

## **“Act of Recognition of Statehood”** **The Re'ut Institute – Concepts and Terms**

### **Definition**

The concept “Act of Recognition of Statehood” (hereafter “Act of Recognition”) refers to the action by which one existing state:

1. **Formally acknowledges** the political status of another entity as a state; *and*
2. **Takes upon itself the legal consequences** of this recognition under international law in its relations with the new state.

### **Background – Recognition of Statehood under International Law**

In order to accede to the status of a “Sovereign State”, a political entity requires both (See [“Accession to Statehood”](#)):

1. The positive attitudes of existing states, i.e. *de jure* recognition<sup>1</sup>; *and*
2. “Effectiveness” of the new state, i.e. *de facto* control over its territory and population.<sup>2</sup>

### **Formal Acknowledgement of Statehood**

Formal recognition results from either *explicit declaration* or from an *implicit action*, such as the establishment of diplomatic relations with the new state:<sup>3</sup>

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<sup>1</sup> The practice of recognition may be viewed as emanating from two distinct theories:

1. *Declaratory* – The Act of Recognition is just an acceptance by states of a “reality on the ground”, meaning that *de facto* the state has already come into being.
2. *Constitutive* – An Act of Recognition by one state only cannot constitute another state, but “[Collective Recognition](#)” endows an entity with its status of statehood.

See: Malcolm Shaw. *International Law*. Cambridge University Press, 2003, p. 185.

<sup>2</sup> A political entity’s status of statehood depends upon its “effectiveness” and the attitude of existing states. For further information, see “[Realms of Statehood](#)”. See also: Antonio Cassese. *International Law in a Divided World*, 1988, p. 77-79.

<sup>3</sup> Institut De Droit International: Resolutions Concerning the Recognition of New States and New Governments. *The American Journal of International Law*, Vol. 30, No.4, Supplement: Official Documents (Oct. 1936), 185-187.

Method	Declarations/Actions
Unilateral	<ul style="list-style-type: none"> <li>- Unilateral declaration by the recognizing state</li> <li>- Calling for or voting in favor of UN membership for the new state</li> </ul>
Bilateral	<ul style="list-style-type: none"> <li>- Visit of the head of state according to the relevant diplomatic protocol</li> <li>- Signing of a bilateral treaty or agreement</li> <li>- Establishing diplomatic relations</li> </ul>

Based on political considerations, a state may adopt one of several types of **formal recognition** vis-à-vis a new state.<sup>4</sup>

1. *Recognition* – complete acceptance of an entity’s factual status as a state.
2. *Conditional Recognition*<sup>5</sup> – “**Nascent State**” – recognition that the permanent political status of a political entity **will be** statehood *but* it will *only* be realized when certain conditions are met, as in the cases of East Timor or the PLO/PA.
3. *Non-recognition* – One state may choose **not** to recognize another state due to hostility. In cases where a state does not recognize another state, it may expressly declare that a particular act by no means implies formal recognition.<sup>6</sup>

### **Collective Recognition versus Act of Recognition (by One State)**

“Collective Recognition” by the international community of a political entity as a state may be expressed by:

1. Acceptance to the United Nations<sup>7</sup> as a “Member State” (the ultimate and irrevocable act of Collective Recognition);<sup>8</sup>
2. Recognition by a **critical mass** of the international community i.e. by a significant number of existing states *or* by leading relevant states.

An Act of Recognition (by one state) may come **before or after** Collective Recognition:

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<sup>4</sup> Shaw, *ibid.*, p. 387, 390.

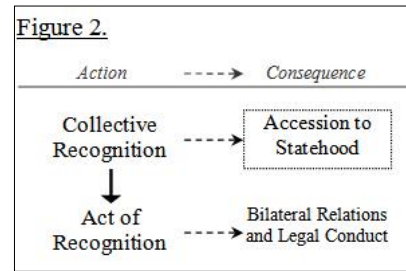
<sup>5</sup> Shaw, *ibid.*, also refers to the possibility of conditional recognition, i.e. to recognition that may be withdrawn if the entity fails to fulfill certain conditions. All such precedents date back to the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. There are no modern day examples of conditional recognition.

