

Examine whether article 1 of the 1933 Montevideo Convention on the Rights and Duties of States is an accurate statement of the criteria of statehood in the modern context of International Law. [20]

I) Introduction

Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States, and the criterion set by it for statehood, has been the pivot of ascertaining statehood as far as the theory of International Law is concerned. However, same has not been reflected by the practice of states as we see today. Hence why the argument that it is still useful is not very persuasive.

II) Article 1 of Montevideo Convention and criteria set by it for Statehood

According to the Article 1 of Montevideo Convention on Rights and Duties of States 1933 includes:

① A Definite Territory

For a state to have the element of statehood, a defined and definite territory with borders is essential.

②

A Government

Secondly, another condition for statehood is a government governing that definite territory of a state.

③

A Permanent Population

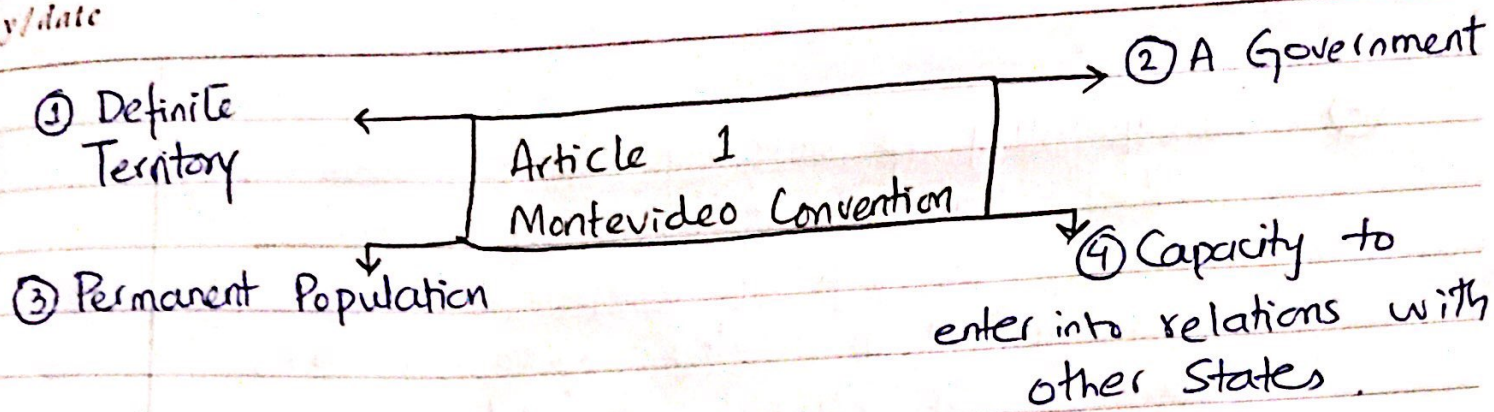
Another essential element of statehood according to the Montevideo Convention is the presence of a permanent population in the state.

④

Capacity to enter into relations with other States.

Lastly, another essential element of statehood according to Article 1 of the Montevideo Convention 1933 is the capacity of that state to enter into relations with other states.

If a state comprises all four of these elements, that territory is considered to have fulfilled all conditions of statehood according to Article 1 of the Montevideo Convention for Rights and Duties of States 1933.



III) Challenges faced by application of Article 1 of Montevideo Convention in modern International Law

As straightforward and traditional the criterion for statehood under Montevideo Convention for Rights and Duties of Statehood 1933 Article 1 may seem, its application faces certain challenges.

- ① Absence of Montevideo criterion does not impact statehood
- Firstly, the existence or absence of the Montevideo criterion does not substantially impact statehood. For instance, the element of a defined territory continues to be an issue for the State of Israel, however, that does not affect its character as a state. Further, the Vatican City does not have a permanent population, yet it is a state and enjoys an observer status at the United Nations (UN) as well. Moreover, the absence of an effective government in Syria in 2012 did not take away its personality as a state. Thus, the notion that a state cannot exist without satisfying the Montevideo criteria is not true.

② Incapability of entering into relations with other states not impacting statehood.
Besides, as politics plays an essential part in recognition of states, even entities seeming to have satisfied the criterion have met with ^{such} widespread international society rejection that one cannot reasonably argue that the entity qualifies as a state. This has been seen in cases like Turkish Republic of Northern Cyprus, Republic of Somaliland, Republic of Abkhazia and Republic of Artsakh. All mentioned states have theoretically met criterion set by Article 1 but either no other state accepts their statehood or hardly any states do, with Republic of Abkhazia having highest number of states, being 7, recognizing it.

③ Criterion disregarded by International Community
The criterion has been disregarded in majority of the times by international community, which has dented its credibility. Political needs of states influence how they follow rules and norms of international law and the reaction to creation of states, is primarily on case to case basis.

④ Criterion disregards other ways / means of acquiring Statehood - considered outdated by many scholars
Since the criterion provided by the Montevideo Convention 1933 Article 1 has its roots in the declaratory theory, it completely disregards other ways through which states can come into existence, thus scholars argue that the criterion is outdated.

(i) States coming into existence by decolonization
After 1933, numerous states have come into existence through decolonization, such as Sudan 1956, Tunisia 1956 and Ghana in 1957.

(ii) States coming into existence by military operations.
After 1933, many states have come into existence through military operations, such as Israel 1949, Indonesia in 1949, and Bangladesh in 1971.

(iii) States being demanded by ethnic minorities
Further, many states are being demanded by ethnic minorities around the globe on the basis of self-determination as well, such as; Quebec by French Speaking Quebec nationals in Canada, Kurdistan by Kurdish people in the Middle East, Kashmir by Kashmiris in India and Pakistan and Chenchnya

by the Chechen population in Russia.

(iv) Membership of UN - more credible way of achieving statehood

New States deem membership of the United Nations (UN) or recognition from its members a more credible and ~~credible~~ effective way of achieving statehood rather than by trying to satisfy the Montevideo Criterion. For instance, the state of Kosovo, who although is not a member of the UN, relied heavily on recognition by UN Member states and upon an advisory opinion given by the International Court of Justice to attain recognition.

IV) Conclusion and Way Forward

Overall, the Montevideo Criterion for statehood has been the pivot of ascertaining statehood as far as the theory of International law is concerned, but the same has not been reflected by practice of states, which is why the argument that it is useful is not very persuasive. Perhaps, an amendment in the convention accepting that statehood can be achieved through decolonization, military operations and self-determination would allow the criterion to catch up with the changing times. Nevertheless, as it

stands now, unless supported by influential states, relying upon the Montevideo convention solely for ascertaining statehood does not seem to be useful.