisory opinion on Kosovo in 2010, underscores how the law provides guidance but stops short of eliminating political discretion.

India's practice illustrates this blend of principle and pragmatism. Its recognition of Israel was delayed for decades, Palestine was recognized early and strongly supported in the UN, Kosovo has been withheld recognition due to fears of encouraging secession, Taiwan is engaged with unofficially, and the Taliban regime is acknowledged only at a humanitarian level. These examples suggest that India sees recognition as a political instrument shaped by legal considerations, not the other way around.

Ultimately, this paper argues that recognition is one of the few areas in international law where political choice continues to overshadow legal doctrine. It exposes the limits of international law but also shows how law provides a language through which states justify and explain their choices.

Keywords: Recognition of States; Recognition of Governments; International Law and Politics; Doctrines of Recognition; India's Foreign Policy

I. Introduction

Recognition sits at the crossroads of law and politics in international relations. At its core, it refers to the act by which states acknowledge that a new state exists, or that a particular government legitimately represents an existing state. On paper, the emergence of states is supposed to be a factual matter, determined by objective elements, population, territory, government, and independence. Yet in practice, recognition often makes the decisive difference. A state without recognition may find itself unable to enter treaties, join international organizations, or assert immunity in foreign courts. Recognition is, in many ways, the "entry ticket" into the international community.

This question has taken on greater importance in a world where sovereignty is contested and power frequently shifts hands. The decolonization of Asia and Africa in the mid-twentieth century showed how recognition could mark the difference between marginalization and full membership in the United Nations. More recently, disputes over Kosovo, Catalonia, or the Taliban in Afghanistan have reignited debates: is recognition a legal duty governed by international rules, or is it largely a matter of political choice? As Hersch Lauterpacht once remarked, recognition is "the most decisive and delicate act in the application of international law."[1] His words remain strikingly relevant.

The Montevideo Convention of 1933 provides the classical starting point for discussions of statehood, setting out four criteria: a permanent population, defined territory, government, and the capacity to conduct relations with other states.[2] Yet even this seemingly clear framework is unevenly applied. South Sudan, for example, was recognized almost universally within months of its 2011 independence. Palestine, despite fulfilling most of the Montevideo requirements, still struggles for universal recognition. Taiwan operates in practice like any other state but is excluded from the UN because of political opposition. These examples show that recognition is not simply about legal criteria, it is also about diplomacy, strategy, and the realities of power.

Recognition of governments brings another layer of complexity. The issue here is not whether the state exists, but whether a specific regime, whether born of elections, revolutions, coups, or insurgencies, can represent it internationally. Traditionally, the distinction between *de facto* and *de jure* recognition has guided practice.[3] A *de facto* government is accepted for the time being because it exercises real control, whereas *de jure* recognition reflects a judgment of permanence and legality. This difference is not just theoretical. It determines whether a government can hold a UN seat or sign binding treaties. The Taliban's return to power in Afghanistan illustrates the problem: most states, including India, engage on humanitarian grounds but stop short of formal recognition.

Over the years, several doctrines have tried to bring order to recognition practice. The Estrada Doctrine of 1930 urged continuity of relations without passing judgment on legitimacy.[4] The Tobar Doctrine of 1907 took the opposite approach, refusing recognition to governments born of unconstitutional means.[5] The Stimson Doctrine of 1932 rejected territorial changes achieved by force, first in Manchuria and later

[1] HERSCH LAUTERPACHT, Recognition in International Law 3 (Cambridge Univ. Press 1947).
[2] Montevideo Convention on the Rights and Duties of States art. 1, Dec. 26, 1933, 165 L.N.T.S. 19.
[3] LASSA OPPENHEIM, International Law: A Treatise § 71, at 135–37 (Hersch Lauterpacht ed., 8th ed. 1955).
[4] Estrada Doctrine, Statement by Genaro Estrada, Mexican Secretary of Foreign Relations (1930), reprinted in 25 Am. J. Int'l L. Supp. 203 (1931).
[5] Carlos R. Tobar, The Tobar Doctrine of Nonrecognition, 1 Am. J. Int'l L. 273 (1907).

echoed in responses to Crimea.[6] These doctrines were attempts at consistency, but their uneven use across cases only reinforces how political recognition decisions remain.

