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Manchukuo and the Self-Declared SADR
International Law of Recognition and the Sahara Issue

Shoji Matsumoto

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Policy Center for the New South

Suncity Complex, Building C, Av. Addolb, Albortokal Street, Hay Riad, Rabat, Morocco.
Email : contact@policycenter.ma
Phone : +212 5 37 54 04 04 / Fax : +212 5 37 71 31 54
Website : www.policycenter.ma

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About the Author, Shoji Matsumoto

Professor Shoji Matsumoto is currently working in NGOs, namely as the President of Sapporo Institute for International Solidarity (Sapporo, Japan); Japan Center for Moroccan Studies (Sapporo, Japan); and the International Center on Separatism (Tokyo, Japan).

He was previously professor of international law at Sapporo Gakuin University, and has recently retired. Dr. Shoji continues to teach international law and other related subjects at the university as a lecturer.

Dr. Shoji was additionally a visiting fellow at the SOAS, University of London and also visiting professor at Mohamed V University.

Summary

The self-declared Sahrawi Arab Democratic Republic's (SADR) declaration on the Guerguerat crisis, in November 2020, to terminate the 1991 ceasefire agreement and go to war with Morocco raises a problem regarding the legality of third States granting State recognition to the self-declared SADR. International law imposes an obligation on third States to not grant 'premature recognition.' Moreover, premature recognition would constitute illegal intervention in the internal affairs of the parent State.

Historically, the obligation of non-recognition was one of the main issues in the Manchukuo case at the League of Nations. The separation of Manchuria from China was enabled, and subsequently Manchuria was controlled by Japan, allegedly based on 'the free will' of the inhabitants. Though Manchukuo was called 'a puppet State,' the League of Nations could not respond quickly to the emergence of the pseudo-State and its control by Japan. Several States would not withdraw their recognition of Manchukuo as a State. The League of Nations' decision on the non-recognition obligation came too late to effectively prevent Japan's military advance in China.

On the basis of lessons learned from the Manchukuo case, problems of the SADR will be considered from international legal perspectives. In particular, approval by the parent State will be focused in terms of the decisive condition for Statehood. International law on State recognition involves the condition of approval by the parent State for an entity aspiring to Statehood on the one hand, and an obligation for third States to not grant 'premature recognition' on the other hand. Even when a parent State granted State recognition to an entity, the condition of independence would further require third States to not recognize the entity as a State. The conditions for recognition matter for third States, especially in terms of premature recognition. Outbreak of armed conflict such as the Guerguerat crisis would attest to the absence of Morocco's approval, resulting in an international obligation on the part of third States to withdraw recognition from the self-declared SADR.

Manchukuo and the Self-Declared SADR

International Law of Recognition and the Sahara Issue

Introduction

In the Guerguerat crisis in November 2020, the self-declared SADR/Polisario[1] announced that the presence of any Moroccan military, security or civilian personnel in Guerguerat will result in a firm response from Polisario allegedly in 'defense' of 'national sovereignty,[2]' leading to the first major military confrontation with Morocco since the UN-sponsored ceasefire agreement concluded between Morocco and Polisario in 1991[3]. It is reported that the events were triggered by the presence of "militiamen of the armed group of the Polisario[4]." In fact, the UN Secretary-General spokesperson reported that MINURSO observed "some 50 people, including men, women and children, present in the buffer strip at Guerguerat. They were blocking the traffic that passes through the area[5]." Guerguerat was declared a demilitarized zone after the ceasefire agreement. Morocco stated that "[a]fter having committed itself to the greatest restraint, in the face of provocations from the militias of the 'polisario', the Kingdom of Morocco had no other choice but to assume its responsibilities in

1. The independence of the self-declared Sahrawi Arab Democratic Republic (SADR) was proclaimed in 1976 by the Polisario. Toby Sherry observes that the Polisario's movement and the so-called SADR "overlap between functionaries of movement and state is considerable," in idem., Endgame in the Western Sahara, Zed Books, 2004, p. 181. From an international perspective, the latter may be another name of the Polisario, because Article 51 of the Constitution of the self-declared SADR provides that "[t]he Secretary-General of the Frente POLISARIO shall be ex officio the President of the Republic." 'SADR' and 'Polisario' may be the names of a single non-State actor. That is why the expression 'Polisario/SADR' has been frequently used. Hereinafter, however, it is called as 'the self-declared SADR/Polisario' in order to make its status as a non-State actor clear.
2. Safaa Kasraoui, "Polisario Threatens to End UN Ceasefire Agreement with Morocco," Morocco World News, 2020, https://www.moroccoworldnews.com/2020/11/325391/polisario-threatens-to-end-un-ceasefire-agreement-with-morocco/. Guerguerat is located on the southern coast of the Saharan Provinces, near the border between Morocco and Mauritania. The Guerguerat crossing is in a demilitarized buffer zone under the observation of MINURSO set up as part of the 1991 ceasefire agreement between Morocco and the Polisario (Ahmed Eljechtimi, "Morocco PM Says Western Sahara Wall at Centre of Dispute Complete," Reuter, 2020, https://www.reuters.com/article/us-morocco-westernsahara-idUSKBN27X2MH). The Polisario had sent militiamen to the region of Guerguerat to hold illegal protests and block commercial and civil traffic across the Morocco-Mauritania border (Kasraoui, "Guerguerat: France Reiterates Support for Morocco's Ceasefire Commitment," Morocco World News, 2020, http://www.moroccoworldnews.com/2020/11/327096/guerguerat-france-reiterates-support-for-moroccos-ceasefire-commitment/). In October 2020, tensions rose when around 70 armed men had attacked about 200 Moroccan truck drivers and the drivers were stuck in difficult conditions on the Mauritanian side of the border near Guerguerat, which is patrolled by the MINURSO ("Can The UN Solve The Conflict Between Morocco and Polisario?", Albawaba News, 2020, https://www.albawaba.com/news/can-un-solve-conflict-between-morocco-and-polisario-1392893), the self-declared Polisario/SADR had set up roadblocks and stopped passage across the border. The drivers appealed to the governments of Mauritania and Morocco to "work as quickly as possible to end the crisis," and urged the UN to "play their role in protecting the buffer zone and the border crossing, which provides a gateway for work for thousands of drivers, farmers and traders." ("Moroccan Truckers Stuck on Mauritania Border Urge Help," Arab News, 2020, https.//www.arabnews.com/node/1759461/middle-east)
3. See UN Security Council Resolution 690, 1991.
4. Taha Mebtoul, "Guerguerat: Colombia, Paraguay, Guatemala Support Morocco," Morocco World News, 2020, https://www.moroccoworldnews.com/2020/11/326742/guerguerat-colombia-paraguay-guatemala-support-morocco/.
5. UN, "Daily Press Briefing by the Office of the Spokesperson for the Secretary-General," UN Peacekeeping 2020, https://peacekeeping.un.org/en/daily-press-briefing-office-of-spokesperson-secretary-general.

order to put an end to the deadlock situation generated by these actions and restore free civil and commercial movement[6]."

The self-declared SADR/Polisario, a non-State actor or group of private persons, is to be governed by Morocco's domestic laws, and is not entitled to invoke the right to self-defense in international law, if not otherwise stipulated in international agreements, because Morocco does not recognize it as a State.

What is worse, the self-declared SADR/Polisario "declared war[7]." On the basis of this declaration alone, those States that recognize the SADR are under obligation to withdraw it in conformity with customary international law on 'premature recognition.' The declaration marks the absence of approval by the parent State, Morocco, for the self-declared SADR's establishment of a State. The absence would certify the self-declared SADR's lack of territory and sovereignty. When an armed conflict continues, the only way for an entity, such as the self-declared SADR, to become a State would be approval by the parent State for its establishment of a State.

International law governing State recognition addresses, in particular, approval by a parent State on the one hand, and 'premature recognition' by third States on the other. When the parent State does not grant State recognition to an entity, as in the case of the self-declared SADR, third States cannot lawfully recognize it as a State. Meanwhile, even when a parent State has granted it, third States may be still required to not recognize it as a State, on the grounds that it lacks independence.

While outbreak of an armed conflict would be conclusive evidence of the absence of the parent State's approval, the end of conflict between an entity aspiring to Statehood and the parent State would mark the latter's approval, usually given in a peace agreement. Until the approval is given, it is premature for third States to grant State recognition to the entity. Therefore, third States are under obligation not to grant recognition to the self-declared SADR because Morocco does not recognize it as a State.

William E. Hall propounded in 1924, "[u]ntil independence is so consummated that it may reasonably be expected to be permanent, insurgents remain legally subject to the state from which they are trying to separate[8]." Later, James L. Brierly argued that "so long as a real struggle is proceeding, recognition is premature[9]." Recently, Nkambo Mugerwa contended that "recognition must be withheld durante bello, when the outcome of the struggle is altogether uncertain[10]." Thus, the Guerguerat crisis may be regarded as 'a real struggle.' According to Hersh Lauterpacht, the following is universally admitted[11]:

6. Morocco, "Morocco Initiates Responsible Operation to Restore Traffic at El Guerguerat Crossing," Kingdom of Morocco Ministry of Foreign Affairs, African Cooperation and Moroccan Expatriates, 2020, https://www.diplomatie.ma/en/morocco-initiates-responsible-operation-restore-traffic-el-guergarat-crossing. Japan announced that restoring road traffic between Morocco and Mauritania at the Guerguerat crossing point was a "legitimate" and "important" action. Kasraoui, "Japan Stresses Importance of Free Movement in Guerguerat," Morocco World News, 2020, https://www.moroccoworldnews.com/2020/12/327554/japan-stresses-importance-of-free-movement-in-guerguerat/.
7. Abdi L. Dahir, "Western Sahara Independence Group Ends Truce With Morocco," New York Times, 2020, https://www.nytimes.com/2020/11/14/world/middleeast/western-sahara-morocco-polisario.html.
8. William Edward Hall, A Treatise on International Law, 8th ed., Vol. I, Oxford University Press, 1924, sec. 26.
9. James L. Brierly, The Law of Nations: An Introduction to the International law of Peace, 6th ed., Oxford at the Clarendon Press, 1963, p. 138. Hereinafter cited as 'Brierly, Law of Nations.'
10. Nkambo Mugerwa, "Subjects of International Law," in Max Sørensen (ed.), Mannual of International Law, Macmillan, 1968, p. 277.
11. Hersh Lauterpacht, Recognition in International Law, Cambridge at the University Press, 1947, p. 283. Hereinafter cited as 'Lauterpacht, Recognition.'

"[I]n the case of a war of secession it is contrary to international law to grant to the insurgent community full recognition as a State. So long as the issue has not been definitely decided in favor of the insurgent community, recognition is premature. Premature recognition is a wrong done to the parent State. In effect, premature recognition amounts to an act of intervention."

In the case of Re Secession of Quebec, the Supreme Court of Canada concluded that third State recognition occurs only after an entity has been successful in achieving secession[12]. As a result, if the self-declared SADR continues armed struggles such as the Guerguerat crisis, third State recognition is premature. Even if granted, such recognition is void, and would constitute an intervention in the internal affairs of Morocco. Premature recognition in this case presupposes continued military actions by the self-declared SADR/Polisario in contravention of the ceasefire agreement.

