

Challenges Facing the Montevideo Convention on the Rights and Duties of States

Archana Vijai Kumar*

Abstract

The main objective of this research paper is to dissect the requirements for statehood provided under Article 1 of the Montevideo Convention on the Rights and Duties of States, 1933, and challenge their effectiveness in the 21st century, based on state practice and customary international law. It critically analyses the requirements under Article 1 (a permanent population, a defined territory, an independent and effective government and the legal capacity to enter into relations with other states) by highlighting their rigidity and the effects of the right of self-determination on statehood, while considering the controversial but equally vital role the international community plays. Further, it ventures into the different theories of recognition and underscores the issues within each theory, *inter alia*, the effects of non-recognition by powerful states, admission of states into the United Nations, and the lack of a central authority to govern the recognition of member states. The growing threat of climate change further exposes the inadequacy of Article 1's criteria and its failure to address issues such as the displacement of populations and shifts in territorial boundaries. It emphasizes Article 1's inadequacy in determining statehood by examining its flaws while providing cogent evidence and academic literature to support these arguments. [Ultimately], this research paper concludes that the requirements under Article 1 are not only inadequate but irrelevant in determining statehood in the 21st century, especially in light of climate change.

Keywords

Montevideo Convention on the Rights and Duties of States 1933, Permanent Population, Defined Territory, Independent and Effective Government, Constitutive Theory, Declaratory Theory, Right to Self-determination, State Recognition.

1. Introduction

Article 1 of the Montevideo Convention on the Rights and Duties of States 1933 has been recognised by numerous scholars as the universally accepted criteria for statehood. Article 1 provides elements for statehood which are a permanent population, a defined territory, an independent government and the legal capacity to enter into relations with other states. This research paper analyses each of the elements under Article 1, challenges its effectiveness on state practice while recognizing other considerations of statehood and its relevance in determining statehood in light of climate change in the 21st century. In the end, this paper concludes that despite its relevance, the Montevideo Convention does not provide an adequate explanation for the criteria of statehood, other than merely stating elements, and is undeniably flawed in addressing current issues under international law.

* Student of LL.M. (Conflict, Security and Human Rights), University of Hull. Email: a.bijai-kumar-2022@hull.ac.uk; archanavjk9@gmail.com.



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2. Permanent Population

The first criterion for statehood under Article 1 is the need for a permanent population.¹ However, Article 1 fails to explain this. Oppenheim argues that a population can be viewed as an ‘aggregate of individuals of both sexes who live together as a community in spite of the fact that they may belong to different races or creeds, or be of different colour.’² Dixon is of a differing opinion, that there must be a ‘population linked to a specific piece of territory on a more or less permanent basis.’³ Oppenheim’s argument suggests that a population is a community of residents that reside together but does not mention the notion of permanence. In this sense, the latter view is preferred.

For a state to have a ‘permanent population’, there must be an intention to establish permanent residency within the state and to be recognised as its inhabitants thereof. Such an attribute can be derived from the nature of livelihood in that state. For instance, Sealand is not recognised as a state as all its citizens have dual citizenship and permanently reside in their home countries. Similarly, the Free Republic of Liberland does not have any permanent population since its formation in 2015, and as such, has not been recognised as a state.⁴ Hence, it does seem that there is a strict need for permanency of population within states. However, as seen in *The Western Sahara case*, the ICJ has recognised nomadic tribes as ‘population’ if they have rights to the land.⁵

Article 1 also does not specify if the population must be considered indigenous in its origin. However, states are recognised despite not having indigenous people as the majority of its population. For instance, the Falkland Islands is recognised by the United Nations as a Non-Self-Governing Territory despite having a population of descendants of UK nationals. Article 1 also fails to lay out the minimum number of populations required. However, inference can be made that there is no minimum population as large states like China (with 1.4 billion people) and small states like Vatican City (with 1,000 people) are equally recognised.

From the above, it seems highly probable that the need for a permanent population is essential as it provides for an organized community to form the basis for the birth of a state. Despite its relevance, Article 1 has failed to explain and provide guidance on the requirements considering migration and dual citizenship.

3. Defined Territory

The second criterion is the need for a defined territory.⁶ Article 1 fails to explain this requirement and in an ironic sense, define the elements of a defined territory. It is silent in its application to disputed territories of states, especially emerging states post-decolonization. The key element is that this requirement sits upon the need for a particular territorial base upon which states can operate.⁷ To fulfil this requirement, some defined physical existence must be

¹ Montevideo Convention on the Rights and Duties of States (adopted 26 December 1933, entered into force 26 December 1934) 165 LNTS 263, Art 1.

² Lassa Oppenheim, *International Law* (8th edn, Oxford University Press 1955), 118.

³ Martin Dixon, *International Law* (6th edn, Oxford University Press 2007), 119.

⁴ Gabriel Rossman, 'Extremely Loud and Incredibly Close (but Still So Far): Assessing Liberland's Claim of Statehood' (2016) 17(1) CJIL 306, 309.

⁵ Advisory *Opinion of Western Sahara* (1975) ICJ Reports of Judgments, Advisory Opinions and Orders, 102.

⁶ *Montevideo Convention* (n 1).

⁷ Malcolm N. Shaw, *International Law* (9th edn, Cambridge University Press 2021), 183.

present to mark it out clearly from its neighbours.⁸ However, this requirement is not adhered to strictly by member states.