India's own recognition practice shows this blend of law and politics. It recognized Israel *de facto* in 1950 but held back on *de jure* recognition until 1992, reflecting regional sensitivities. It recognized Palestine in 1988 and reaffirmed that position as recently as 2024 in the UN General Assembly. It has declined to recognize Kosovo, mindful of implications for secessionist movements at home. It has also withheld recognition from the Taliban government while still engaging with it in limited ways, and it continues to follow the "One China" policy while quietly expanding ties with Taiwan. India's record demonstrates how recognition decisions are rarely abstract, they are shaped by immediate concerns as much as by doctrine.

This paper sets out to explore these tensions in detail. It will examine the theoretical foundations of recognition, from the constitutive and declaratory theories to the Montevideo framework and related doctrines. It will then analyze recognition of states and governments, including the practical importance of the *de facto/de jure* distinction. Finally, it will situate India's policy within this global context, showing how recognition continues to straddle law and politics. In the end, recognition remains not only a legal concept but also a mirror of shifting power and contested legitimacy in the international order.

II. Doctrinal Foundations of Recognition

In the field of international law, recognition has never been an entirely comfortable subject. It serves, ostensibly, as a part of the entry to states and governments into the international order while simultaneously there is no clear legal meaning for what the act of recognition means. Scholars and practitioners have debated whether, if a state exists, the existence of a state can be established outright as a factual matter, once certain objective standards have been met or whether a state only exists under recognition from others. This abstract, but not entirely, straightforward question creates a dichotomy in international legal thought—between constitutive and declaratory theories. Other doctrines have emerged to address specific situations such as unconstitutional regime changes or annexations made by force. These topics, together, explicitly express the uneasy connective fabric of law, politics, and diplomacy through the actual practice of recognition.

A. Constitutive Theory

The constitutive theory represents the view that recognition is not a passive acknowledgment but an active, creative act. It is through recognition, this theory argues, that an entity becomes a subject of international law. Even if an aspiring state has its own government, territory, and people, it remains outside the "legal community of nations"[7] until existing states agree to admit it.

This view reflects the practice of nineteenth-century Europe, when the international order was shaped largely by the Great Powers. Greece, for example, was not treated as a full state upon its independence in the 1830s[8] until it had received recognition from established powers. The same can be said of Bulgaria in the late nineteenth century. Recognition here functioned less as a confirmation of fact and more as the decisive legal act that admitted a new member to international society.[9]

[6] Henry L. Stimson, U.S. Secretary of State, Note to Japan and China (Jan. 7, 1932), reprinted in 26 Am. J. Int'l L. Supp. 342 (1932).
[7] HERSCH LAUTERPACHT, RECOGNITION IN INTERNATIONAL LAW 28–31 (Cambridge Univ. Press 1947).
[8] See generally DAVID ARMSTRONG, LAMY & MITCHELL, INTERNATIONAL LAW AND INTERNATIONAL RELATIONS 134–36 (2d ed. 2012).
[9] JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 22–24 (2d ed. 2006).

Lauterpacht, who is one of the most important advocates for this view, maintained that recognition is essential to statehood. This view has clear problems. If recognition is constitutive, then the fate of groups seeking independence lies solely in the hands of others. Taiwan and Palestine are two examples commonly cited in this context: they both possess many of the classic characteristics of statehood, but both remain outside the UN due to a lack of recognition. In effect, constitutive theory has the potential to turn international law into a tool of political expediency.

B. Declaratory Theory

The declaratory theory of recognition was, in its original conception, an effort to place the law of recognition on much stronger objective footing.[10] Under this theory, a state exists once the factual conditions for statehood are satisfied - whether other states recognize the state or not. It was the Montevideo Convention of 1933 that popularized four conditions: territory, stable population, governmental capacity, and capacity to enter into relations with other states. [11]

This position was validated when South Sudan was recognized by the world community in 2011. South Sudan met all the conditions of Montevideo and declared independence and was recognized right away. Recognition in this context functions as confirmation rather than creation.

Yet again similar difficulties arise. Northern Cyprus comes to mind as an entity that meets the Montevideo test yet remains non-recognized and therefore marginalized. Thus, recognition still has an obstructive gatekeeping role internationally even if it is not constitutive of recognition in some theories.

C. Doctrinal Approaches

In addition to these two conceptual detour, several doctrines emerged in the 20th century that expressed more specific position as to how recognition should operate in more limited contexts.

