



THE GREY AREAS OF SELF-DETERMINATION: DOUBLE STANDARD OF RECOGNITION IN INTERNATIONAL LAW

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Introduction

The concept of self-determination is enshrined in international law as a fundamental right, empowering peoples to freely choose their political status and to pursue their economic, social, and cultural development. Emerging in the aftermath World War I and subsequently codified in foundational documents such as the United Nations Charter (1945) and the International Covenant on Civil and Political Rights (1966), the principle was conceived primarily to facilitate decolonization and to dismantle imperial dominance. However, in the post-colonial and post-Cold War periods, the application of self-determination has grown increasingly complex and legally ambiguous, raising significant concerns about its selective enforcement and political manipulation.¹

At the core of this debate is the Montevideo Convention on the Rights and Duties of States (1933), which lays out the traditional criteria for statehood: a permanent population, a defined territory, an effective government, and the capacity to enter into relations with other states.² Although intended to bring legal clarity and consistency to the process of state recognition, the Convention has proven inadequate when confronted with contemporary claims involving unrecognized nations, separatist movements, and overlapping sovereignty claims. Its state-centric model does not adequately address the legal, historical, and political dimensions of self-determination claims in the modern international system.³

This article argues that the Montevideo Convention's rigid interpretation has not only failed to accommodate contemporary challenges in the application of self-determination but has also enabled dominant global actors to manipulate legal norms to serve strategic objectives. The result is a pattern of highly selective recognition, where the legitimacy of a statehood claim hinges less on legal compliance than on geopolitical alignment. Consequently, the notion of self-determination is no longer applied as a consistent legal standard but rather functions as a discretionary instrument wielded by powerful states.⁴

1 Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press 1995).

2 Montevideo Convention on the Rights and Duties of States (1933), art 1.

3 James Crawford, *The Creation of States in International Law* (2nd edn, OUP 2006) 415–425.

4 Anne Peters, 'The Principle of Democratic Teleology in International Law' in Tomuschat and Thouvenin (eds),



The criteria outlined in the Montevideo Convention were designed to offer an objective benchmark for statehood; yet, the framework is frequently overridden or selectively enforced. For example, the 2008 recognition of Kosovo's independence by many Western states was justified as a necessary response to human rights abuses under Serbian governance. Yet comparable claims made by regions such as Abkhazia and South Ossetia, which also declared independence following conflict, were categorically rejected by those same actors. This stark inconsistency reveals how legal arguments around self-determination are often subordinated to political interests.

A similar dynamic can be observed in the case of Crimea, annexed by Russia in 2014 following a disputed referendum. Russia defended its actions by invoking the rhetoric of self-determination, while the majority of the international community denounced the annexation as a clear violation of Ukraine's territorial integrity and a breach of fundamental norms of international law. Meanwhile, pro-Russian separatist entities in Luhansk and Donetsk were recognized by Russia but dismissed by Western states as illegitimate instruments of Russian influence. These examples illustrate how the practice of self-determination in international law lacks coherent legal enforcement and is heavily shaped by realpolitik.

The Kosovo precedent further complicates this legal landscape. The North Atlantic Treaty Organization's (NATO) military intervention in 1999 and its subsequent political support for Kosovo's independence set a significant, albeit controversial, precedent. Russia has since relied on this example to legitimize its own interventions, including in Georgia and Ukraine. The result is a cycle of legal mimicry, where self-determination claims are adopted or rejected depending on the geopolitical agenda of the states involved.

Perhaps nowhere is this pattern more evident than in the protracted cases of Palestine and Somaliland. Despite having viable claims to statehood under the Montevideo framework, both entities remain in diplomatic limbo. Palestine, which enjoys broad international recognition and possesses a permanent population, continues to be denied full membership and statehood status [due to persistent occupation and the exercise of veto power by the United States in the UN Security Council]. Somaliland, a de facto stable and democratic region with historical sovereignty, has been similarly excluded from recognition, not on legal grounds but due to political inertia and regional sensitivities.¹

In each of these cases, the failure to apply a consistent legal standard has left affected populations exposed to protracted instability, political marginalization, and external manipulation. In the absence of a robust legal framework capable of meaningfully addressing these asymmetries, international law cannot fulfill its role in promoting justice, sovereignty, and peace. As such, this paper calls for a reevaluation of the Montevideo Convention and the development of a more equitable and transparent system for evaluating self-determination claims.