The self-declared SADR/Polisario proclaimed it would terminate the ceasefire agreement[13]. From an international legal perspective, however, the declaration is just an offer to terminate it, and does not affect its legal validity. An offer alone cannot terminate it, on the basis of the fundamental principle of pacta sunt servanda. The termination of an international agreement or the withdrawal of a party may take place when all the parties consented to it, in conformity with Article 54 of the Vienna Convention on the Law of Treaties. So, in order for the 1991 ceasefire agreement to be terminated, Morocco's consent to the offer is indispensable[14].

However, Morocco's Foreign Minister, Nasser Bourita proclaimed, "Morocco is committed to the ceasefire[15]." Morocco's response to the Guerguerat crisis is as assessed as follows: "Morocco has shown a great deal of wisdom and restraint in line with its diplomatic vocation, including its commitment to the 1991 ceasefire agreement and Military Agreement No. 1, as well as its observance of the spirit of the UN-led political process initiated in 2007[16]." Bourita added that "Morocco is aware that any movement of its army in this area should be well-calculated and in accordance with its international commitments." Hence, Morocco informed MINURSO of its decision "to expel Polisario militiamen and install a security cordon around Guerguerat[17]." The Permanent Representative of Morocco to the UN

12. Reference by the Governor in Council, pursuant to Art. 53 of the Supreme Court Act, concerning the Secession of Quebec from Canada, Supreme Court of Canada, 1988, para. 142. Hereinafter cited as 'Re Secession of Quebec.'
13. "Western Sahara Independence Leader Declares End of 29-Year-Old Ceasefire with Morocco," WION, 2020, https://www.wionews.com/world/western-sahara-independence-leader-declares-end-of-29-year-old-ceasefire-with-morocco-343433.
14. At the same time, the incident has the unexpected consequence that the self-declared SADR/Polisario authorizes Morocco to unilaterally terminate the ceasefire agreement anytime, without any condemnation, because no provision on prescription for the legal effect of an offer of termination is included in the Vienna Convention on the Law of Treaties.
15. "Fears Grow of New Western Sahara War Between Morocco and Polisario Front," U. S. News, 2020, https://www.usnews.com/news/world/articles/2020-11-13/morocco-vows-to-clear-polisario-blockade-of-western-sahara-road. Then, on the 11th December, the US has recognized Morocco's sovereignty over the Saharan Provinces. See the White House, "Proclamation on Recognizing the Sovereignty of the Kingdom of Morocco over the Western Sahara," 2020, https://www.whitehouse.gov/presidential-actions/proclamation-recognizing-sovereignty-kingdom-morocco-western-sahara/.
16. "Military Agreement no. 1 establishes a 5 km-wide Buffer Strip (BS) to the south and east of the Moroccan military wall, where the entry of the troops or equipment of both parties, by ground or air, and the firing of weapons in or over this area, is prohibited at all times and is a violation," Habibulah M. Lamin, "Tired of Stalemate, Sahrawis Support Polisario Military Action against Morocco," Middle East Eye, 2020, https://www.middleeasteye.net/news/morocco-polisario-western-sahara-conflict.
17. Samir Bennis, "Western Sahara: UN Dereliction of Duty Sounds Death Knell for Political Process," Morocco World News, 2020, https://www.moroccoworldnews.com/2020/11/326143/western-sahara-un-dereliction-of-duty-sounds-death-knell-for-political-process/. The UN spokesperson has said that MINURSO continues to receive "reports of shots being fired 'during the night at various locations along the Berm,' or the Moroccan defense wall." Kasraoui, "Western Sahara: MINURSO Continues to Receive Reports of Shots Fire," Morocco World News, 2020, https://www.moroccoworldnews.com/2020/11/326333/western-sahara-minurso-continues-to-receive-reports-of-shots-fired/.

then informed the Security Council members of the latest developments in Guerguerat[18].

As the ceasefire agreement thus remains valid, its violations by the self-declared SADR/Polisario constitute internationally wrongful acts. The illegal use of force is in contravention of both Article 2 (4) of the UN Charter and a norm of jus cogens on the prohibition of the use of force. The international community almost unanimously agrees that the prohibition of the use of force is a jus cogens norm[19]. According to James Crawford, the obligation of non-recognition arises when the illegality invoked involves a jus cogens norm[20]. A jus cogens norm is accompanied by a variety of legal consequences. In addition to the withdrawal of recognition of the self-declared SADR/Polisario as a State, all third States should refrain from providing aid or assistance in maintaining the situation. Even foreign assistance to the self-declared SADR/Polisario as such would constitute a breach of a jus cogens norm on the prohibition of the use of force[21]. Furthermore, in a letter from its Foreign Ministry to the Moroccan Ministry of Foreign Affairs, Togo denounced that "[t]he Algerian-backed Polisario militia framed the lifting of the blockade as an act of aggression[22]."

With regard to the means for finding jus cogens violations by the self-declared SADR/Polisario, Morocco's UN Permanent Representative suggested that "UN observers on the ground can attest that Morocco acted in self-defense after waiting for weeks for a diplomatic solution[23]." Does an action by a non-State actor, like the SADR/Polisario, therefore constitute 'an armed attack' that would authorize the victimized State to invoke the right to self-defense under Article 51 of the UN Charter?

The answer is arguably 'Yes' because it may be advocated the cumulative effect of actions or omissions by the self-declared SADR/Polisario amounts to 'a composite act' of 'armed attack.' A series of actions or omissions, whether wrongful or not, may be defined in aggregate as wrongful, like a crime against humanity, under Article 15 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts[24]. Accordingly, a series of self-declared SADR actions or omissions, whether wrongful or not, may constitute 'a composite act' in violation of a jus cogens norm.

Thomas D. Grant suggests, in respect of compliance with jus cogens norms, that "[t]he threat of the withholding of recognition would induce constitutional regimes to include compliance with jus cogens

18. "Morocco informs Security Council of latest developments in Guerguerat," EN24, 2020, https://www.en24news.com/2020/11/morocco-informs-security-council-of-latest-developments-in-guerguerat.html. See also Yahia Hatim, "UN to Share Morocco's Letters on Situation in Guerguerat in Archives," Morocco World News, 2020, https://www.moroccoworldnews.com/2020/11/327132/un-to-share-moroccos-letters-on-situation-in-guerguerat-in-archives/.
19. Shoji Matsumoto, "Jus Cogens and the Right to Self-Determination - Falsifiability of Tests -," Policy Center for the New South, Research Paper, RP-20/12, 2020, p. 9.
20. James Crawford, The Creation of States in International Law, 2nd edition, Oxford University Press, 2006, p. 160. Hereinafter cited as 'Crawford, Creation.'
21. Matsumoto, loc. cit., supra note 19, p. 9.
22. Jasper Hamann, "Togo Announces Support for Morocco in Western Sahara Tensions," Morocco World News, 2020, https://www.moroccoworldnews.com/2020/12/327951/togo-announces-support-for-morocco-in-western-sahara-tensions/. 'An act of aggression' constitutes, in respect of individuals, an international crime under the Rome Statute of the International Criminal Court. If the UN Security Council determines the existence of an act of aggression, it may decide to take enforcement measures under Article 41 of the UN Charter.
23. Idem., "UN Representative Omar Hilale Teaches CNN Western Sahara Facts," Morocco World News, 2020, https://www.moroccoworldnews.com/2020/11/326707/un-representative-omar-hilale-teaches-cnn-western-sahara-facts/.
24. The Article prescribes that "The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act." See Matsumoto, "Counter-Terrorism and International Law - Armed Attacks as a Composite Act, "Alirfan, No. 4, 2018, pp. 83-93.

norms[25]." That kind of threat was actually attempted by Japan about 90 years ago through the non-recognition policy of the League of Nations when responding to the self-proclaimed Manchukuo. The policy was made on the basis of the Lytton Report on the situation in Manchuria, as expounded later. However, the policy could not induce Japan to refrain from the use of force in China. In this sense, it cannot be expected that the mere threat of withholding recognition would dissuade the self-declared SADR/Polisario from recourse to 'a composite act' in violation of a jus cogens. That may also be true of the threat of withdrawing recognition. Its actual withdrawal would not be dispensed with.

As for the UN, based on its findings on the outbreak of fighting between the self-declared SADR/Polisario and Moroccan forces, the UN Secretary-General's spokesperson said "the United Nations, including the Secretary-General, has been involved in multiple initiatives to avoid an escalation of the situation in the Buffer Strip in the Guerguerat area and to warn against violations of the ceasefire [...] the MINURSO is committed to continue implementing its mandate and the Secretary-General calls on the parties to provide full freedom of movement for the MINURSO in accordance with its mandate[26]." In line with the UN responses, the Chairperson of the African Union Commission commended the efforts of the UN and the States in the region to urge the parties to return to the negotiating table[27].

State Recognition

The number of UN Member States that recognize the self-declared SADR as a State is less than 40 out of a total of 193 Member States[28], constituting only around 20%. What is more, according to Stefan Talmon, "[o]nly a few States, such as Burkina Faso, Sierra Leone, Tanzania and Venezuela, have expressly recognized the SADR as 'a sovereign and independent State'[29]." Even among these States, Burkina Faso has withdrawn its recognition of the self-declared SADR in June 1996. It is also reported that Sierra Leone's recognition had been frozen once in July 2003, though resumed in June 2011[30]. And, in January 2019, the interim President of Venezuela Juan Guaido suggested the withdrawal of its recognition of the self-declared SADR[31]. If this is the case, the only UN Member States to recognize the self-declared SADR as 'a sovereign and independent State' would be Sierra Leone and Tanzania.

25. Thomas D. Grant, The Recognition of States: Law and Practice in Debate and Evolition, Praeger, 1999, p. 214. Hereinafter cited as 'Grant.'
26. UN Secretary-General, "Statement attributable to the Spokesperson for the Secretary-General - on Western Sahara," UN 2020, https://www.un.org/sg/en/content/sg/statement/2020-11-13/statement-attributable-the-spokesperson-for-the-secretary-general-western-sahara. "Expressing Regret over Failed Efforts to Avoid Escalation in Western Sahara, Secretary-General Reiterates Commitment to Preventing Collapse of Ceasefire," UN Meetings Coverage and Press Releases, SG/SM/20419, 2020, https://www.un.org/press/en/2020/sgsm20419.doc.htm.
27. "Statement of the Chairperson of the African Union Commission, H.E. Mr. Moussa Faki Mahamat, on the Tensions in the Guerguerat Buffer Zone," African Union, 2020, https://au.int/en/pressreleases/20201114/communique-auc-chairperson-tensions-guerguerat-buffer-zone.
28. It is reported, as of March 2020, self-declared SADR has been recognized by 40 UN Member States ("International Recognition of the Sahrawi Arab Democratic Republic," Wikipedia, https://en.wikipedia.org/wiki/International_recognition_of_the_Sahrawi_Arab_Democratic_Republic). Stefan Talmon comments that "in most cases it is not clear in what capacity the SADR has been recognized." According to Stefan Talmon, "[o]nly a few States, such as BurkinaFaso, Sierra Leone, Tanzania and Venezuela, have expressly recognized the SADR as 'a sovereign and independent State," in idem., Recognition of Governments in International Law: With Special Reference to Governments in Exile, Oxford University Press, 1998, p. 116, n. 278.
29. Ibid., p. 309.
30. "International Recognition of the Sahrawi Arab Democratic Republic," Wikipedia, 2020, hpps://en.wikipedia.org/wiki/International_recognition_of_the_Sahrawi_Arab_Democratic_Republic.
31. "Venezuela, Another Latin American Country on way to Withdraw Recognition of Polisario," The North Africa Post, 2019, https://northafricapost.com/27544-venezuela-another-latin-american-country-on-way-to-withdraw-recognition-of-polisario.html.