- **Estrada Doctrine (1930):** Proposed by Mexico, this doctrine held that states should not judge the legitimacy of a government prior to recognizing it, but rather to continue or suspend diplomatic relations according to whether or not it exercised effective control, with the assumption that state citizens would have to address any political questions regarding legitimate governance. [12]
- **Tobar Doctrine (1907):** Quito Foreign Minister Carlos Tobar aerated the idea that no recognition should be given to governments established through extra-constitutional methods, especially coups. This was a rational idea that had a sense of legitimacy; however, it was applied very sporadically since it conflicted with state sovereignty and even state actions that regardless of its legal status, favored stability over democratic legitimacy.[13]
- **Stimson Doctrine (1932):** The US Secretary of State, Henry Stimson, proclaimed that states must not recognize changes to territorial sovereignty brought by force. This doctrine was addressed specifically toward Japan's overreach of its expelled territory in Manchuria, but the idea was promulgated into international law in later contexts, such as the responses to Russia's annexation of Crimea.[14]

[10] LAUTERPACHT, supra note 1, at 65.
[11] See Crawford, supra note 3, at 103–07.
[12] Estrada Doctrine, Statement by the Mexican Secretary of Foreign Relations, Sept. 27, 1930, reprinted in 25 AM. J. INT'L L. SUPP. 203 (1931).
[13] Tobar Doctrine, discussed in Thomas M. Franck, The Stealing of the Presidency: Substantive Due Process in International Law, 74 AM. J. INT'L L. 417, 420–21 (1980).
[14] Stimson Doctrine, U.S. Dep't of State, Press Release (Jan. 7, 1932), reprinted in 26 AM. J. INT'L L. SUPP. 342 (1932).

These doctrines demonstrate that recognition is more than a yes or no assessment, but it can be leveraged, contextualized to reflect much broader principles such as non-intervention, constitutionalism, or opposition to aggression.

D. De Facto and De Jure Recognition

Furthermore, a distinction has been made in international practice between de facto and de jure recognition. **De facto** recognition signifies a practical acknowledgement that an authority does exist in practice and will be dealt with, although legitimacy may be questioned, whereas **de jure** recognition signifies full, complete, and permanent acceptance signifying the legal status.

This distinction has had an important impact on diplomacy as well. Britain extended de facto recognition to the Soviet regime in 1921 enabling limited relations, but withheld de jure recognition until 1924. India's engagement with Israel, followed a similar process; India's conferred consular relations in 1950 signified de facto recognition, while results of full diplomatic recognition came decades later in 1992. These examples illustrate the manner in which states utilized gradations of recognition to navigate delicate political situations.

E. Judicial Perspectives

Judicial and arbitral instances have, at times, intervened on issues of recognition. The Tinoco Arbitration (1923) is one example in which William Taft affirmed that acts by the Tinoco regime in Costa Rica were lawful, despite its lack of full legitimacy.[15] Taft's thinking was that the lack of recognition cannot eliminate the exercise of effective power.

The International Court of Justice's Advisory Opinion on Kosovo (2010) likewise verified that an expression of national independence is not, per se, in violation of the law.[16] However, recognition is still, by deducing context from the reasoning, left to the individual states, affirming the act's political nature.

Together, they illustrate there is an uneasy compromise that dictates the law of recognition: law exists but recognition is still at the intersection of principle and political.

III. Recognition of States

The acknowledgement of states is a pivotal concept in international law as it establishes the criteria for the entry of new political entities into the community of nations. On the other hand, the recognition of governments pertains to questions of legitimacy and authority to act on behalf of a government, whereas the consideration of states concerns the existence of legal personality under international law. Recognition operates as a "gatekeeping function," by which entities obtain the capacity to enter into treaties, obtain membership into international organizations, and exercise rights and obligations under international law.[17]

A. Criteria for Statehood

The Montevideo Convention on the Rights and Duties of States (1933) is the traditional basis for determining statehood. It requires: (1) a permanent population; (2) a defined territory; (3) government; and (4) capacity to enter into relations with other states. [18]

[15] Great Britain v. Costa Rica (Tinoco Arbitration), 1 R.I.A.A. 369, 377 (1923).
[16] Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 403, ¶ 84 (July 22).
[17] Sean D. Murphy, Democratic Legitimacy and the Recognition of States and Governments, 48 INT'L & COMP. L.Q. 545, 546 (1999).
[18] Montevideo Convention on the Rights and Duties of States art. 1, Dec. 26, 1933, 165 L.N.T.S. 19.