The Fundamental Rules of the International Legal Order (Martinus Nijhoff 2006) 94.

¹ Suhaib Mahmoud, 'Understanding the Secession of Somaliland' (2023) 6(1) *AlMuntaqa* 8.

1. The Montevideo Convention and the Legal Criteria for Statehood: An Examination of Article 1 and Its Contemporary Challenges

The Montevideo Convention on the Rights and Duties of States, adopted in 1933 during a period of hemispheric diplomatic engagement in the Americas, sought to codify the essential criteria for statehood under international law.¹ Article 1 of the Convention articulates four constitutive requirements: a permanent population, a defined territory, an effective government, and the capacity to enter into relations with other states.

Despite the clarity the Convention intended to provide, it is rooted in a Eurocentric legal and political paradigm that prioritizes territorial sovereignty over the evolving realities of identity, autonomy, and self-governance. At the time of its drafting, the drafters did not anticipate a post-colonial international system characterized by ethno-nationalist demands, failed states, or the proliferation of unrecognized but functioning polities. This has led to a significant disjunction between legal formalism and geopolitical practice.²

Although the criteria appear objective, they frequently produce contradictions when applied to real-world disputes. For instance, the case of Kosovo demonstrates how boundaries inherited from imperial or communist cartographies often provoke new contestations when subjected to ethnic, cultural, or political realignment. The Convention's fourth criterion- the capacity to enter into relations with other states- introduces a circular logic. In many cases, an entity's capacity for international engagement is contingent on recognition itself. This creates a paradox: states must be recognized to have international legal standing, yet must demonstrate legal standing to be recognized.³

Scholarly commentary has emphasized that this capacity is often a consequence rather than a prerequisite of recognition, further complicating its legal relevance. Moreover, legal scholarship has questioned the utility of "capacity for relations" as a standalone criterion, since many unrecognized entities conduct international negotiations or sign agreements unofficially.

This ambiguity opens the door to strategic manipulation. Some states are denied recognition not for failing to meet the Montevideo criteria but due to broader geopolitical calculations. Examples include Western Sahara and Somaliland, both of which possess functioning governments, defined territories, and stable populations but are denied recognition due to regional opposition or the interests of influential states. Conversely, Taiwan has been extended de facto recognition by numerous actors, despite widespread non-recognition by the international community.⁴

Furthermore, the Convention is silent on the right to self-determination, creating an asymmetry between the law's technical criteria and the ethical principles embedded in the UN Charter (1945) and customary international law.⁵ While UN bodies and International Court of

1 Montevideo Convention, *Encyclopaedia Britannica* (Mar. 5, 2024), <https://www.britannica.com/event/Montevideo-Convention>.

2 Crawford (n 2)415-425

3 D P O'Connell, 'Criteria of Statehood in International Law' (1998) 10 *Temporis Law Journal* 261.

4 Suhaib Mahmoud, 'Understanding the Secession of Somaliland' (2023) 6(1) *AlMuntaqa* 8; Temesgen Sisay Beyene, 'Declaration of Statehood by Somaliland and the Effects of Non-Recognition under International Law' (2019) 10(1) *Beijing Law Review* 196.

5 UN Charter 1945, art 1(2); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 1.



Justice's (ICJ) advisory opinions have acknowledged the moral and political relevance of self-determination, the Montevideo framework does not integrate this norm as a legal threshold for statehood. As a result, claims such as that of Catalonia- which involves a functioning regional government and a distinct population- are dismissed on the basis of territorial integrity, despite arguably meeting many of the Convention's standards.¹

The Convention's rigidity has therefore left international law ill-equipped to handle modern self-determination conflicts. It fails to differentiate between secessionist movements born of legitimate grievances and those orchestrated by external actors for strategic purposes. Without reform, this legal vacuum will continue to be filled by power politics and selective recognition.