The number of States that recognize the self-declared SADR as a State has been decreasing since a maximum of 84 in the Cold War era[32]. "Today, now that the Cold War is over," Mohamed Mael-Ainin, Ex-Ambassador of Morocco said in 2017, "more than 33 States have withdrawn their recognition of the 'Sahrawi Republic'; and only 45 out of more than 190 UN Member States recognize this non-existent entity[33]." Recently, in June 2019, the Moroccan Government spokesperson expressed the government's satisfaction with El Salvador and Barbados' decision to withdraw recognition of the self-declared SADR. Half a year later, Guyana announced its decision to withdraw its recognition of the self-declared SADR[34]. The Moroccan government therefore believed that the increasing trend of withdrawing recognition of the self-declared SADR as a State would continue[35].

Recognition of a State has usually been defined as an act of the existing State to acknowledge that the recognized entity possesses the attributes of Statehood. Charles Stockton noted that regular political relations would exist only between States that reciprocally recognized them[36]. Concerning the legal effect of the act, traditionally there are declaratory and constitutive doctrines. While neither doctrine consistently explains State practice, one of the differences in consequence concerns the rights and duties of a non-recognized entity, or a non-State actor, under international law.

The declaratory doctrine characterizes recognition as "an acknowledgment of statehood already achieved[37]." It detaches Statehood from the acts of the existing States, making Statehood automatic, upon the fulfillment of conditions by an entity aspiring to Statehood[38]. So, under this doctrine, an entity becomes a State as soon as it fulfills the conditions for Statehood. Hence, recognition by the existing States has been held as just 'declaratory.' In this way, the status of Statehood is based on fact. Under the declaratory doctrine, therefore, 'a puppet State' or 'a dependent State' is not a State as long as the conditions for Statehood are not fulfilled. Thus, even an entity that is not recognized as a State by any existing State, like the self-declared 'Islamic State (IS),' may be governed by international law, leading to the benefit of fundamental international rights. That may be pointed out as a shortcoming of the declaratory doctrine. The constitutive doctrine may also be criticized. James Brierly illustrates the possible unreasonable consequences under the constitutive doctrine, taking Manchukuo as an example, that "an intervention, otherwise illegal, would not have been illegal in Manchukuo, or that if Manchukuo had been involved in war, she would have been under no legal obligation to respect the rights of neutrals[39]." However, even in the declaratory doctrine, there is room for the discretion in determining the facts on whether the conditions for Statehood are fulfilled.

32. "Western Sahara in 2019… a Year of Withdrawals and a Setback for the Polisario," Yabiladi, 2019, https://en.yabiladi.com/articles/details/87272/western-sahara-2019-year-withdrawals.html.
33. Mohamed Mael-Ainin, "Is « Western Sahara » Moroccan?," Embassy of Morocco Australia-New Zealand-Pacific States, 2017, http://moroccoembassy.org.au/?q=%C2%AB-western-sahara-%C2%BB-moroccan.
34. Kasraoui, "Guyana Withdraws Recognition of Polisario's Self-Proclaimed SADR," Morocco World News, 2020, https://www.moroccoworldnews.com/2020/11/325972/guyana-withdraws-recognition-of-polisarios-self-proclaimed-sadr/.
35. Idem., "Moroccan Government: Withdrawals of SADR Recognition Will Continue," Morocco World News, 2020, https://www.moroccoworldnews.com/2019/06/276917/moroccan-government-sadr-recognition-western-sahara/. See also "Will Other Latin American Countries Withdraw Recognition of «SADR» in 2020?," Yabiladi, 2019, https://en.yabiladi.com/articles/details/86768/will-other-latin-american-countries.html.
36. Charles H. Stockton, Outlines of International Law, Charles Scribner's Sons, 1914, p. 88.
37. Grant, p. 4.
38. Examples of declaratory doctrine are found in: Brierly, Law of Nations; Ti-Chiang Chen, The International Law of Recognition: With Special Reference to Practice in the United States, Stevens & Sons Limited, 1951, hereinafter cited as 'Chen'; and Ian Brownlie, Principles of Public International Law, 6th edition, Oxford University Press, 1990, Hereinafter cited as 'Brownlie, Principles.'
39. Brierly, Law of Nations, pp. 138-139.

Under the constitutive doctrine, on the contrary, only recognition by the existing State renders an entity a State. Non-recognition consigns it to the status of a non-State actor[40]. Lassa Oppenheim describes this doctrine: "[a] state is, and becomes, an International Person through recognition only and exclusively[41]." A recognized State lacking certain conditions for Statehood may be called 'a puppet State' or 'a dependent State.' Hersh Lauterpacht views that the constitutive doctrine "deduces the legal existence of new states from the will of those already established dates back to Hegel." According to Hegel, prior to the act of recognition no relations of a legal nature can exist between them[42]. So, as a principle, a non-State actor would not possess any international rights and duties. The self-declared SADR cannot have any international rights of States, if it is not granted recognition as a State. "New entities which may fulfill the requirements of international persons have no right to recognition," Georg Schwarzenberger declares[43]. And J. H. W. Verjil puts forward that international law would be self-destructive if it admitted the right of new States to recognition as members of the international community[44].

On the controversy between the constitutive and declaratory doctrines, Ian Brownlie cautions that "to reduce, or to seem to reduce, the issues to a choice between the two opposing theories is to greatly oversimplify the legal situation[45]." And Thomas D. Grant views that "[n]either doctrine in its strong form holds up under logical scrutiny or is borne out by state practice[46]." Under either doctrine, recognition may seem discretionary for the existing States. "The action of states in affording or withdrawing recognition is as yet uncontrolled by any rigid rules of international law; on the contrary, recognition is treated, for the most part, as a matter of vital policy that each state is entitled to decide for itself," according to Starke[47]. He remonstrates that there is an irresistible tendency in State recognition to use legal principles as a convenient camouflage for political decisions and States have granted recognition to entities for reasons that lacked strict legal justification[48]. Antony Anghie notes that this has been seen over time, observing that recognition was granted by States not in accordance with international principles, but "according to the powerful and unpredictable expediencies of competition for colonies[49]." That may be fundamentally true even in the post-colonial world. In 1998, the Supreme Court of Canada admitted, in the case of Reference Re Secession of Quebec, that in the process of recognition, "national interest and perceived political advantage to the recognizing state obviously play an important role[50]." What should an entity aspiring to Statehood do? What such entity

40. Examples of constitutive doctrine are found in: Lassa Oppenheim, International Law, 8th edition, Longmans, Green & Co., 1955, Hereinafter cited as 'Oppenheim'; Lauterpacht, Recognition.
41. Oppenheim, p. 125.
42. Georg W. Friedrich Hegel, Encyklopädie der philosophischen wissenschaften im grundrisse, Heimann, 1870, pp. 62-63, quoted in Lauterpacht, Recognition, p. 38.
43. Georg Schwarzenberger, Power Politics: A Study of International Society, Stevens & Sons Limited, 1951, p. 8.
44. Namely, "international law simply cannot acknowledge any positive right of newly emerged States to be recognized as fully-fledged fellow members of the community of States as soon as they have reached the status of effective statehood." J. H. W. Verzijl, International Law in Historical Perspective, Part III International Persons, A. W. Sijthoff, 1969, p. 590.
45. Brownlie, Principles, p. 91.
46. Grant, p. 19.
47. I. A. Shearer, Starke's International Law, 11th edition, Butterworths, 1994, p. 122. Hereinafter cited as 'Starke's.'
48. Ibid., p. 118. Therefore, "It is important that in considering the international law and practice as to recognition, due allowance should be made for the exigencies of diplomacy." Among such considerations have been the following: That the entity recognized could give valued help as a co-belligerent; that the entity recognized was willing to conclude a general settlement with the recognizing state; that recognition or non-recognition might offend an ally." "For example, in the First World War, Great Britain, France, the United States, and other Powers recognised Poland and Czechoslovakia before these latter actually existed as an independent states …. Similarly, in the Second World War the grant of recognition was conditioned by the supreme necessity of strengthening the ranks in the struggle against the Axis Powers." Ibid.
49. Antony Anghie, Imperialism, Sovereignty and the Making of International Law, Cambridge University Press, 2004, p. 78.
50. Reference Re Secession of Quebec, Canadian Supreme Court, International Legal Materials, Vol. 37, 1998, para. 143. Hereinafter cited as 'Re Secession of Quebec.'

can actually do may be only to make efforts to fulfill the conditions for Statehood. What then are the conditions for Statehood?

In an attempt to define the conditions for Statehood, the Convention on the Rights and Duties of States was signed at Montevideo in 1933. It is held as "the most widely accepted formulation of the criteria of statehood in international law[51]." The Montevideo Convention prescribes that the State as a person of international law should possess the following: (a) a defined territory; (b) a permanent population; (c) a government; and (d) the capacity to enter into relations with other States[52]. Similar conditions were used by the Arbitration Commission of the Conference on Yugoslavia in 1991. It concluded that "the state is commonly defined as a community which consists of a territory and a population subject to an organized political authority; that such a state is characterized by sovereignty[53]." First of all, the concept of sovereignty in international law should be elucidated, for there is no explicit definition in international agreements.

The concept of sovereignty may be expounded by comparing it with administration. One of the differences of sovereignty from administration in international law is the legal competence to cede a part of the territory of the sovereign State[54]. The notions of territorial sovereignty and property in private law are "essentially analogous on account of the exclusiveness of enjoyment and disposition which is in law the main formal characteristic of both private law and territorial sovereignty," Lauterpacht explains[55]. Also, Ian Brownlie reiterates that the analogy between sovereignty and ownership is evident and useful, and that the legal competence of a State includes liberties in respect of the disposal of territory[56]. Malcolm N. Shaw also argues that "[i]nternational rules regarding territorial sovereignty are rooted in the Roman law provisions governing ownership and possession[57]." Based on this concept, the self-proclaimed SADR does not assume sovereignty. Although the self-declared SADR may assume administration over the Tindouf camps, it is impossible for it to cede part of the territory to another State, independent of Algeria.

Meanwhile, any third States are not entitled to affect the sovereignty of the parent State by granting State recognition to a separatist entity. "Sovereignty is a territorial definition of political authority," explains Robert Jackson. According to Jackson, territoriality became the primary condition for Statehood in the early-modern period. Therefore, a sovereign State can be defined as "an authority that is supreme in relation to all other authorities in the same territorial jurisdiction, and that is independent of all foreign authorities[58]." Indeed, even interdependence in the international community is based on the consent of the existing States. Accordingly, consent of the family State to an entity

51. Malcolm N. Shaw, International Law, 4th edition, Cambridge University Press, 1997, p. 140. Hereinafter cited as 'Shaw, International Law.'
52. Convention on Rights and Duties of States (inter-American), 1933, Yale Law School, Lillian Goldman Law Library, 2008, https://avalon.law.yale.edu/20th_century/intam03.asp.
53. A. Murphy and A. Stoica, "Sovereignty: Constitutional and Historical Aspects," Bulletin of the Transilvania University of Braşov. Series VII: Social Sciences, Law, No. 2, 2015, p. 220. See also Alain Pellet, "The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples," European Journal of International Law, Vol. 3, 1992, pp. 178-185.
54. Brownlie, Principles, p. 107-108.
55. H. Lauterpacht, Private Law Sources and Analogies of International Law, Archon Books, 1970, pp. 95-96. At the same time, there are differences between sovereignty and property. John Westlake illustrates, "when a state cedes a province it cedes the territorial sovereignty over the whole, and the property in those parts which belonged to it as property, such as fortresses and public buildings, but the property in all other parts remains unaffected," in idem., Chapters on the Principles of International Law, Cambridge at the University Press, 1894, p. 130.
56. Brownlie, Principles, p. 106.
57. Shaw, International Law, p. 333.
58. Robert Jackson, Sovereignty: Evolution of an Idea, Polity Press, 2007, p. 104.

aspiring to secede would become indispensable as the primary condition for Statehood.