Although only binding on the parties to the treaty, the Montevideo criteria are widely regarded as representative of customary international law.[19] The first three criteria are factual criteria, while the last criterion addresses external sovereignty. Some jurists have noted that these criteria are minimal; statehood can be obtained for relatively small or disputed territories (e.g., Vatican City). Nevertheless, satisfying Montevideo is not sufficient in all circumstances. As Crawford observes, "the existence of a state is a matter of fact, but recognition by other states is practically decisive in determining whether the state can operate internationally."[4] Such dichotomy between law and politics is evident in modern-day controversies.

B. Collective Recognition and the United Nations

The establishment of the United Nations in 1945 institutionalized recognition processes by linking statehood to membership. Under Article 4 of the UN Charter, membership is open to "peace-loving states" upon recommendation of the Security Council and decision of the General Assembly.[20] Although UN membership is not constitutive of statehood, it often functions as collective recognition by the international community. The admission of South Sudan in 2011 is an example: recognition by key states was followed almost immediately by UN membership, cementing its place in the international order.

However, Security Council veto powers complicate the process. Palestine, despite broad recognition by over 140 states and an upgrade to "non-member observer state" in the UN General Assembly in 2012, remains excluded from full membership due to opposition in the Council. This demonstrates that recognition at the multilateral level can be shaped as much by geopolitics as by legal doctrine.

C. Case Studies in State Recognition

1. South Sudan (2011)

A salient example of recognition can be seen in South Sudan. After years of violence, the Comprehensive Peace Agreement of 2005 resulted in a referendum that passed with 98.83% voting for independence. South Sudan declared independence on July 9, 2011, and soon thereafter was recognized by the United States, China, India and other states, and admitted to the UN within a few days. This case demonstrates recognition under both the Montevideo criteria for membership and self determination that would be implicitly protected by international law.

2. Kosovo (2008)

Kosovo's declaration of independence from Serbia in February 2008 is still a disputed issue. Over 100 nations, including the United States and numerous members of the European Union, have acknowledged Kosovo. However, some countries, such as Russia, India, and China have not granted Kosovo recognition as a state. The Advisory Opinion of the International Court of Justice, delivered in 2010, indicated that Kosovo's unilateral declaration of independence was not inconsistent with international law, while also signalling, that the Court was not going to declare Kosovo a state. Kosovo demonstrates the uncertainty of recognition: the legality of secession does not discount the political inclination of states to grant state's status to countries who have unilaterally secured independence.

3. Taiwan

The question of Taiwan provides an even murkier path to recognition. Functionally, it satisfies all four Montevideo criteria, as it has political control of the state territory, has a defined underlying territorial domain, it conducts foreign relations with a multitude of countries, and is governed institutionally and

[19] JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 45–46 (2d ed. 2006).
[20] U.N. Charter art. 4.

intentionally. The withdrawal of recognition for Taiwan from numerous states since the People's Republic of China joined the United Nations and replaced the Republic of China in 1971 to maintain political relations with the PRC is especially problematic. Taiwan therefore demonstrates the political limits of recognition: factual statehood without widespread legality of statehood.

4. Palestine

The recognition trajectory of Palestine reveals the politicization of recognition. In 1988, the Palestine Liberation Organization (PLO) proclaimed statehood, and statehood for Palestine has since been acknowledged by most states. The UN General Assembly Resolution 67/19 (2012) states that Palestine should be accorded an enhanced status as a non-member observer state. However, the failure of the Security Council to endorse statehood has precluded full membership. Palestine exemplifies the distinction between broad declaratory recognition and constitutive limitations at the institutional level.

D. Non-Recognition and Secessionist Entities

Recognition also works in the negative through policies of non-recognition. States and entities, such as Northern Cyprus, recognized only by Turkey, as well as Abkhazia, South Ossetia and Transnistria, have established effective control within their claimed territories but have not achieved broad recognition. Refusal of recognition is often grounded in the principle of territorial integrity firmly etched into the UN Charter.[21] Similarly, Russian recognition of Donetsk and Luhansk "people's republics" in 2022 was roundly condemned as a breach of the Stimson Doctrine against recognition of territorial acquisitions by force. These examples have a normative function for recognition in protecting the established international order.

IV. Recognition of Governments

The recognition of governments is a separate but closely related area of recognition in international law. Whereas the recognition of states deals with legal existence of an entity as a subject of international law, the recognition of governments deals with which authority is the legitimate representative of a pre-existing state. This question usually arises in the context of an unconstitutional change, a coup d'état, the insurgency, or civil war when more than one faction claims authority over the same state. Whereas state recognition takes a relatively objective assessment, recognizing governments has developed over time as a mixture of legal doctrine along with political judgment, as well as a consideration of stability.