2. Case Studies in Selective Recognition: The Application of Montevideo Criteria in Kosovo, Abkhazia, and South Ossetia

Kosovo, recognized by over 100 states but denied UN membership due to Russian and Chinese vetoes, exemplifies how great-power politics override legal criteria. Western support for its independence contrasted sharply with their reluctance in Crimea, exposing double standards.²

In Crimea, Russia invoked the principle of self-determination to justify its 2014 annexation following a disputed referendum.³ However, the vote occurred under conditions that did not meet international standards: the presence of Russian military forces, exclusion of international observers, and widespread reports of voter coercion undermined the legitimacy of the process.⁴ The majority of the international community condemned the move as a violation of Ukrainian sovereignty, reflecting a geopolitical rather than a legal response.

State recognition has increasingly functioned as a geopolitical tool. China's refusal to recognize Taiwan, despite its de facto statehood, highlights how political strategy often trumps legal criteria. Conversely, the rapid recognition of former Yugoslav republics in the 1990s by Western states demonstrates the use of recognition to reshape regional dynamics.⁵

Legal scholars like James Crawford and Anne Peters argue that the Montevideo criteria are inadequate for modern challenges. Crawford notes the Convention's failure to address "failed states" (e.g., Somalia)⁶. The ICJ's Opinion on the *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* further revealed that international law neither prohibits nor endorses secession, leaving a vacuum filled invariably by political expediency.

In the case of Kosovo, the Western argument for recognition focused principally on remedial secession, justified by grave humanitarian concerns, particularly Serbia's systematic suppression of the Kosovo Albanians in the 1990s.⁷ Yet the concomitant claim that Kosovo

1 Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion) [2010] ICJ Rep 403, paras 79–84.(July 22), <https://www.icj-cij.org/case/141>.

2 UNGA Res 1244 (1999) UN Doc S/RES/1244; UN SC, 'Kosovo's Independence Not Endorsed by United Nations' (18 February 2008).

3 Russian Federation, Statement on Crimea Referendum, Ministry of Foreign Affairs (17 March 2014).

4 Organization for Security and Co-operation in Europe (OSCE), *Report on Absence of International Observers in Crimea Referendum* (2014).

5 Steven Pifer, 'Five Years After Crimea's Illegal Annexation' (Brookings Institution, 2019) <https://www.brookings.edu/articles/five-years-after-crimeas-illegal-annexation>.

6 James Crawford, *The Creation of States in International Law* 70 (2d ed. 2006).

7 NATO, 'Kosovo Air Campaign: Operation Allied Force' (1999); see also UNSC meetings March–June 1999.



represented a “unique case” was strategically used to preempt the establishment of a broader legal precedent, thereby protecting Western recognition policies from being invoked by other separatist groups.¹

By contrast, Abkhazia and South Ossetia, two breakaway regions from Georgia also declared independence following armed conflict. Despite meeting several of the Montevideo criteria, they were dismissed by Western powers as illegitimate entities, in part due to their dependence on Russian military and economic support.²

This inconsistency reveals the selective invocation of the Convention’s standards. In the case of Kosovo, the absence of full UN membership and continued Serbian objections were overlooked. In Georgia, similar deficits were deemed disqualifying.

The legal argument of “capacity for relations” was applied flexibly: Kosovo’s partial diplomatic engagement was deemed sufficient, while Abkhazia’s and South Ossetia’s limited autonomy from Russia was portrayed as disqualifying. This selective legal interpretation served to protect geopolitical interests rather than enforce uniform standards.

Recognition has thus become a strategic act. In Yugoslavia, it served to disempower a non-aligned regional power and extend Western influence. In Georgia, restraint reflected a desire to avoid open conflict with Russia and to protect vital energy corridors such as the Baku-Tbilisi-Ceyhan pipeline.

In both cases, legal norms were subordinated to broader strategic aims. Kosovo was recognized despite unresolved territorial disputes, such as in the Serb-majority North. Abkhazia and South Ossetia, while functionally autonomous, were dismissed as “puppet states” of Russia.

These examples demonstrate that statehood in the current international system is not a neutral legal status but a potent tool of power projection. Russia’s use of recognition in Georgia mirrors the tactics used by Western states in the Balkans; yet the former is widely deemed illegitimate while the latter is legitimized under exceptionalist narratives.

The Kosovo precedent established a loophole: powerful states may invoke humanitarian crises to override sovereignty but ignore the same principle when it becomes politically inconvenient. This form of legal exceptionalism erodes the universality of international law.