In this regard, the ICJ held in the Kosovo Advisory Opinion that international law contained no prohibition on declaration of independence[59], though it did not examine external self-determination and remedial secession. On the basis of the principle of respect for the territorial integrity of a State, a declaration of independence would be held as one of the internal affairs of a State. In this way, for an entity aspiring to Statehood, approval by the parent State is indispensable.

External self-determination and remedial secession were examined in the case of Reference Re Secession of Quebec. With regard to this case, Suzanne Lalonde argues that if third States were to recognize an independent Quebec notwithstanding Canada's refusal to act similarly, such 'premature' recognition would infringe Canada's sovereignty and unlawfully violate its territorial integrity[60]. In fact, the Supreme Court of Canada holds that "[t]he international law principle of self-determination has evolved within a framework of respect for the territorial integrity of existing state[61]." In the case of secession, approval of a parent State would be the decisive condition for Statehood. Other conditions such as territory and independence are not only consistent with this decisive condition, but these two conditions would be fulfilled by the parent State's approval. Then, if there should be implicit or explicit recognition of independence of an entity aspiring to Statehood by the parent state, its recognition by third States would follow almost automatically[62].

It is true that Charles C. Hyde argued that the propriety of recognition was not necessarily dependent on the approval of the parent State. However, his argument presupposes that the conflict with the parent State has been substantially won[63]. Therefore, when armed conflicts continue, the only gateway for an entity to become a State would be, after all, approval of the parent State. If such conflict ended, the approval would be implied in the peace agreement which brought the conflict to an end or the entity would have lost its strength, eliminating the problem of State recognition.

As such, international law governing State recognition addresses approval by a parent State and 'premature recognition' by third States. Even when a parent State granted State recognition to an entity aspiring to Statehood, some third States may not recognize the entity as a State. But, when a parent State does not recognize it as a State, recognition granted to the entity is premature. The conditions for recognition would matter in terms of premature recognition on the part of third States.

The conditions for recognition must naturally be the essential requirements of Statehood[64]. Recognition of an entity as having Statehood was defined in 1936 by the Institute of International law as the free act by which the existing State acknowledges "the existence on a definite territory of a human society politically organized, independent of any other existing State, and capable of observing the obligations of international law, and by which they manifest therefore their intention to

59. Accordance with international law of the unilateral declaration of independence in respect of Kosovo, ICJ 2010, Advisory Opinion, paras. 79, 123.
60. Suzanne Lalonde, "Secession: Quebec," Canadian Bar Review, Vol. 74, 1995, pp. 225, 293, referred to in Patric Dumberry, "Lessons Learned from the Quebec Secession Reference before the Supreme Court of Canada," in Marcelo G. Kohen (ed.), Secession: International Law Perspective, Cambridge University Press, 2006, p. 442.
61. Re Secession of Quebec, para. 127. It also finds that international recognition occurs only after a territorial unit has politically succeeded in achieving secession. Ibid., para. 142.
62. Stockton, op. cit., supra note 36, p. 85.
63. Charles Cheney Hyde, International Law Chiefly as Interpreted and Applied by the United States, Vol. 1, 2nd revised edition, Little, Brown and Company, 1945, p. 152.
64. Chen, p. 55. See also Grant, pp. 5-6.

consider it a member of the international community[65]." Among these conditions, a definite territory and independence would especially matter for the self-declared SADR. Regarding the condition of territory, due to the self-declared SADR's Algerian operational base in the Tindouf camps, I. Fernandez-Molina and R. Ojeda-García characterize it as "a primarily extraterritorial state-in-exile de facto[66]."

A more difficult condition for the self-declared SADR to fulfill may be independence. Concerning the non-recognition of Bophuthatswana, which was recognized in December 1977 by its parent State, South Africa, as a State, the British Minister of State, Foreign and Commonwealth Office, referred to "the economic dependence on South Africa," as one of the reasons why Britain refused to recognize it as a State[67]. The case of Bophuthatswana shows that even an entity recognized by the parent State may not be recognized as a State by third States. That is to say, an entity that fulfills the conditions of territory and sovereignty may not fulfill the condition of dependence. The self-declared SADR has much in common with Bophuthatswana, and Manchukuo, as far as independence is concerned. Manchukuo was not recognized as independent by the international community, because it was subject to the dominant control of Japan[68]. That is why Manchukuo was called 'a puppet State[69].'

Even if further conditions must be fulfilled once an entity has been recognized as a State by the parent State, lack of parent State approval would nonetheless make it impossible for the entity to fulfill the conditions of territory and sovereignty. One of the examples without such approval is the pseudo-Manchukuo.

Manchukuo

The self-declared SADR is similar to Manchukuo as regards the main aspects of Statehood. Just as Manchukuo was established by the Empire of Japan, so the self-declared SADR was established by Algeria. Even after the declaration of independence, both pseudo-States heavily depended on the respective patron States. Moreover, Manchukuo and the self-declared SADR both caused international disputes regarding their recognition as States. Furthermore, both cases involve concerns regarding the alleged 'free will of the inhabitants.' It is also critically important to note that both entities were not been approved as States by the respective parent State.

In face of the Mukden Incident in September 1931, the League of Nations Council adopted a resolution in December to appoint the Lytton Commission to take interim measures to prevent any aggravation of the situation developing in Mukden[70]. In February 1932, the independence of 'Manchukuo' was

65. Institute of International Law, Resolutions adopted in 1936, American Journal of International Law, Vol. 30, Supplement, 1936, p. 185. The Institute is an academic organization for the study and development of international law.
66. I. Fernandez-Molina and R. Ojeda-García, "Western Sahara as a Hybrid of a Parastate and a State-in-exile: (Extra)territoriality and the Small Print of Sovereignty in a Context of Frozen Conflict," Nationalities Papers: Journal of Nationalism and Ethnicity, 2018, pp. 3, 20. However, the problem is whether the self-declared SADR is a State at all, before talking about the concept of 'parastate' and 'State-in-exile.'
67. Geoffrey Marston (ed.), "United Kingdom Materials on International Law 1986," British Yearbook of International Law, Vol. 57, 1986, p. 507.
68. See Report of the Commission of Enquiry, Series of the League of Nations Publication, VII, Political, 1932, pp. 97, 106.
69. Chen, p. 299.
70. The Mukden Incident was an event staged by Japanese troops in September 1931, without authorization from the Japanese government, for making it a pretext for legitimizing Japan's invasion in Manchuria as an exercise of the right to self-defense. Besides, Japan claimed at the League of Nations that China was not an organized country, challenged China's claims of sovereignty over Manchuria by insisting Manchuria was not an area historically populated by Han peoples, and referred to the Chinese population there as "Chinese immigrants." Andrew Reed Hall, "Constructing a 'Manchurian' Identity: Japanese Education in Manchukuo, 1931-1945," University of Pittsburgh, 2003, p. 64, https://core.ac.uk/download/pdf/12210208.pdf. See also Arthur K. Kuhn, "The Lytton Report on the Manchurian Crisis," American Journal of International Law, Vol. 27, 1933, p. 96.

declared with the Empire of Japan supporting separation from China, and it was officially founded on the March 1. Five days later, the US Secretary of State Henry L. Stimson proclaimed that the situation in China could not be reconciled with the obligations set forth in the Nine-Power Treaty on China in 1922 and the Pact of Paris in 1928[71]. Britain, however, did not adopt the Stimson Doctrine, and proposed a more tolerant draft resolution to the Assembly of the League of Nations, which was unanimously adopted as the resolution of March 11, 1932, declaring that "it is incumbent upon the members of the League of Nations not to recognize any situation, treaty or agreement which may be brought about by means contrary to the Covenant of the League of Nations or to the Pact of Paris[72]." In September, before the Lytton Report was made public the following month, Japan had recognized Manchukuo as a State[73]. The Lytton Report found that the operations of the Imperial Japanese Army following the Mukden Incident could not be regarded as the exercise of the right to self-defense. Japan's military action in Manchuria was held to be contrary to the Covenant of the League of Nations and the Pact of Paris[74]. However, the League of Nations was neither consistent nor unambiguous on the issue whether Manchukuo was independent[75].

On the critical issue as to whether Manchukuo was an independent State, the League of Nations Assembly ultimately adopted a resolution in February 1933, declaring that "the sovereignty over Manchuria belongs to China," reiterating that the Members of the League of Nations "continue not to recognize this regime either de jure or de facto[76]." The resolution led to Japan's withdrawal from the League of Nations[77]. In the resolution, the Members of the League of Nations expressed their determination to refuse to grant State recognition to Manchukuo.

The Empire of Japan expected the international community, and the League of Nations in particular, to recognize Manchukuo as a State, so that the recognition would help to legitimize and facilitate Japan's actions in Manchuria in particular and in China in general. However, the official position of the League of Nations as determined by the Lytton Report, was not at all in favor of international recognition of Manchukuo.

With respect to the self-declared SADR/Polisario, it is reported that "[w]hile the Polisario Front are hoping to leverage the Guerguerat crisis to gain support for their cause, attempts to weaponize the incident could actually have the opposite effect in reality." However, in practice, "[a] growing number of countries and international organizations had already voiced their support voiced for Morocco's action to reestablish the free trade between Morocco and Mauritania which had ground to a dangerous halt under the rebels' roadblock[78]." Under international law, such circumstances would oblige States to

71. "Stimson Doctrine 1932," U.S. Department of State, https://2001-2009.state.gov/r/pa/ho/time/id/16326.htm.
72. US Department of State, Peace and War: United States Foreign Policy, 1931-1941, US Government Printing Office, 1943, pp. 3-8.
73. As Crawford aptly states, the sovereignty over the territory of Manchuria belonged to China in the period 1932 to 1945. Idem., Creation, p.79.
74. League of Nations, Official Journal, Special Supplement, No. 101, 1932, pp. 87, 88.
75. The Rytton Commission found that Manchukuo was not "a genuine and spontaneous independence movement." Crawford, Creation, pp. 132-133.
76. Green Haywood Hackworth, Digest of International Law, Vol. I, The US Government Printing Office, 1940, p. 337.
77. Konstantin D. Magliveras, "The Withdrawal From the League of Nations Revisited," Penn State International Law Review, Vol. 10, 1991, pp. 59-65.
78. "Have Western Saharan Independence Fighters Overplayed their Hand?," Africa Times, 2020, https://africatimes.com/2020/11/23/have-western-saharan-independence-fighters-overplayed-their-hand/. Early in December, of 64 States which have reacted to Morocco's operation, 60 States supports Morocco, while only four have expressed support for Polisario's actions: Algeria, Namibia, Cuba and Venezuela's Maduro administration, in Zakaria Bouali, "International Support for Morocco's Guerguerat Operation Reaches 60 Countries," Morocco Telegram, 2020, https://moroccotelegram.com/politics/international-support-for-moroccos-guerguerat-operation-reaches-60-countries/.

withdraw recognition, as discussed above. However, in the Sahara Issue, around 40 UN Member States have not yet withdrawn recognition of the self-declared SADR as a State. In the case of Manchukuo, the international community was also unable to take a consistent stance on the issue of its recognition and could not stop the advance of the Imperial Japanese Army in China.