A. Theories of Government Recognition

Three primary approaches to government recognition have emerged in state practice: the effective control doctrine, democratic legitimacy approach, and denial of recognition policies.

1. Effective Control Doctrine.

The prevailing conventional view is that a government should be recognized as legitimate if authority has arisen and is exercising effective control over the territory and population of the state.[22] The government should also reasonably expect to continue to remain in control over the territory and population for the foreseeable future. The effective control doctrine gives priority to order and stability over the question of a state's legitimacy. This principle is illustrated in the **Tinoco Arbitration** (1923) where the arbitral tribunal accepted acts of the unidentified Tinoco regime in Costa Rica, even though

[21] U.N. Charter art. 2(4).
[22] James Crawford, The Creation of States in International Law 100–105 (2d ed. 2006).

the regime was not recognized as the legitimate government of Costa Rica, because the tribunal found that the regime exercised de facto control over the territory and population.[23]

2. Democratic Legitimacy and Constitutionalism.

A more contemporary approach that relates to the **Tobar Doctrine** (1907) and the **Inter-American Democratic Charter** (2001) ties recognition to constitutional legitimacy.[24] Under the democratic legitimacy doctrine, recognition of a regime that has come to power in an unconstitutional way (e.g., coup d'état or revolutionary) may no longer be accepted until democracy or constitutional legitimacy is restored. In principle, this is a desirable approach, but its use has not been universally accepted or adopted because states prioritize the pragmatics of relations with effective authorities.

3. **Non-Recognition Policies.**

Sometimes, states implement policies of non-recognition for the purposes of delegitimation of governments that emerge through illegitimate means even when they have effective control. For example, the Estrada Doctrine (1930), which originated in Mexico, rejected extending formal recognition or de-recognition of governments, preferring to judge our relations with them based on diplomatic requirements, rather than legitimacy. The Stimson Doctrine (1932), applied initially to cases of changes to territory, contributed to a broader concept of non-recognition in cases of unlawful changes in regimes, in the case of many states' refusal to recognize apartheid South Africa during the 1970s-80s.

B. De Facto and De Jure Recognition

The distinction between de facto and de jure recognition becomes relevant during the consideration of governments. De facto recognition is extended when a regime has exercised factual authority, but doubts remain about the regime's permanence or legitimacy. It typically permits limited forms of engagement, such as trade or consular relations. De jure recognition, in contrast, involves full and final recognition of a government as the legal representative of the state, thus allowing that government to engage in diplomatic, treaty, and organizational processes.

For example, the United Kingdom recognized the Bolshevik government of Russia *de facto* in 1921, but withheld *de jure* recognition until 1924. Similarly, India recognized Israel *de facto* in 1950 but waited until 1992 to grant *de jure* recognition by establishing full diplomatic relations.

C. Contemporary Issues in Government Recognition

1. Afghanistan and the Taliban (2021–Present).

The Taliban's comeback to power in Afghanistan in August 2021 reignited discussions on recognition by governments. The Taliban now effectively control territory, yet most states, including India, the United States, and members of the European Union, have not formally recognized them as legitimate rulers due to various factors related to inclusivity, rights, and terrorism. Instead, states have preferred to engage in pragmatic ways - providing humanitarian aid or engaging in negotiations related to security - but have not granted formal, de jure recognition. This is indicative of a modern preference for conditional recognition policies.[25]

2. Myanmar Junta (2021).

After the military coup in February 2021, Myanmar has experienced conflicting recognition. The United Nations continues to seat the ambassador of the civilian government that was overthrown, while the junta has effective control of the state. This reflects the political nature of recognition, where

[23] Tinoco Arbitration (Great Britain v. Costa Rica), 1 R.I.A.A. 369 (1923).
[24] Tobar Doctrine (1907), reprinted in 1 American Journal of International Law Supplement 377 (1907).
[25] United Nations Security Council Report, "The Situation in Afghanistan" (2022).

international institutions can do a lot of work to delay or resist allegiance to regimes that they perceive as illegitimate.