While some scholars propose “democratic governance” as a basis for recognition, such criteria remain susceptible to politicization and selective application. In the absence of a consistent and transparent legal framework, recognition remains arbitrary, reinforcing global power hierarchies at the expense of equitable legal standards.³

1 Marc Weller, ‘Modesty Can Be a Virtue: Judicial Economy in the ICJ Kosovo Opinion?’ (2011) 10 *Chinese J Intl L* 31.

2 Stephen Jones, *Georgia: The Conflict with Russia and the Crisis in South Ossetia*, House of Commons Library Research Paper (2008).

3 Thomas M Franck, ‘The Emerging Right to Democratic Governance’ (1992) 86 *AJIL* 46.



3. Comparative Analysis of State Disintegration and Secessionist Conflicts: The Cases of Yugoslavia and Georgia

The breakup of Yugoslavia in the 1990s and the 2008 Russia-Georgia conflict present contrasting illustrations of how the Montevideo criteria and the right to self-determination have been applied or disregarded depending on the prevailing political context.

During Yugoslavia's dissolution, Western states rapidly recognized Slovenia, Croatia, Bosnia-Herzegovina, and later Kosovo, despite contested borders and ongoing violence.¹ The Badinter Arbitration Committee, established by the European Community, endorsed this recognition based on principles such as respect for human rights and democratic governance, extending beyond strict Montevideo criteria. This approach incentivized secessionist momentum and enabled Western powers to shape the post-Yugoslav order.

By contrast, when Georgia turned to self-determination claims for Abkhazia and South Ossetia following the brief Russo-Georgian war in 2008, Western states rejected these claims, invoking the countervailing principle of territorial integrity. Despite those regions having devolved administrative structures and distinct ethnic populations, their declarations of independence were dismissed as illegitimate, highlighting the selective and politically contingent enforcement of legal norms.

Furthermore, recognition of Abkhazia and South Ossetia by Russia, following military action in August 2008, drew criticism for violating international law, including the UN Charter's prohibition on the unilateral use of force.² The responses to these crises demonstrate how power dynamics shape legal interpretations: when Western states sought to reshape a region for strategic ends, recognition was swift; when Russia attempted the same, the response was denial and condemnation.

This tale of two crises underscores a systemic problem: international legal standards like the Montevideo criteria or the principle of self-determination are subject to political discretion. Depending on whether great powers back or oppose a claim, the same legal tools are interpreted in dramatically opposite ways.

4. The Russian Federation's Invocation of Self-Determination in Crimea and Donbas: Legal Assessment and Geopolitical Implications

The annexation of Crimea by the Russian Federation in 2014 and its subsequent recognition of the so-called Donetsk People's Republic (DPR) and Luhansk People's Republic (LPR) have intensified debates around the selective application of self-determination. Russia justified its actions by referencing the 2014 Crimean referendum, arguing that the majority of Crimean residents had voted to join the Russian Federation, thereby exercising their right to self-determination.³

However, the referendum occurred under the effective occupation and presence of Russian military forces, lacked transparency, and was conducted without the presence of international

¹ Council of the European Union, 'Brussels European Council 15 and 16 December 1991, Conclusions' (1991).

² UN Charter 1945, art 2(4); see also UNGA Res ES-11/4 (12 October 2022) condemning unilateral annexations.

³ Russian Federation, 'Address by President of the Russian Federation on the Accession of Crimea' (18 March 2014).



observers. It was condemned by the UN General Assembly, which subsequently affirmed Ukraine's territorial integrity.¹ International observers, including the Organization for Security and Co-operation in Europe (OSCE), were barred from monitoring, and reports emerged detailing voter intimidation, restricted media access, and ballot-stuffing². The UN High Commissioner for Human Rights noted that Crimean Tatars, constituting approximately 12% of the population, faced systemic exclusion, with their leaders arrested or silenced.³ By 2025, Russia's claims of a "free expression of will" remain contested, as no independent verification of the process has ever been permitted.⁴ Unlike the case of Kosovo, where NATO intervened after a prolonged humanitarian crisis, the international community rejected Russia's use of similar reasoning in Crimea. This suggests that the validity of self-determination claims is assessed not through consistent, objective criteria but through the perceived legitimacy of the actor invoking them.