William Meier and Mark Dennis explain that one of the reasons there was such inconsistency in the international community regarding Manchukuo was the fact that Manchurian nationalism complicated matters for many States and led them to reconsider when condemning the Manchukuo. "The fact that many nations proved willing to consider the idea of an independent Manchuria prevented definitive united action against Japan[79]," explain Meir and Dennis. A point which is also relevant in the Sahara Issue. In reality, the self-declared SADR/Polisario obstinately insists on resuming the aborted procedures to identify eligible voters for a referendum in the Saharan Provinces, which would lead to immobilized segmentation of all inhabitants into Sahrawis and non-Sahrawis, as will be elaborated below.

While the parent State, China, did not recognize Manchukuo, Japan attempted to legitimize the creation of 'Manchukuo' as a spontaneous expression of separatist sentiment that allegedly prevailed among the inhabitants[80], just like the tactics of the SADR. Rebutting Japan's criticism of the Lytton Report, China stated that "[i]t is conclusively proved by the report that the 'Manchukuo,' far from being the expression of the free will of the people of Manchuria, is an artificial creation of the Japanese officials and is controlled by them[81]." This statement would cause anxiety about the artificial creation of the eligible voters, or 'Sahrawis,' by means of implementing a referendum. Indeed, the phrase 'the free will of the inhabitants' in the Japan-Manchukuo Protocol in September 1932 is suggestive of the self-declared SADR/Polisario's separatist claims, insisting on 'the free will of Sahrawis', not 'the free will of all inhabitants', in the Saharan Provinces.

The determination of Sahrawis would make room for the emergence of non-Sahrawi inhabitants[82], not registered as eligible voters for the referendum, if the referendum were actually implemented. The registration of eligible voters would institutionally divide, in a discriminatory manner, the all inhabitants into Sahrawis and non-Sahrawis, like Hutu and Tutsi in Rwanda on the eve of genocide[83]. Such institutionalized division based on national origin may constitute an unlawful distinction based on 'national or social origin' under Article 2 of the International Covenant on Civil and Political Rights. Moreover, it may "involve discrimination solely on the ground of … social origin," under its Article 4 (1), of which prohibition is a non-derogable peremptory norm, i.e. a jus cogens norm[84]. The definition of 'social origin' given by the UN Committee on Economic, Social and Cultural Rights involves "descent-

79. William Meier and Mark Dennis, "International Recognition of the Japanese Recognition of the Japanese 'Puppet State' of Manchukuo in Chinese Manchuria in the Early 1930s," Texas Christian University, 2017, https://repository.tcu.edu/bitstream/handle/116099117/19851/Smith__Emily_-_Honors_Project.pdf?sequence=1&isAllowed=y, pp. 5-6.
80. Errol MacGregor Claus, "The Roosevelt Administration and Manchukuo, 1933–1941," The Historian, Vol. 32, 1970, p. 595.
81. Letter, dated December 3rd, 1932, from the Chinese Representative on the Council to the Secretary-General of the League of Nations, League of Nations, Official Records, 1932, VII. 16, Series of Publications, p. 141.
82. Japan-Manchukuo Protocol, signed on September 15th, 1932, at Sinking, www.ibiblio.org/pha/policy/pre-war/320915a.html.
83. See John Waterbury, "Avoiding the Iron Cage of Legislated Communal Identity," in Wolfgang Danspeckgruber and Arthur Watts (eds.), Self-Determination and Self-Administration, Lynne Rienner Publishers, 1997, pp. 375-387.
84. Matsumoto, loc. cit., supra note 19, p.9.

based discrimination under 'birth' [85]."

Then, not only the implementation of a referendum as such, but also an agreement for its implementation would be void. What is more, John Dugard maintains that "a State will not come into existence if its act of creation violates a norm having the character of jus cogens[86]." In a similar vein, Antonello Tancredi suggests adding "the lawfulness of the process of State creation," to the traditional conditions for Statehood referred to above. According to Tancredi, "[i]f this process is the product of a breach of cogent norms, then the de facto entity would be prohibited from claiming statehood[87]."

In this way, the proposed discriminatory tactics of the self-declared SADR/Polisario to resume the aborted referendum process would add doubt about political cohesion and permanency to the self-declared SADR. When existing States have some doubt as to the viability of an entity as a State, States have been known to grant recognition as a de facto State, provisionally and temporarily, with all due reservation for the future[88]. In international law, recognition granted to an entity may be de jure or de facto. It is not the act of granting recognition that is de jure or de facto, but the State that is recognized as existing either de jure or de facto[89]. With regard to de facto recognition of Manchukuo, Ti-Chiang Chen suggests, "a State may recognize de facto a new power whose qualifications as a State may be doubtful, but to which the recognizing State wishes to extend its moral and political support." However, "there is no doubt that de facto recognition constitutes an intervention in the internal affairs of other States and is unjustifiable in international law," Chen continues[90]. Its reason may be because de facto recognition presupposes that the conditions required for Statehood are not fulfilled. Chen's suggestion may well be applicable to the recognition of the SADR as a de facto State[91]. The relations between recognition, particularly 'premature recognition,' and intervention will be considered later.

Manchukuo was recognized as a State by a few States such as the Vatican, El Salvador, Poland, Hungary, Spain, Italy, Germany, and Japan. However, most States did not recognize it as a State. Did Manchukuo therefore exist as a State under international law? According to Lauterpacht, "[t]he example of Manchukuo shows that it serves no useful purpose to assert that a community is a State because it 'exists' or claims to exist." It could not be accurately maintained that "at any time, Manchukuo existed as an independent State, i.e. as a State in international law, and not as a subservient province of Japan endowed for the purpose of deception[92]," he adds. Thus, Lauterpacht criticizes the following passage in the Protocol between Japan and Manchukuo in 1932 as a deception: "Whereas Japan has recognized the fact that Manchukuo in accordance with the free will of the inhabitants, has organized

85. UN Committee on Economic, Social and Cultural Rights, General Comment 20: Non-Discrimination in Economic, Social and Cultural Rights (art 2, para 2), UN Doc E/C.12/GC/20, 2009, para. 24. According to Angelo Capuano, this General Comment is the only report of a UN treaty body that provides a clear, direct and reasonably detailed interpretation of "social origin" in an international human rights treaty. Idem., "The Meaning of "Social Origin" in International Human Rights Treaties: A Critique of the CESCR's Approach to "Social Origin" Discrimination in the ICESCR and its (Ir)relevance to National Contexts such as Australia," New Zealand Journal of Employment Relations, Vol. 41, 2016, p. 103.
86. John Dugard, Recognition and the United Nations, Cambridge University Press, 1987, p. 147.
87. Antonello Tancredi, "A Normative 'Due Process' in the Creation of States through Secession," in Kohen (ed.), op. cit., supra note 60, pp. 182-183.
88. Shaw, International law, p. 130.
89. Brierly, Law of Nations, pp. 146-147.
90. Chen, p. 290.
91. See I. Fernandez-Molina and M. Porges, "Western Sahara: Subtleties and Multiple Sources of Recognition for a Hybrid of a State-in-Exile and a De Facto State," Western Sahara-Routledge Handbook of State Recognition, 2019, https://ore.exeter.ac.uk/repository/handle/10871/39721.
92. Frederick Middlebush, "Non-recognition as a Sanction of International Law," Proceedings of the American Society of International Law at Its Annual Meeting (1921-1969), 1933, p.27.

and established itself as an independent State[93]," which is referred to above.

The example of Manchukuo shows the absence of the primary condition for recognizing an entity as a State, i.e. independence. Independence is the most essential condition for Statehood. The primary condition of independence is far more relevant to the self-declared SADR, because it is located in Algeria's territory. Independence is inseparably connected with sovereignty. In the Island of Palmas Case in 1828, "[s]overeignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of other State, the function of a State[94]." The classic statement on the definition of independence is given by Judge Anzilotti in the Austro-German Customs Union Case in 1931 noting that the independence of Austria is nothing other than the existence of Austria, within the frontiers, as a separate State and not subject to the authority of any other States[95]. Crawford comments that 'separate existence' in this sense is dependent on the exercise of substantial governmental authority with respect of some territory and people. Thus, an entity formally dependent is actually "under the direction of another State to the extent that its formal independence is nugatory or meaningless[96]."

Manchukuo was not actually independent of Japan. Lauterpacht asks: "Did Manchukuo, established by Japan as a State ... constitute a State by the very fact of its 'existence'?"[97] The decisive factor governing this question is whether Manchukuo was independent of the State which purported to detach that province from China. Lauterpacht answers, "[i]f a community, after having become detached from the parent State, were to become, legally or actually, a satellite of another State, it would not be fulfilling the primary condition of independence and would not accordingly be entitled to recognition as a State." He concludes that the primary condition for Statehood is "the possession of sovereignty exercised by an independent government[98]." Louis Cavaré was of the opinion that Manchukuo was entirely "the work of Japan[99]." As regards the self-declared SADR, it lacks independence, because its 'territory' in Tindouf is the territory of Algeria and it cannot be independent of Algeria.

Self-Declared SADR

The creation of the self-declared SADR was declared by Polisario on February 27, 1976, just one day after the Spanish withdrawal from the territory of the Saharan Provinces. John Damis is of the opinion that a significant escalation of the Sahara Issue is marked by Polisario's declaration of the self-declared SADR's independence, since "the declaration of Western Saharan independence gave the Polisario front a greater margin to maneuver internationally," upgrading it from a mere local actor to an international actor that could even compete against Morocco for international recognition[100]. Former Polisario police chief Mustafa Salma Ould Sidi Mouloud said that "the parameters of the conflict changed, from a war to drive out the Spanish colonialist to a regional conflict between Polisario and

93. Georg Friedrich von Martens, Recueil de Traités, 3rd Series, Vol. XXVIII, p. 671, reproduced in "Japan–Manchukuo Protocol", Wikipedia, https.//en.wikipedia.org/wiki/Japan–Manchukuo_Protocol.
94. Island of Palmas Case, RIAA, Vol. 2, 1828, p. 838.
95. Austro-German Customs Union Case, Separate Opinion of Judge Anzilotti, PCIJ Ser A/B, No. 41, 1931, p. 57.
96. Crawford, Creation, p. 66.
97. Lauterpacht, Recognition, p. 46.
98. Ibid., pp. 27-28.
99. Louis Cavaré, "La reconnaissance de l'État et le Mandchoukou," Revue Générale de Droit International Public, Vol. 42, 1935, p. 10. However, as a logical consequence of the declaratory doctrine, Cavaré insisted to recognize Manchukuo as a State on the only ground that it "existed", in ibid., p. 31.
100. John Damis, Conflict in Northwest Africa: The Western Sahara Dispute, Hoover Institution Press, 1983, p. 76.