3. **Libya (2011) and Yemen (2015).**

International recognition moved in both Libya and Yemen during civil unrest. In Libya, many states and the UN withdrew recognition from the Gaddafi regime and provided recognition to the National Transitional Authority in 2011.[10] Although the Houthis control much of Yemen, both the UN and most states continue to recognize the government internationally supported by the UN although such authority may be limited.[11] These two examples demonstrate how recognition may also function as a political tool to bolster a specific group or faction.[26]

D. India's Practice

In general, India's methodology of recognition has always been characterized by pragmatism and by the principle of effective control - but tempered by geopolitical issues. After the Bangladesh Liberation War of 1971, Indian state authorities recognized the Mujib-ur-Rahman government almost immediately, thus establishing Indian authority in the subcontinent.[27] On the other hand, India has never formally recognized the Taliban regime in Afghanistan, even after its de facto control of the country, and has only engaged through humanitarian and security issues. Likewise, India's position regarding Myanmar is that it has maintained working relationships with the military junta, without extending formal recognition. India has to balance democratic values within a national security context regarding India-Myanmar relations along its northeastern border.

V. India's Policy and Practice

India's stance on recognition of states and governments embodies a mixture of legal principles, historical legacies, and pragmatic foreign policy interests. Positioned at the intersection of South Asia, the Middle East, and the Indo-Pacific, India has been faced with numerous challenges requiring recognition decisions over the years, from post-colonial independence movements to contemporary insurgencies to contested regimes. While India has never clearly specified a formalized doctrine of recognition, a pattern exists in its state practice: a pragmatic reliance on **effective control** as the prominent course of action, particularly when balanced against the principles of self-determination, anti-colonial solidarity, and perceived self-interest.

A. Early Policy Foundations

India's practice of recognition was influenced by its colonial past as well as its early role in the **Non-Aligned Movement (NAM)**. Jawaharlal Nehru said that recognition was "not a mark of approval, but acceptance of a fact" which represented the declaratory theory of statehood, and for India, a way of avoiding the ideological rivalries of the cold war and honouring its foreign policy commitment to self-determination. In the period right after independence, India **de facto** recognized the State of Israel in 1950, while withholding **de jure** recognition until 1992, in a way that balanced domestic political desires and solidarity with the Arab world. India's recognition of the People's Republic of China (PRC), also in 1950, ahead of many western states, showed India's priority regarding effective control and not ideological legitimacy. These early choices showed a practical orientation, where recognition was seen mainly as acknowledgment of factual situation and not political system endorsement.

[26] U.N. Security Council, "The Situation in Yemen," S/RES/2216 (Apr. 2015).
[27] Sumit Ganguly, Conflict Unending: India-Pakistan Tensions since 1947 102–05 (2001).

B. Recognition of States

1. Bangladesh (1971).

One of the most consequential recognition decisions in the history of India was its recognition of Bangladesh on December 6, 1971. After months of political repression by Pakistan and an enormous influx of refugees into India, New Delhi announced recognition of the provisional government of Sheikh Mujibur Rahman before Pakistan officially surrendered.[28] This decision illustrates India's willingness to use recognition strategically to further humanitarian and security goals. India's action prompted the Soviet Union to recognize Bangladesh followed by the broader international community, culminating in Bangladesh joining the United Nations in 1974.[29]

2. Palestine.

India has a history of supporting Palestinian statehood, a situation that began with recognizing the Palestine Liberation Organization (PLO) as "the sole and legitimate representative of the Palestinian people" in 1974 and giving recognition to the State of Palestine in 1988 (soon after its declaration of independence). As an example of its sustained support, in 2012 India voted for UN General Assembly Resolution 67/19, which granted Palestine non-member observer state status. In the most recent sign of this policy of support for self-determination and self-governance within the framework of international law, India voted for the resolution in 2024 supporting Palestine full membership status at the UN.[30]

3. Kosovo.

By contrast, India has not recognized Kosovo over worries about unilateral secession and its implications for separatism in South Asia. India's decision indicates its preference for territorial integrity, based in part on the situation in Kashmir and the Northeast. Even though the International Court of Justice alleged in an advisory opinion in 2010 that Kosovo's declaration of independence violated no law, India still did not officially recognize Kosovo.[31]

4. Taiwan.

India follows the "One China" policy, meaning India does not recognize Taiwan as a country. However, it has strong economic, cultural, and unofficial diplomatic relations with Taiwan through the Taipei Economic and Cultural Center situated in New Delhi. This arrangement reflects India's complicated reconciliation of formally denying recognition at the legal level and engaging with Taiwan practically at the functional level.

C. Recognition of Governments

India's approach to recognition of governments reflects similar pragmatism, balancing effective control with broader policy considerations.