In 2022, the Russian government formally recognized the DPR and LPR and used their alleged right to self-determination as a primary legal justification for its full-scale invasion of Ukraine.⁵ The legal justification was widely dismissed as pretextual. These declarations of independence occurred in the absence of free and fair referenda, amid active armed conflict, and in regions that had been under de facto Russian military and political control for years.⁶

Although both entities proclaimed independence, created governing institutions, and claimed to represent distinct populations, their heavy and overt dependence on external military and financial support undermines the criteria outlined in the Montevideo Convention. In particular, their "government" lacks independent functionality, and their capacity to engage in international relations is inseparable from and contingent on Russian involvement.

In contrast to Kosovo, which has received recognition from over 100 sovereign states, the DPR and LPR have only been recognized by a small group of Russian-aligned states. This disparity reinforces the view that recognition remains an intrinsically political, rather than a purely legal, process, reinforcing the asymmetry of power in the application of international norms.

Additionally, the attempted annexation of the DPR, LPR, Kherson, and Zaporizhzhia regions following referendums in September 2022 raises further serious legal concerns. These referenda, overwhelmingly rejected by the international community as illegitimate, having been conducted under conditions of military occupation and during active warfare, violating standards of self-determination that require a free expression of will.

The 2014-2015 Minsk Agreements,⁷ brokered by France and Germany, aimed to reintegrate

1 UNGA Res. 68/262, *Territorial Integrity of Ukraine*, 1, U.N. Doc. A/RES/68/262 (Mar. 27, 2014), <https://press.un.org/en/2014/ga11493.doc.htm>.

2 Harriet Salem, *Ukraine and Russia Call Truce before Crimea Referendum*, *The Guardian* (Mar. 16, 2014), <https://www.theguardian.com/world/2014/mar/16/ukraine-russia-truce-crimea-referendum>.

3 Human Rights Watch, 'Crimean Tatars Face Unfounded Terrorism Charges' (12 July 2019) <https://www.hrw.org/news/2019/07/12/crimean-tatars-face-unfounded-terrorism-charges> accessed 7 June 2025

4 Steven Pifer, *Five Years after Crimea's Illegal Annexation, the Issue Is No Closer to Resolution*, Brookings Institution (Mar. 18, 2019), <https://www.brookings.edu/articles/five-years-after-crimeas-illegal-annexation-the-issue-is-no-closer-to-resolution/>.

5 Ministry of Foreign Affairs of the Russian Federation, 'Recognition of Donetsk and Luhansk' (21 February 2022).

6 UN Human Rights Council, *Report on the Human Rights Situation in Ukraine* (2022) paras 33–40.

7 *What Are the Minsk Agreements on the Ukraine Conflict?*, Reuters (Feb. 21, 2022), <https://www.reuters.com/world/europe/what-are-minsk-agreements-ukraine-conflict-2022-02-21/>.



Donbas into Ukraine with autonomy. However, Russia and the separatist forces it backed are widely considered to have sabotaged their implementation, using the accords to entrench de facto control over the territory. By 2025, the DPR and LPR remain unrecognized by all states except Russia, Syria, and North Korea, with their governance sustained almost entirely by Russian subsidies and military aid.

The war has reduced cities like Mariupol and Sievierodonetsk to rubble. A 2024 UN report documented 28,000 civilian deaths, 12,000 kidnapped or forcibly displaced, and 90% of infrastructure destroyed.¹ The Montevideo Convention's sterile criteria ignore such realities, reducing human suffering to abstract legal debates.

The Convention's criteria assume a static and consensual process of statehood, ignoring modern hybrid warfare tactics like cyberattacks, disinformation, and "little green men"² (a reference to unmarked Russian troops in Crimea). Russia's policy of "passportization"- the mass issuance of Russian passports to Donbas residents since 2019-³ to justify intervention mirrors tactics used in Georgia's Abkhazia and South Ossetia.

Ukraine's own independence in 1991, recognized under the Montevideo framework, now clashes with localized identities in Crimea and Donbas. The Convention offers no guidance on reconciling historical grievances (e.g., Soviet-era deportations of Tatars) with the imperatives of contemporary sovereignty. This indicates that the principle of self-determination must evolve beyond 20th-century decolonization paradigms to adequately address substate nationalism.