Algeria on the one hand, and Morocco and Mauritania on the other[101]." Also, according to Stephen J. King, the creation of self-declared SADR was intended to counter Morocco's implication that "instead of being an independent actor, the Polisario insurgents were proxies for the Algerian government seeking to claim the Western Sahara for itself[102]." Stephen Zunes and Jacob Mundy observe that the war in the Sahara provided Algeria "a golden opportunity to pursue its strategic interests indirectly," and estimate the cost to Algeria of "supporting Polisario has certainly not been cheap[103]." With regard to Algeria's motives, it is noted that Algeria has known how to use the Saharan Issue to seek to destabilize Morocco[104].

At first, Libya and Algeria provided material support and Algeria offered guerrilla expertise. At the end of 1975, Algeria began to provide military supplies to the Polisario and "they started a guerrilla campaign against Moroccan armies until 1989[105]." In February 1976, in Amgala, around 350km from Tindouf, the Moroccan Army surprised units of the Algerian People's Army and captured about 100 Algerian officers and soldiers[106]. Tony Hodges reports that Polisario received "invaluable assistance from the Algerian government, which, besides providing the guerrillas with bases, training and equipment, briefly sent units of its own army into Western Sahara[107]." In a similar vein, "[i]n some instances, units from the Algerian army joined the Polisario forces," reveals J. Peter Pham[108]. S. J. King also admits that "[t]he Polisario's early military victories and possibly its very existence would not have been possible without the strong backing of Algeria[109]."

On the illegality of foreign military aid for secession, Crawford suggests that when a State illegally intervenes in and foments secession from a parent State, other States are under the same obligation of non-recognition as in the case of illegal annexation of territory. Then, he adds that "[a]n entity created in violation of the rules relating to the use of force in such circumstances will not be regarded as a State[110]." Relating to Algeria's influence on the use of force by the self-declared SADR/Polisario, Yahia H. Zoubir discloses that "Algerian government approval for Polisario's decision to resume fighting was demonstrated by an October 2 editorial in the semi-official newspaper, El-Moudjahid[111]." With regard to the Guerguerat crisis, it is estimated that "[f]or the Polisario, Algeria's support would be essential

101. Kasraoui, "Former Polisario Member: Algeria Styled 'SADR' Simply for Popular Support", Morocco World News, 2020, https://www.moroccoworldnews.com/2020/12/328245/former-polisario-member-algeria-styled-sadr-simply-for-popular-support/.
102. Stephen J. King, "The Emergence and Politics of the Polisario Front," in Anouar Boukhars and Jacques Roussellier (eds.), Perspectives on Western Sahara: Myths, Nationalisms, and Geopolitics, Rowman & Littlefield, 2014, p. 78.
103. Stephen Zunes & Jacob Mundy, Western Sahara: War, Nationalism, and Conflict Irresolution, Syracuse University Press, 2010, pp. 34, 42.
104. "The Polisario Front: A Destabilising Force in the Region that is Still Alive," European Strategic Intelligence and Security Center, 2008, http://www.corcas.com/Portals/Al/the-polisario-front-a-destabilising-force-in-the-region-412.pdf.
105. Andreu Solá-Martin, The United Nations Mission for the Referendum in Western Sahara, The Edwin Mellen Press, 2006, p. 17. The Sahara Issue is considered as a question of Algeria's national security, not as a question of Sahraoui's self-determination by Ali Kafi, a veteran of Algerian war of liberation and the acting President of Algeria from 1992 to 1994. Tahia H. Zoubir and Daniel Volman, "The Western Sahara Conflict in the Post-Cold War Era," in Idem. (eds.), International Dimensions of the Western Sahara Conflict, Praeger, 1993, p. 215.
106. Abdelhamid El Ouali, Saharan Conflict: Towards Territorial Autonomy as a Right to Democratic Self-Determination, Stacey International, 2008, p. 104.
107. Tony Hodges, Western Sahara: The Roots of a Desert War, Lawrence hill & Company, 1983, p.230.
108. J. Peter Pham, "Not Another Failed State: Toward a Realistic Solution in the Western Sahara," Journal of the Middle East and Africa, Vol. 1, 2010, p.9.
109. King, loc. cit., supra note 102, p. 76.
110. Crawford, Creation, p. 119.
111. Yahia H. Zoubir, "Origins and Development of the Conflict in the Western Sahara," in Zoubir and Volman (eds.), op. cit., supra note 105, pp. 10-11. In December 2020, a few weeks after the outbreak of the Guerguerat crisis, "Algeria's military magazine, El-Djeich, called in its December editorial for Algerians to 'stand ready to face' imminent threats," in "'Foreign Manoeuvres' in W. Sahara Destabilising Algeria: PM," France 24, 2020, https://www.france24.com/en/live-news/20201212-foreign-manoeuvres-in-w-sahara-destabilising-algeria-pm.

for any return to major fighting[112]."

By applying the lessons learned from the bitter experience of the US in the escalation of the Vietnam War, Tom J. Farer identified the illegality of 'tactical support' by devoting such physical support, such as sending combatants, for example, to war zones in the territory of another State suffering from civil strife, making a distinction from 'strategic support' by providing military or other material assistance[113]. For Farer, while tactical support constitutes an illegal intervention in civil strife, strategic support does not. Because Farer finds the decisive factor of reinforcing troops, which may deteriorate civil strife, in the lamentable increase of deaths or serious wounds amongst the supporting State's combatants. In practice, strategic materials may be recovered, while lost lives are unrecoverable. The bereaved families cannot forget the death of their relatives. So, it is usual for public opinion in a supporting State to call for the reinforcement of troops, wishing to effectively protect the lives of its combatants. Therefore, in order to halt the deterioration of civil war, the dispatch of foreign combatants to civil war zones in a foreign State must be prohibited. This may also be true for the Sahara Issue. With respect to State recognition, however, even strategic support as such would matter, as contended above.

Since Algeria intervened in and fomented the secession of part of Morocco, those States that recognize the self-declared SADR as a State are under international obligation to withdraw the recognition. In this respect, Osama Abi-Mershed and Adam Farrar find that Algeria began to fund, arm, and support Polisario[114]. It is also pointed out that Algeria provided military material to Polisario, including advanced weaponry[115]. Zunes and Mundy note that "Polisario's political and military health was virtually guaranteed by Algeria[116]." Even now, "Polisario is heavily dependent on support from Algeria[117]." Would Algeria's support in this way help the self-declared SADR fulfill conditions for Statehood?

Peter Pham, however, predicts that, if given the chance to actually occupy and attempt to govern the Saharan Provinces it claims, the self-declared SADR would likely metastasize into a 'collapsed State,' with adverse consequences for regional stability and security[118]. Then, Pham suggests, "the success or failure of States is measured by how effectively they deliver the political goods[119]." Consequently, Omar Hadrami, one of the Polisario founders and the former Foreign Minister of the self-declared SADR, confessed that independence had become unrealistic[120].

As far as international law is concerned, the self-declared SADR does not fulfill the primary condition for Statehood, i.e. independence. Brierly submits that "[t]he proper usage of the term 'independence' is to denote the status of a state which controls its own external relations without dictation from other states[121]." In this regard, it is maintained that "Polisario's international activities are heavily dependent upon Algerian support[122]." Though the self-declared SADR/Polisario has consistently

112. Ibid.
113. Tom J. Farer, "Harnessing Rogue Elephants: A Short Discourse on Foreign Intervention in Civil Strife," Harvard Law Review, Vol. 82, 1969, pp. 511–541.
114. Osama Abi-Mershed and Adam Farrar, "A History of the Conflict in Western Sahara," in Boukhars and Roussellier (eds.), op. cit., supra note 96, pp. 17-18.
115. Zunes & Mundy, op. cit., supra note 103, p. 42.
116. Ibid., p. 9.
117. "'Foreign Manoeuvres' in W. Sahara Destabilising Algeria: PM," loc. cit., supra note 111.
118. Pham, loc. cit., supra note 107, p. 12.
119. Ibid., p. 13.
120. Quoted in Zunes & Mundy, op. cit., supra note, 103, p. 118.
121. Brierly, Law of Nations, p. 129.
122. Mundy, "Algeria and the Western Sahara Dispute," The Maghreb Center Journal, Issue 1, Spring/Summer 2010, p. 6.

claimed sovereignty over the entire territory of the Saharan Provinces, it is hard for it to implement responsibilities for the injuries, if any, incurred in the territory controlled by Morocco or Algeria.

According to Jean-Germain Gros, the self-declared SADR is not even a 'failed State', but rather an 'aborted State,' because it lacks any control of its frontiers and territory[123]. In fact, the self-declared SADR is neither a dependent State nor a State-in-exile because it has never fulfilled the conditions for Statehood. From a legal viewpoint, the self-declared SADR is no more than one of the domestic NGOs. Hence, an Algerian official notes, regarding the Sahara Issue, that "[i]t is impossible to reach any solution to the conflict, and under any form, without the direct participation of Algeria as a main party[124]." The self-declared SADR lacks clear independence from Algeria. The problem would therefore be the legality of an act of granting State recognition to the self-declared SADR.

Premature Recognition

Premature recognition has been defined as violation by third States of the rights of the parent State from which an entity aspires to secede for establishing a State[125]. While the arguments on the act of granting recognition as a State to an entity vary, third States' obligation not to grant premature recognition has been almost universally accepted. While there is no obligation to grant recognition to an entity that fulfills all the conditions for Statehood, there is an obligation to withhold it when it does not fulfill the conditions[126]. Chen sustains that premature recognition is void and constitutes an act of intervention and internationally wrongful act. In Chen's view, "[t]his is common to both the constitutive and declaratory schools[127]." US President Roosevelt once said that premature recognition was an extraordinary procedure which would violate the international obligation of non-intervention[128].

In a similar vein, David Raič submits that the discussion about the legal nature and effect of recognition is of particular relevance in the case of premature recognition, and an act of granting recognition as a State to an entity would amount to premature recognition when it is granted while certain conditions for Statehood have not been fulfilled by the recognized entity[129]. Premature recognition has been held as a wrongful act against the parent State, reducing the parent State to the status of a rebel group and to raise the newly recognized entity to the position of the legitimate State to which support and encouragement may lawfully be given. "Such abuse of the power of recognition is", Lauterpacht expounds, "illustrated by the recognition by Germany and Italy of the Spanish insurgents in the early stages of the Spanish civil war, at a time when the issue of the struggle was altogether uncertain[130]."

Thomas and Thomas sum up the link between premature recognition and intervention as follows: "Premature recognition is clearly intervention and falls under the proscription of the non-intervention rule, being an unwarranted interference in the internal affairs of the mother country; By its premature

123. Jean-Germain Gros, ''Towards a Taxonomy of Failed States in the New World Order: Decaying Somalia, Liberia, Rwanda and Haiti," Third World Quarterly, Vol. 17, 1996, pp. 455–471.
124. Kasraoui, "Algerian Official Acknowledges Algeria's Responsibility in Western Sahara," Morocco World News, 2020, https://www.moroccoworldnews.com/2020/11/326594/algerian-official-acknowledges-algerias-responsibility-in-western-sahara/.
125. Henry Beach Wheaton, Elements of International Law, Vol I, 6th ed., Little, Brown and Company, 1929, p. 55.
126. Hans Kelsen, "Recognition in International Law: Theoretical Observations," American Journal of International Law, Vol. 35, 1941, p. 610.
127. Chen, p. 54.
128. John Basset Moore, A Digest of International Law, Vol. III, US Government Printing Office, 1906, p. 71.
129. David Raič, Statehood and the Right of Self-Determination, Kluwer Law International, 2002, p. 29.
130. Lauterpacht, Recognition, p. 95.

recognition, the interfering state shows a sympathy with the rebellious portion of the populace[131]."