1. Afghanistan and the Taliban.

India acknowledged successive governmental entities in Afghanistan, including the Northern Alliance and governments pre and post 2001. Yet, since the Taliban regained control of the country's power in August 2021, India has taken a position in withholding de jure recognition. India has kept lines of diplomatic contacts open through its mission in Kabul and has given humanitarian assistance, but has formulated its policy around conditional engagement with the Taliban conditional upon stated

[28] Sumit Ganguly, Conflict Unending: India-Pakistan Tensions since 1947 102–05 (2001).
[29] Ministry of External Affairs (India), India–Palestine Bilateral Relations, MEA Brief (2023).
[30] See MEA, India–Palestine Bilateral Relations (official bilateral brief and MEA statements on development cooperation and recognition history).
[31] See MEA spokesperson statement on India's position re: Kosovo (Aug. 9, 2010): "Our position on Kosovo's UDI … has not changed."

commitments to stop terrorism and use power within an inclusive governance framework. This hesitation reflects India's security concerns, specifically, threats of cross-border militancy and long-established linkages between the Taliban and overlapping hostility directed to India.[32]

2. Myanmar.

After the military coup in 2021, India did not derecognize the junta and kept working engagement to promote its strategic and security interests along the northeastern border and to counter China.[33] In addition, India has indicated support for restoring democracy. This suggests that India has tried to balance its stated norms of democracy with the realities of geopolitics.

3. Other Instances.

India's recognition of the Mujib government in 1971 is an example of actively using recognition to drive outcomes, whereas it recognized the PRC and did not mutually recognize governments such as the Taliban, which demonstrates restraint. This highlights India's case-by-case approach, tempered by effective control, stability, and strategic priorities.

D. Multilateral Context

India's recognition practice is also evident in its multilateral engagements. For instance, its voting patterns at the United Nations show a preference for upholding decolonization and self-determination processes (i.e., Palestine, Namibia, South Africa, under apartheid) while opposing unilateral secession (i.e., Kosovo, Abkhazia, South Ossetia). India has always stressed that any recognitional action would need to comply with the principles of sovereignty and non-intervention found in the United Nations Charter. India's participation in the International Court of Justice also reflects its position. In the Kosovo Advisory Opinion matter, India delivered written statements warning against the legitimisation of unilateral secession. In its statements, India uses words to highlight its belief that recognition practices should not create situational instability in the international order.

E. Policy Characterization

Researchers describe India's recognition practice as pragmatic and flexible, rather than doctrinal. India does not adhere to either the declaratory or constitutive theory, but employs a factual approach, recognizing effective control, while factoring in the geopolitical context, domestic political sensitivities, and wider principles of international law. This pragmatic approach allows India to modify its recognition policy in relation to changing regional and global circumstances.

VI. Emerging Issues and Challenges in Recognition

While the doctrine of recognition has existed for a long time, it has encountered new problems in an era of insurgencies, frozen conflicts, and competing geopolitical interests. The concept of recognition extends beyond just the formal recognition of a state or government, to now include aspects related to legitimacy, human rights, and international security. The purpose of this section is to highlight some key emerging issues that will challenge traditional principles of international law.

1. Recognition in the Age of Insurgencies and Secessionist Movements

One of the biggest tests is with insurgent groups and secessionists that have the capacity for effective control of territories but lack consequential legitimacy in the eyes of the international community. The Taliban in Afghanistan, has been able to consolidate power to some degree, yet is not recognized by

[32] See reporting on Afghanistan's diplomatic presence in India, including AP/National & MEA remarks re: recognition status and consular arrangements.

[33] MEA, "India–Myanmar Relations" (2022).

most states including India, because of terrorism concerns, women's rights, and obligations under counter-terrorism conventions. Another example comes from Myanmar, where the military conducted a coup in 2021, leading to twin governance claims with the junta on one side and the National Unity Government on the other side. This has left the international community split on how to respond to the parallel claims for governance by each side. Cases like this force the question of legitimacy. Is effectiveness enough for governance legitimacy or must legitimacy based on democratic credentials precede everything else?

2. Frozen Conflicts and Partially Recognized States

The existence of partially recognized states creates yet another challenge. Such entities include Abkhazia, South Ossetia, and Northern Cyprus, which still operate with recognition from, at best, a few states. The most visible case is Kosovo, which is recognized as independent by over 100 states, but is not recognized by some states, including India, Russia, and China. The International Court of Justice's (ICJ) 2010 Advisory Opinion regarding Kosovo (ICJ Rep. 2010), ruled that unilateral declarations of independence are not prohibited by international law. However, the court drew back from ruling on the legal effects of recognition. The way forward is still unclear with regard to legal norms governing criteria of lawful secession and the effect of recognizing partially recognized states or secessionists.