Most importantly, the West's refusal to recognize the Russian annexation of Crimea and the independence of the Donbas contrasts sharply with its support for Kosovo's independence, revealing a double standard rooted in realpolitik. While the U.S. and EU imposed severe sanctions on Russia and provided substantial military assistance to Ukraine, their insistence on Ukrainian territorial integrity ignores parallels to Serbia's loss of Kosovo. This hypocrisy erodes the credibility of international law.

The international legal community largely views Russia's actions as violations of Article 2(4) of the UN Charter, which prohibits the threat or use of force against the territorial integrity or political independence of any state. The invocation of self-determination in this context has been characterized not as a legal claim, but as a strategic instrument used to retroactively justify territorial aggression.

These cases illustrate that when self-determination is invoked without credible procedures, external actors can exploit the concept to pursue expansionist aims. The failure to hold all actors to a consistent and impartial legal standard not only weakens the legitimacy of international law but also perpetuates instability and conflict. The inconsistency in responses to Russia's claims versus those of Kosovo, Palestine, or Somaliland underscores the instrumentalization of self-determination for strategic advantage.

1 Int'l Org. for Migration, *Ukraine Crisis Response*, IOM (2024), <https://www.iom.int/crisis-ukraine>.

2 "Little Green Men" or "Russian Invaders"?, *BBC News* (Mar. 11, 2014), <https://www.bbc.com/news/world-europe-26532154>.

3 Fabian Burkhardt, *Russia's "Passportisation" of the Donbas*, SWP Comment No. 41, SWP Berlin (Sept. 2020), <https://www.swp-berlin.org/10.18449/2020C41/>.

5. Palestine's Pursuit of Sovereignty Under International Law: Legal Merit and Political Obstruction

The Palestinian claim to statehood remains one of the most contested and politically obstructed applications of self-determination in modern international law. Unlike the cases of Kosovo or Abkhazia, which have been selectively championed or rejected by external powers, Palestine's bid for recognition has been systematically impeded by entrenched geopolitical interests, notably those of the United States and Israel. This resistance persists despite the fact that Palestine fulfills the criteria for statehood under the Montevideo Convention. The selective application of international law and the politicization of UN mechanisms have entrenched a legal vacuum, allowing occupation to persist under the guise of contested sovereignty.¹

The legal foundations of the Palestinian claim stretch back to the British Mandate, established in 1922 following the dissolution of the Ottoman Empire. The 1947 UN Partition Plan, which recommended the creation of separate Jewish and Arab states, was followed by the establishment of Israel and the fragmentation of Palestinian territories during the 1948 Arab-Israeli war. By 1967, Israel had assumed military control over the West Bank, Gaza, and East Jerusalem- territories designated for a Palestinian state under various international proposals. Despite the Palestine Liberation Organization's (PLO) declaration of independence in 1988, formal recognition remained limited, and the 1993 Oslo Accords merely established an interim self-governing body without resolving final status issues.²

Under the Montevideo Convention, Palestine meets the four key statehood criteria. It possesses a permanent population of approximately 5.3 million people in the West Bank and Gaza, in addition to over six million refugees abroad. However, this demographic continuity has been undermined by Israeli measures including settlement expansions, population displacement, and restrictions on freedom of movement.³ Palestine's claim to a defined territory is internationally recognized in the form of the 1967 borders, including East Jerusalem. Nonetheless, the expansion of Israeli settlements and land appropriation has fragmented this territory, obstructing the possibility of a contiguous sovereign entity.⁴

The Palestinian Authority exercises governance over parts of the West Bank, while the Gaza Strip is under the administration of Hamas. Although Israel retains control over borders, resources, and movement, Palestinian institutions manage civil affairs and have conducted elections, issued laws, and engaged in international diplomacy.⁵ Palestine maintains diplomatic relations with 139 UN member States and has held non-member observer state status at the United Nations since 2012.⁶ However, it is blocked from full UN membership due to repeated U.S. vetoes in the Security Council.⁷

1 UN Charter 1945, art 1(2)

2 UNGA Res 181 (II) (29 November 1947) UN Doc A/RES/181(II); Oslo I Accord (1993).

3 Human Rights Watch, 'A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution' (2021) <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution> accessed 10 July 2025.

4 ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136, para 118.