Chen divorces premature recognition from the matters of recognition, and puts forward that premature recognition is involved in the concept of intervention, as below[132]:

"[P]remature recognition should properly be considered as a species of intervention, rather than of recognition. The undertaking is generally viewed as a political adventure with full knowledge of its illegality and its consequences. The recognizing State seldom seeks to justify its action upon legal principles of recognition. Premature recognition is, therefore, not illustrative of the practice of States in matters of recognition."

Thus, under the heading of 'Intervention,' Robert Phillimore discussed France's recognition of the US in 1778 and the Great Powers' recognition of Greece and Belgium in 1827[133]. According to Roland Sharp's argument in 1934, long before the total prohibition of the use of force under Article 2 (4) of the UN Charter, "[t]he state injured by the premature recognition may resort to war or reprisals against the delinquent state." Thus, French premature recognition of the US in 1778 resulted in the Anglo-French war[134]. As Lauterpacht submits, international law forbids third States favoring insurrection by recognizing the insurgents as a State before they have succeeded in establishing themselves beyond all reasonable doubt[135].

Therefore, A. Tancredi is not always correct when, concerning the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY), he argues that "the premature recognition given by third States to some components of the Federation (first Slovenia, then Croatia and Bosnia and Herzegovina), would have expressed the will of international community to support the secessionist claims of those federative units against the territorial integrity of Yugoslavia[136]." Premature recognition is definitely void and internationally wrongful. Wrongful acts of any kind should not be legally appreciated. In practice, Hans W. Maull conceives that premature recognition may have in part contributed to the civil war in Bosnia[137]. An entity which continues campaign for independence may be lawfully recognized by third States only when the parent State has granted State recognition to the entity.

Opinion No. 1 of the Arbitration Commission of the Conference on Yugoslavia declared in November 1991 that the former Yugoslavia was still "in the process of dissolving[138]." Before the approval by the patent State nevertheless, third States had granted premature recognition to seceding entities[139]. As

131. Ann Van Wynen Thomas and A. J. Thomas, Jr., Non-Intervention: The Law and its Import in Americas, Southern Methodist University Press, 1956, p. 244.
132. Chen, p. 85.
133. Ibid., p.86. Robert Phillimore, Commentaries on International Law, Vol. 1, T. & J. W. Johnson Law Booksellers, 1879, p. 553. See also Willian Vernon Harcourt, Letters by Historicus on Some Questions of International Law, Inter Documentation Co., 1863, pp.5-6.
134. Roland Hall Sharp, Non-Recognition as a Legal Obligation 1775-1934, Imprimerie Georges Thone, 1934, p. 18.
135. Lauterpacht, Recognition, p. 8.
136. Tancredi, loc. cit., supra note 87, p. 179.
137. Hans W. Maull, "Germany in the Yugoslavia Crisis," Survival, Vol. 37, 1995, pp. 99-130, quoted by Grant, p. 205, n. 82.
138. Opinion No. 1 (Dissolution of SFRY), the Arbitration Commission of the Conference on Yugoslavia, 1991, International Legal Materials, Vol. 31, 1992, pp. 162-163. See Allain Pellet, "The Opinion of the Bandinter Arbitration Committe: Second Breath for the Self-Determination of Peoplws," European Journal of International Law, Vol. 3, 1992, pp. 178–185.
139. While it was not until April 1992 that the SFRY recognized Croatia and Slovenia as independent States (Letter dated 27 April 1992 from the Permanent Mission of Yugoslavia to the UN addressed to the President of the Security Council, UN Doc A/46/915, 1992), Germany recognized as early as December 1991, then many other European States recognized them in January 1992 (See Grant, pp. 153, 171-180). Patric Dumberry views "some expressions of recognition in the context of the dissolution of Yugoslavia were arguably 'premature'." (Idem., loc. cit., supra note 60, p. 442) The UN Security Council has declared that "no territorial gains or changes within Yugoslavia brought about by violence acceptable." (UN Doc S/RES/713, 1991, preamble, para. 9)

for dissolution of the USSR in 1991, it was based on the consent of the parent State. Article 72 of the 1977 USSR Constitution prescribed that "each Union Republic shall retain the right freely to secede from the USSR[140]." The Constitution had thus granted to the Union Republics the consent of the parent State to secede in advance.

M. N. Shaw finds that the recognition of Croatia by the European Community, its Member States, Austria and Switzerland was premature, since at the time of the recognition the SFRY did not grant recognition to Croatia. In fact, the view of the Yugoslav Arbitration Commission in Opinion No. 5 was that Croatia did not fully meet the conditions for recognition prescribed in the European Community Guidelines[141]. In addition, Shaw regards the recognition of Bosnia-Herzegovina by the European Community, its Member States and the US as premature, because its government effectively controlled only less than one-half of its territory[142]. As regards the Saharan Issue, while Morocco effectively controls around three-quarters of the territory of the Saharan Provinces, the self-declared SADR/ Polisario controls the rest[143].

According to H. Lauterpacht, it is generally agreed that recognition is governed by an international obligation of restraint, the breach of which entails responsibility on the part of the recognizing State. In the case of the Saharan Issue, those States that recognize the self-declared SADR are under obligation to cease that act[144]. Moreover, premature recognition authorizes the parent State to take countermeasures against the delinquent recognizing States in conformity with the Draft Articles on Responsibility of States for Internationally Wrongful Acts[145].

An obligation not to grant premature recognition may be reinforced by virtue of the Pact of Paris. Quincy Wright is of the opinion that the obligation of non-recognition flows from obligations under the Pact of Paris "to condemn resort to war for the solution of international controversies." He views this obligation as incompatible with the approval of the results of war involved in an act of recognition, and consistent with 'the Budapest Articles of Interpretation' adopted in 1934 by the International Law Association[146]. Besides, the obligation of non-recognition was implied in Article 10 of the Covenant of the League of Nations. It stipulates that "[t]he Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League."

140. Henry Bissen, "Self-Determination and Self-Administration in the Former Soviet Union," in Danspeckgruber and Watts (eds.), op. cit., supra note 81, pp. 255-166.
141. Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, adopted by the EC on 16 December 1991, reproduced in European Journal of International Law, Vol. 4, 1993, pp. 72-73. See Roland Rich, "Recognition of States: The Collapse of Yugoslavia and the Soviet Union," European Journal of International Law, Vol. 4, 1993, p. 43. Rich states, "[w]hile the EC Guidelines are stated to be 'subject to the normal standards of international practice,' their application in fact has thrown doubt on the relevance of the traditional criteria for statehood." (Ibid., p. 56) Especially on the conditions of the rule of law, democracy and human rights, see Jessica Almqvist, "EU and the Recognition of New States," (Euborders Working Paper 12, 2017, pp. 12-16) Cedric Ryngaert and Sven Sobrie submit, on this new coherent normative framework, that it leaves enough room for political considerations while avoiding arbitrariness and "it is still in the process of being shaped." (idem., "Recognition of States: International Law or Realpolitik? The Practice of Recognition in the Wake of Kosovo, South Ossetia, and Abkhazia," Leiden Journal of International Law, Vol. 24, 2011, p. 490)
142. Shaw, International Law, p. 309.
143. "Western Sahara: It's Tough to Run a Business in Guerguerat," North Africa Journal, 2020, north-africa.com/2020/11/western-sahara-its-tough-to-run-a-business-in-guerguerat/.
144. Draft Articles on Responsibility of States for Internationally Wrongful Acts, Article 30 (a).
145. Ibid., Articles 49-54.
146. H. Lauterpacht, "The Pact of Paris and the Budapest Articles of Interpretation," Grotius Transactions, Vol. 20, 1934, p. 178. 'International Law Association' is a non-profit organization that promotes the study, clarification and development of international law and the furtherance of international understanding and respect for international law, International Law Association, 2020, https://www.ila-hq.org. As regards the Budapest Articles of Interpretation, see Manley O. Hudson, "The Budapest Resolutions of 1934 on the Briand-Kellogg Pact of Paris," American Journal of International Law, Vol. 29, 1935, pp. 92–94.

Although the UN Charter does not specifically provide for 'a guarantee clause' like Article 10 of the Covenant, it is argued that recognition of illegal acquisitions cannot be compatible with the principles of the UN Charter and an obligation to refrain from giving assistance to any State against which the UN is taking preventive or enforcement action[147], in conformity with Article 2 (5) of the UN Charter. In the case of the self-declared SADR, the obligation of non-recognition would flow particularly from the UN Security Council resolutions for finding a "just, lasting, and mutually acceptable political solution, on compromise," to the Saharan Issue[148]. An act of granting recognition to the self-declared SADR would disturb the UN-led political process on compromise because the act may discourage compromise on the part of the self-declared SADR/Polisario. For instance, when Bolivia decided to withdraw its recognition of the self-declared SADR as a State in January 2020[149], it has declared as below[150]:

"Based on the explanations provided by the Kingdom of Morocco, the Plurinational State of Bolivia adopts constructive neutrality and the commitment to support the efforts of the United Nations and the international community so that the parties can reach a just, durable and mutually acceptable political solution in accordance with the principles and purposes of the Charter of the United Nations. In that sense, the Plurinational State of Bolivia decided to suspend its current ties with the "Arab Republic of Democratic Saharaui (SADR)."

This Bolivian declaration may be construed as implying that the recognition of the self-declared SADR as a State would be incompatible with the UN Security Council's efforts to find a political solution based on compromise. Likewise, Lesotho's Foreign Minister announced in December 2019 that Lesotho fully backs the UN-led political process concerning the Sahara Issue to find an agreed upon and mutually acceptable political solution to it, adding that Lesotho's previous statements on the Saharan Issue were "void and have no value[151]." Even the latest independent State, South Sudan, proclaims that "the Republic of South Sudan has never had and is not maintaining a relationship with this separatist entity (SADR)[152]." The Foreign Minister of Cape Verde "denounces all the reckless acts which undermine the political process carried out under the aegis of the Secretary General of the United Nations, with a view to the search for a political solution to the question of the Sahara[153]." Sweden's Minister for Foreign Affairs affirms the UN process to find a political solution, noting that "[r]ecognition would not benefit this process[154]." And France welcomes Morocco's commitment to the ceasefire, stating that it "must be preserved, just as the political process must be relaunched within the framework of the United Nations[155]." This is in line with the statement by the Canadian Supreme Court in Reference Re Secession of Quebec that "the adherence of the parties to the obligation to negotiate would be evaluated in an indirect manner on the international plane[156]".