3. Recognition and International Organizations

The role of international organizations in mediating disputes concerning recognition has increased, especially regarding the United Nations. The UN system requires a dual form of recognition: where the Security Council recommends and the General Assembly votes to admit a state. Thus, to the extent that the UN system recognizes states, these actions are often subject to the geopolitical conflict and dynamics of those member states. For instance, Palestine was admitted to the UN system as a non-member observer state in 2012, despite the fact that it does not have full recognition by several powerful states. Similarly, Taiwan has not been part of the UN system since 1971 and is not a member of the UN system due to the "One China" policy, yet Taiwan qualifies as a state under the Montevideo criteria. These geopolitical tensions related to multilateral recognition versus individual recognition of states continues to complicate the legal framework related to recognition.

4. Human Rights and Democratic Legitimacy as New Standards

Historically, recognition has been thought of as a political act driven by efficacy and stability. But an increasing discussion suggests that recognition should involve respect for human rights and democracy. Examples of this approach include the **Tobar Doctrine** and the more recent African Union rejection of unconstitutional changes of government. For example, after the coup in Niger in 2023, the African Union and the **Economic Community of West African States (ECOWAS)** suspended communication with the coup junta and rejects the 2023 coup.[34] Though the Tobar Doctrine has become an accepted approach for recognition of governments that respect human rights and democracy, and the African Union and ECOWAS chose to reject a coup government based on democratic principles, the use of discretion in applying these standards often reflects the "political convenience" of those making decisions about recognition rather than an adherence to legal norms.

5. The Debate: Legal Duty or Political Discretion?

The most basic unresolved question may be whether recognition should be considered an obligation of law or one of sovereign political discretion. The declaratory theory, as articulated by the Montevideo

[34] African Union Peace and Security Council, Communiqué on Niger Coup (Aug. 2023).

Convention, concludes that recognition is only declaratory of a pre-existing fact of statehood.[35] Contrarily, the constitutive theory states that recognition is necessary for legal personality in the international community. Contemporary practices embody a hybrid of theories, as recognition is informed by both legal and realpolitik considerations. India's policy of balancing non-interference and pragmatism, representing the current ambiguity of law and politics.[36]

VII. Conclusion

The doctrine of recognition in international law remains in a precarious position between legal principle and political expediency. Recognition "serves as the connection between the existence of an entity and that entity's engagement with the international community." In both examples, an act of recognition will carry significant consequences related to sovereignty, legitimacy, and international relations.

Examining doctrinal underpinnings indicates that while the constitutive and declaratory theories remain central to the discipline, neither theory provides a robust enough analytical framework to deal with contemporary issues. The Montevideo Convention's criteria—defined territory, permanent population, government, and capacity to acquire international relations—provide a minimal baseline, but neither facilitate dispute resolution about legitimacy, human rights, or democratic governance. Recognizing governments poses an even larger dilemma, as the question of effective control often conflicts with democratic legitimacy and constitutional continuity.

India's example showcases the pragmatic navigation of these complexities. Its cautious position—acknowledging Israel after around 30 years of its establishment, supporting the declaration of statehood for Palestine, denying Kosovo recognition, and declining recognition of the Taliban—reflects a strategy that sought to balance international legal norms with the realities of geopolitics. This points to a more general truth: recognition is not simply a legal issue, but a political act that is shaped by foreign policy priorities and security concerns. The emergence of issues such as insurgent takeovers, frozen conflicts, and growing influence of international institutions reveal the evolving nature of recognition. Increasingly, the requirements of human rights and democratic governance are becoming normalized as conditions for recognition, reflecting a normative shift even as it may undermine recognition practice. The ultimate question is whether recognition is a legal obligation defined by objective legal criteria, or a sovereign prerogative exercised for a political purpose.

In the end, recognition is neither entirely legal nor purely political; it is a mixed doctrine which both showcases the tension of the regime between questions of international order and state sovereignty. For a state like India, balancing adherence to international law principles with safeguarding national interests remains challenging in an increasingly multipolar world. Thus, as the world continues to generate new claimants to statehood and governance through conflicts, recognition will remain one of the most contentious, fluid, and strategically important doctrines in international law.

[35] Montevideo Convention on the Rights and Duties of States, Dec. 26, 1933, 165 L.N.T.S. 19.x

[36] Sean D. Murphy, Democratic Legitimacy and the Recognition of States and Governments, 48 Int'l & Comp. L.Q. 545, 546 (1999).