5 UNHRC, 'Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967' (2022) UN Doc A/77/356.

6 UNGA Res 67/19 (29 November 2012) UN Doc A/RES/67/19.

7 UNSC, 'Security Council Fails to Recommend Full United Nations Membership for State of Palestine, Owing



Western objections to Palestinian recognition cite the absence of a negotiated peace agreement, concerns over internal political fragmentation, and the characterization of armed resistance as terrorism. These arguments, however, are inconsistently applied. Kosovo's statehood was endorsed by many Western states despite Serbia's vehement objections and ongoing post-conflict instability.¹ Moreover, Palestine's extensive diplomatic recognition by a significant majority of states far exceeds that of many newly created entities.² This differential treatment underscores how recognition, rather than being based on legal consistency, is contingent on alignment with the preferences of dominant geopolitical actors.

International legal institutions have also failed to remedy the impasse. The International Criminal Court has accepted Palestine's accession and asserted jurisdiction, yet investigations into alleged war crimes are dismissed as illegitimate by Israel and the United States.³ The humanitarian crisis in Gaza, where over two million people live under blockade with limited access to essential services, and the ongoing occupation in the West Bank underscore the costs of this legal and diplomatic paralysis.⁴ While the Kosovo case was framed as a humanitarian imperative necessitating intervention, Palestine's protracted circumstances have elicited rhetorical support but little enforceable international action.⁵

6. Somaliland and the limits of Recognition: A Functional State without Legal Status

Somaliland presents a compelling example of a functioning political entity that satisfies the Montevideo Convention's criteria for statehood but remains unrecognized due to regional and international political dynamics. Since its declaration of independence from Somalia in 1991, Somaliland has operated as a de facto state, maintaining internal stability, functioning democratic institutions, and effective control over its territory.⁶ Despite these attributes, it has not been recognized by a single UN member State, illustrating how recognition is shaped more by geopolitical concerns than by legal standards.

Somaliland's historical identity as a separate colonial entity under British rule forms a central pillar of its legal claim. It was administered as the British Somaliland Protectorate from 1884 until it gained independence in June 1960.⁷ It briefly existed as the State of Somaliland before voluntarily uniting with the former Italian-administered Trust Territory of Somalia to form the Somali Republic. This union, however, was not ratified by referendum and soon proved dysfunctional, with power centralized in Mogadishu and the northern region (Somaliland) becoming increasingly marginalized.⁸ Widespread repression under Siad Barre's regime culminated in the Hargeisa genocide of 1988, in which tens of thousands of civilians were

to Veto Cast by United States' (18 April 2024) UN Doc SC/15670.

1 Marc Weller, 'Modesty Can Be a Virtue: Judicial Economy in the ICJ Kosovo Opinion?' (2011) 10(1) *Chinese J Intl L* 31.

2 Jure Vidmar, 'Explaining the Legal Effects of Recognition' (2012) 61 *ICLQ* 361.

3 ICC, 'State of Palestine Accedes to the Rome Statute' (2015) <https://www.icc-cpi.int> accessed 10 July 2025.

4 UNHCR, 'Occupied Palestinian Territory Emergency' (2024) <https://data.unhcr.org> accessed 10 July 2025.

5 NATO, 'Operation Allied Force and Humanitarian Concerns in Kosovo' (1999).

6 Temesgen Sisay Beyene, 'Declaration of Statehood by Somaliland and the Effects of Non-Recognition under International Law' (2019) 10(1) *Beijing Law Review* 196.

7 Suhaib Mahmoud, 'Understanding the Secession of Somaliland' (2023) 6(1) *AlMuntaqa* 8.

8 Ibid.

killed. Following the collapse of the Somali state in 1991, Somaliland reasserted its sovereignty, citing both the failure of the union and its inherent right to self-determination.¹

According to the Montevideo Convention, Somaliland satisfies the criteria for statehood. It has a permanent population of approximately 5.7 million people. Its borders are clearly defined and correspond to those of the former British protectorate, as documented in colonial-era treaties.² The region is governed by a stable and functional political system, including an elected president, a bicameral legislature, an independent judiciary, and security forces. Since 2003, it has held regular multi-party elections and maintained a peaceful transfer of power, a rarity in the region.³ Unlike many other unrecognized entities, Somaliland does not rely on a patron state for its political, economic, or military sustenance.