147. Chen, pp. 417-418.
148. UN Doc S/RES/2548, 2020.
149. "Western Sahara: Bolivia Withdraws its Recognition of Polisario's Self-Styled SADR," Morocco World News, 2020, https://www.moroccoworldnews.com/2020/01/291680/western-sahara-bolivia-polisario-sadr/.
150. Gobierno del Estado Plurinacional de Bolivia, Ministero de Relaciones Exteriores, COMUNICADO, "Fortalecimiento de las Relaciones Diplomáticas entre el Estado Plurinacional de Bolivia y el Reino de Marruecos," 20 de enero de 2020, quoted in ibid.
151. Madeleine Handaji, "Lesotho Says Any Previous Statements in Favor of Polisario are 'Void'," Morocco World News, 2019, https://www.moroccoworldnews.com/2019/12/288738/lesotho-statements-polisario-void/.
152. "South Sudan does not Recognize Western Sahara Independent State: FM," Sudan Tribute, 2018, https://sudantribune.com/spip.php?article66342.
153. Kasraoui, "Guerguerat: Cape Verde Supports Morocco's Action to Restore Free Movement," Morocco World News, 2020, https://www.moroccoworldnews.com/2020/12/327716/guerguerat-cape-verde-supports-moroccos-action-to-restore-free-movement/.
154. Sweden's Minister for Foreign Affairs, "Review of Western Sahara Policy", Press Release, Government Offices of Sweden, 15 January 2016, https://www.government.se/press-releases/2016/01/review-of-western-sahara-policy/.
155. Mebtoul, "Guerguerat: France Welcomes Morocco's Commitment to Ceasefire", Morocco World News, 2020, https://www.moroccoworldnews.com/2020/11/326292/guerguerat-france-welcomes-moroccos-commitment-to-ceasefire/.
156. Re Secession of Quebec, para. 103.

Particularly in respect of the parent State's approval, Crawford submits that any entity attempting to secede unilaterally has not been admitted to the UN since its inception against the wishes of the parent State[157]. And Patrick Monahan is of the view that a unilateral Quebec declaration of independence is "simply not feasible if it is opposed by Canada[158]."

In consequence, a State seeking to grant State recognition to an entity aspiring to Statehood will need to consider carefully the factual situation concerning the existence of armed actions and the degree to which the conditions for Statehood have been fulfilled[159], especially approval of the parent State.

Conclusion

The discussion on premature recognition so far is true of the self-styled 'IS'. It declared independence in 2014, and then controlled parts of Syria and Iraq with a population of over 6 million inhabitants, though many of them were the citizens of other States, such as Iraq, Syria, and Lebanon[160]. Most of the conditions for Statehood provided in the Montevideo Convention may be more or less fulfilled by the self-proclaimed IS. It may seem, at first glance, to be more favorable to the Montevideo criterion than the self-declared SADR, because at some point in time the self-proclaimed IS effectively controlled, though illegally, parts of the territories of Syria and Iraq. However, its parent States, i.e. Syria and Iraq, did not recognize it as a State and armed actions persisted. Eli Bernstein submits that, therefore, "it is fair to say that IS has not achieved recognition, nor is it likely that any acts of positive recognition will ever be made[161]." Recognition of the self-proclaimed IS as a State, if any, would be premature recognition, and thus constitute intervention in the internal affairs of Syria and Iraq. As such, the concept of premature recognition may work as an effective weapon against the recurrence of self-proclaimed terrorist 'States.' The concept of premature recognition involves an obligation to withdraw State recognition from the wrongfully recognized 'State' on the part of third States other than the parent State. The parent State is entitled to grant State recognition even to such an entity as an exercise of sovereignty, if not otherwise stipulated in international agreements. In this way, a Point adopted by the Organization of African Unity (OAU) Council of Ministers in 1976 would not be compatible with an international obligation on the part of third States not to grant premature recognition. The Point states that "the recognition of an independent and sovereign state is an act of sovereignty pertaining each member of the international community[162]," because a State that has a prerogative to grant 'premature recognition' to an entity is, as a principle, its parent State. Other States are under obligation not to recognize such an entity as the self-declared SADR as, for instance, an 'independent sovereign African State' under Article IV of the OAU Charter, though it was actually recognized as such.

157. Crawford, "State Practice and International Law in Relation to Secession," British Yearbook of International Law, Vol. 69, 1998, pp. 85-117.
158. Patrick J. Monahan, "The Law and Politics of Quebec Secession," Osgoode Hall Law Journal, Vol. 33, 1995, pp. 28-29.
159. Shaw, International Law, p. 309.
160. Eli Bernstein, "Is the Islamic State a 'State' by International Law?," ResearchGate, 2015, https://www.researchgate.net/publication/310773204_Is_the_Islamic_State_a_'state'_by_International_Law.
161. Shaw, International Law, p. 309. Concerning the seceding entity openly abjures any intention of seeking international recognition, Lee C. Buchheit argues that "even a nonparticipatory entity must act in accordance with certain basic normative principles such as the prescription of the use of force," in idem., Secession: The Legitimacy of Self-Determination, Yale University Press, 1978, p. 235.
162. OAU Doc ME/5149/A/9, 3 March 1976, reproduced in Talmon, op. cit., supra note 28, p. 186, n. 380.

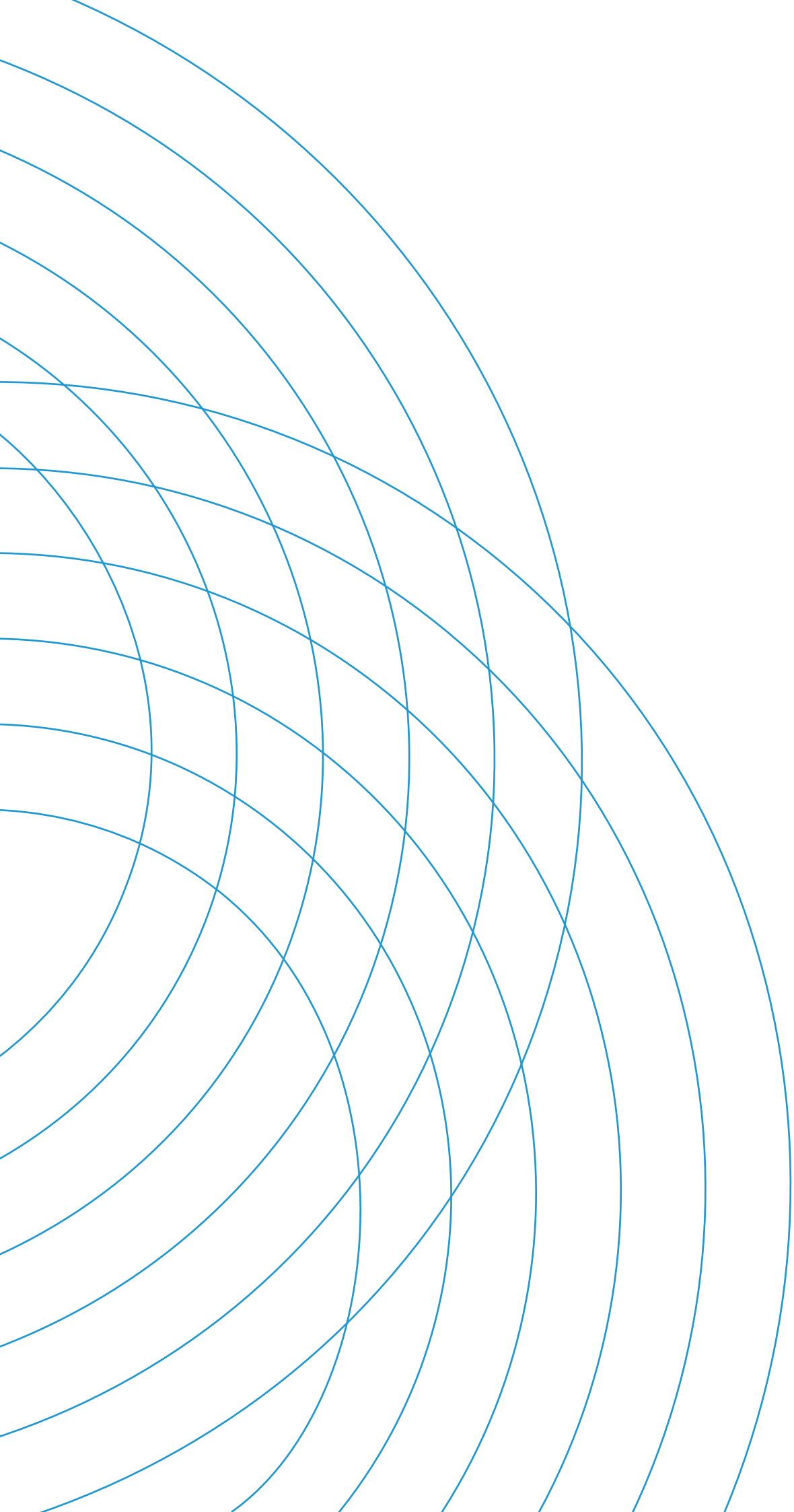
Indeed, there are some theoretical objections to the possibility of withdrawing State recognition once granted, especially with respect to de jure recognition[163]. In reality, however, withdrawal of recognition is common in State practice. Since 'non premature recognition' is the only international rule regulating acts of granting recognition on the part of third States, the recognizing States are under obligation to withdraw the recognition, as mentioned above. Lauterpacht states that in principle there would seem to be no reason why recognition should not be liable to withdrawal[164]. Thus, a State may repeat granting recognition to and its withdrawal from the same entity, as exemplified by Guinea-Bissau. First, Guinea-Bissau had granted recognition to the self-declared SADR in 1976, then withdrew it in 1997, and again granted recognition in 2009, but ultimately withdrew it the following year[165].

As discussed above, the self-declared SADR does not have its own territory and, therefore, does not assume sovereignty. Besides, it is not independent of Algeria. More importantly, its parent State, i.e. Morocco, does not recognize it as a State. So, a third State's act of recognizing it as a State is premature recognition and constitutes intervention in the internal affairs of Morocco. Such recognizing States assume responsibility to cease the internationally wrongful act. The wrongful act would cease when the recognition of the self-declared SADR is withdrawn. Then, the status of the self-declared SADR would be a non-State actor, as long as not otherwise stipulated in international agreements.

Substantially, even a non-State actor may have interests and damages under the existing international law, because States assume various international responsibilities in relation to non-State actors. A non-State actor would be incorporated into the system of international law through the implementation of international responsibilities by States. The concept of premature recognition is its example. In reality, withdrawal of recognition of the self-declared SADR would unfavorably exert an extensive political influence on this non-State actor.

As a principle, international law does not govern the act of granting State recognition to an entity. That is why the act has been universally conceived as discretionary. However, international law imposes on States an obligation not to grant premature recognition to an entity, like the self-styled IS and the self-declared SADR. In fact, the self-declared SADR does not fulfill the primary conditions for Statehood, namely approval by the parent State, territory, and independence. Since the self-declared SADR is not recognized as a State by Morocco, recognition of the self-declared SADR is premature recognition. Accordingly, recognition, whether de jure or de facto, already granted to the self-declared SADR must be withdrawn in conformity with the law of State responsibility.

163. Lauterpacht, Recognition, p. 349.
164. Ibid.
165. Michael D. Jacobs, "Hegemonic Rivalry in the Maghreb: Algeria and Morocco in the Western Sahara Conflict," University of South Florida, 2012, p. 63, https://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=5282&context=etd.



Policy Center for the New South

Complexe Suncity, Immeuble C,
Angle Boulevard Addolb et rue Albortokal,
Hay Riad, Rabat - Maroc.

Email : contact@ocppc.ma
Phone : +212 5 37 27 08 08
Fax : +212 5 37 71 31 54
Website : www.policycenter.ma