<sup>6</sup> Such non-recognition was maintained for many years by Arab countries vis-à-vis Israel and by Israel vis-à-vis the PLO.

<sup>7</sup> Acceptance to other regional, international and supranational organizations may not meet the criteria of Collective Recognition e.g. the PLO has been accepted to a number of international organizations, but has not been collectively recognized as a state.

<sup>8</sup> A status of statehood cannot be undone, although it may be transformed into alternative political structures. For example, Czechoslovakia, the Soviet Union and Yugoslavia were unitary states which dissolved into multiple states; East and West Germany reunified; Eritrea seceded from Ethiopia; *and* the EU may receive a seat at the UN Security Council alongside other states.

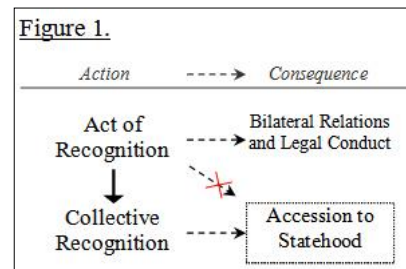
- When an Act of Recognition **precedes** Collective Recognition, the international community *must* follow with Collective Recognition *or* the Act of Recognition does not take effect (see Figure 1).<sup>9</sup>
- When an Act of Recognition **follows** Collective Recognition, the Act of Recognition only impacts on bilateral relations and the conduct of the recognizing state (see Figure 2). For example, Egypt’s Act of Recognition of Israel in 1978 transformed Egyptian-Israeli bilateral relations and Egypt’s own conduct towards Israel.<sup>10</sup>



**Legal Consequences of Act of Recognition**

The Act of Recognition signifies that the existing state takes upon itself to treat the recognized entity as a Sovereign State and thus:

1. Their **bilateral** relations will be subject to norms of international law governing relations between states whether in conflict or peace.
2. It accepts that the recognized state has “Inherent Rights” possessed by every independent state from the moment it accedes to statehood. Infringement upon the Inherent Rights of the recognized state must be based on international law.
3. It expects that the recognized state will undertake its “Inherent Duties” which are obligations of every independent state.



**Additional Resources**

For further reading on the issue of recognition under international law, see:

<sup>9</sup> For example, the US Act of Recognition of Panama as an independent state in 1903 was effective since it was followed by Collective Recognition by the international community. Conversely, neither South Africa’s Act of Recognition of ten Bantustan tribal states in 1976 nor Turkey’s Act of Recognition of the Turkish Republic of Northern Cyprus in 1983 were effective as they were not followed by Collective Recognition of the international community.

In addition, although the PLO’s 1988 declaration of independence (See “Algiers Declaration”) was recognized by 94 states, the PLO never received Collective Recognition as a state (See “Status of Palestinian Statehood”). Western Sahara is also recognized by over 50 states as being an independent state (the Sahrawi Arab Democratic Republic), but has not received Collective Recognition and remains on the UN list of Non-Self-Governing Territories.

<sup>10</sup> “Signatories shall establish among themselves relationships normal to states at peace with one another...Steps to be taken in this respect include full recognition.” See: “1978 Camp David Accords” – Section C ‘Associated Principles’, Par. 2.

Furthermore, Jordan’s Act of Recognition of Israel (10/24/94) had a similar effect. See: “Israel-Jordan Treaty of Peace” – Article 2 ‘Mutual recognition’: “Recognize and respect each other’s sovereignty, territorial integrity and political independence”.

- Lauterpacht, H. *Recognition in International Law*, (Cambridge: 1947).
- Kelsen, H. "Recognition in International Law: Theoretical Observations," *American Journal of International Law*, Vol. 35, No. 4 (Oct. 1941), 605-617.
- Kunz, Josef L. "Critical Remarks on Lauterpacht's 'Recognition in International Law'," *American Journal of International Law*, Vol. 44, No. 4 (Oct. 1950), 713-719.

End.