Somaliland also demonstrates a capacity to engage in foreign relations. It has signed bilateral agreements with Ethiopia, the United Arab Emirates, and Djibouti, and cooperates with international organizations such as the United Nations and African Union in an unofficial capacity.⁴ However, formal recognition is obstructed by the African Union's adherence to the principle of *uti possidetis juris*, which aims to preserve colonial-era boundaries to prevent regional fragmentation. Somalia's federal government continues to claim sovereignty over Somaliland despite lacking any effective administrative control on the ground. Regional actors, including Ethiopia and members of the Arab League, fear that recognizing Somaliland would set a precedent for other secessionist movements.⁵

Western states that supported Kosovo's independence have avoided applying similar reasoning to Somaliland, even though the latter's legal and historical claims to statehood are arguably stronger. The refusal to recognize Somaliland deprives it of access to international funding, arms trade, and legal trade agreements. It also prevents citizens from travelling internationally, as Somaliland-issued passports are not recognized. The region remains vulnerable to external threats from extremist groups such as Al-Shabaab and to internal disputes with the neighboring Puntland over territorial boundaries.

Somaliland's situation demonstrates that compliance with international legal standards is insufficient in the absence of political will. Despite fulfilling the Montevideo Convention's criteria more robustly than many recognized states, it remains in legal limbo because recognition is treated as a strategic concession rather than a legal entitlement. Like Palestine, Somaliland exists in a space where sovereignty is contingent upon external validation- an outcome that undermines the rule-based structure of international law.

1 UNHCR, 'Somaliland: Background Note' (2019).

2 OAU, Cairo Resolution on Border Disputes (1964); African Union Peace and Security Department, *Somaliland: Legal History and Territorial Basis* (2005).

3 Mark Bradbury and Sally Healy, *Whose Peace is it Anyway? Connecting Somali and International Peacemaking* (Accord, Conciliation Resources 2010) 25.

4 Somaliland Ministry of Foreign Affairs, 'Bilateral Cooperation' (2024) <https://somalilandmfa.gov> accessed 10 July 2025.

5 Institute for Security Studies (ISS), 'Recognition and Regional Stability in the Horn of Africa' (2021).



Conclusion: Rethinking the Legal Framework for Self-Determination and Statehood in the 21st Century

The principle of self-determination has become one of the most inconsistently applied and politicized norms in international law. While it originated as a tool to facilitate decolonization and affirm the inherent sovereignty of peoples, its contemporary application reveals a deep disconnect between legal theory and political practice. The Montevideo Convention, which offers a seemingly objective framework for determining statehood, has proven inadequate in addressing the complex realities of modern conflicts, hybrid warfare, and politically driven recognition.

As demonstrated in the cases of Kosovo, Crimea, Donbas, Palestine, and Somaliland, the Convention's criteria are neither applied uniformly nor interpreted neutrally. Entities that clearly satisfy the requirements of a permanent population, defined territory, functioning government, and capacity for international relations are often denied recognition due to strategic considerations. Conversely, other entities with comparatively weaker legal claims have received swift recognition because they serve the interests of dominant powers.

Palestine remains a clear example of a people systematically denied statehood not due to a lack of legal standing, but because its recognition is obstructed through political mechanisms, most notably the exercise of the veto power within the UN Security Council. Somaliland, despite its internal stability and democratic governance, remains trapped in diplomatic limbo due to regional fears of secessionist contagion. These examples reveal that the threshold for statehood is not legal compliance but political acceptability.

The Montevideo Convention also fails to engage with emerging challenges to sovereignty, including foreign intervention, digital disinformation campaigns, and proxy governance. Its silence on the principle of self-determination, democratic legitimacy, and human rights further limits its utility as a definitive legal standard for statehood. In the absence of meaningful reform or reinterpretation, the Convention will continue to function as a static relic ill-suited to a dynamic geopolitical environment.

Recognition, which should reflect objective legal standards, remains a product of political discretion. The result is a fragmented legal order in which sovereignty is treated as a privilege selectively granted, rather than a right derived from and conferred by established international norms. Until international law reconciles its foundational principles with their real-world implementation, self-determination will remain subject to selective enforcement, and the grey zones of statehood will persist- unresolved, unstable, and unjust.



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