After World War I, many states were recognised for its territorial consistency even when their boundaries had not been accurately delimited.⁹ For instance, Albania was recognised as a state by many countries, although its borders were not defined for a long period.¹⁰ Despite having multiple claims over Palestinian territory, Israel has been accepted by the United Nations as a valid state; because despite the conflicts regarding its borders, there is a clearly marked territory that is solely recognised as 'Israel'. In fact, the UK itself has recognised many states that have disputes over their borders with their neighbours. However, the states mentioned here came into existence after being 'recognised' by other states. Hence, recognition plays a huge role in the circumstances of a state having a disputed territory. In the event there is a void in recognition from other states, this requirement would need to be strictly adhered to. This is explained in detail in Part 6.

Crawford argues that there is a need for the establishment of an effective political community for this criterion to be fulfilled.¹¹ This argument is humbly disagreed with, as the word 'political' reflects a subjective interpretation and is dependent on the government of the day. The preferred view is that of the importance placed on the presence of a stable community within a certain area.¹² This view places this criterion's fulfilment on stability within a certain area and does not dwell upon the territorial disputes which often occur during decolonization. This requirement, although relevant, is not a strict requirement followed by member states. As argued above, there are instances where recognition plays an important role in recognizing statehood when there is uncertainty of a state in fulfilling this requirement. In this regard, Article 1 has failed to consider the impact recognition plays.

4. An Independent and Effective Government

The next criterion is an independent and effective government.¹³ In this regard, Crawford's view of a stable 'political community' is accepted¹⁴ as there is a necessity for an effective government, with central administrative and legislative organs. Although necessary, it is not a condition for the recognition of an independent country but acts as proof of a political structure of independence. For instance, Congo was recognised by other states as having formal independence despite not having an effective government.¹⁵ In this sense, there seems to be a flexible approach to this requirement.

The government would require a sufficient level of control for it to be independent. For instance, Transkei is not recognised by the United Nations since the majority of its budget was controlled by South Africa.¹⁶ However, Shaw believes that the lack of effective central control may be compensated by significant international recognition, leading to the membership of

⁸ Dixon (n 3).

⁹ *Duestche Continental Gas-Gesellschaft v Polish State* (1929), Annual Digest of Public International Law Cases (Cambridge University Press 2021).

¹⁰ *North Sea Continental Shelf Case* (1969) ICJ Reports of Judgments, Advisory Opinions and Orders, 32.

¹¹ James Crawford, *Brownlie's Principles of Public International Law* (9th edn, Oxford University Press 2012), 128.

¹² Shaw (n 7), 183.

¹³ *Montevideo Convention* (n 1).

¹⁴ Crawford (n 11), 128.

¹⁵ James Crawford, *The Creation of States in International Law* (Oxford University Press 1979), 42-43.

¹⁶ Geoffrey E. Norman, 'The Transkei: South Africa's Illegitimate Child' (1977) 12 *New England Law Review*, 585, 588.

the United Nations.¹⁷ Such a view is accepted, although any lack of effective control will need to be substituted with recognition that must be 'significant.' It is not known for sure what would amount to 'significant' recognition. However, it is implied that a large number of states would need to confer that recognition. For instance, states like Croatia, Bosnia and Herzegovina were recognised by other states despite facing uncertainty in fulfilling this requirement.¹⁸ Although it does not have an effective government and is not a member of the United Nations, Kosovo is still recognised by states like the U.S., Germany, France and more.

It is argued that such recognition is only valid because it comes from powerful nations as the aforementioned. However, this is not absolute. For instance, Somaliland, a separate state with an effective government was not recognized as a state by the United Kingdom¹⁹ and as such, remains as an unrecognised state. Although external recognition is vital, there are instances where a state possesses a sovereign government due to the internal recognition of it being the highest authority. For instance, Transnistria is a state with internal recognition of its sovereignty despite not having the same kind of external recognition.²⁰

Despite the above, membership of the United Nations is not equivalent to statehood as there are states that are recognised without being part of the United Nations (for instance, Vatican City). It is equally incorrect to state that membership of the United Nations is a sign of the existence of the state, as there are entities that are not recognised as an independent state despite being members. For instance, Ukraine and Byelorussia have been members of the United Nations since 1945. Hence, although recognition of the state is important and often results in its membership of the United Nations, it is controversial to conclude that membership of the United Nations automatically gives rise to statehood. Additionally, loss of control by the central government does not lead to the termination of statehood.²¹ For instance, Lebanon and Sudan were still recognised as states despite there being an invalid government because of civil wars in those states.

This requirement is crucial as it shows the legal capacity of governments to enter into relations with other states. Equally important is the impact that recognition from other states have. It is necessary for governments to possess effective control over their states and to be viewed as sovereign, since sovereignty signifies independence.²² However, in the event of diminishing sovereignty, significant recognition can grant states the notion of statehood. Nevertheless, caution must be exercised in this regard, as a significant lack of effective control may not be compensated by international recognition. For instance, in a belligerent occupation, the occupied state is prevented from exercising effective control during the said occupation. In such circumstances, although the existence of the state's sovereignty is not challenged, its governmental and administrative functions are heavily impacted. Here, recognition from other states will not negate the state's lack of effective control and this requirement for statehood will be left unfulfilled.

¹⁷ *Shaw* (n 7), 185.

¹⁸ Robert M. Hayden, 'The 1995 Agreements on Bosnia and Herzegovina and the Dayton Constitution: The Political Utility of a Constitution Illusion' (1995) 4 *Euro Const Rev* 59, 61.

¹⁹ Michael Schoiswohl, 'Status and (Human Rights) Obligations of Non-Recognised De Facto Regimes in International Law: The Case of Somaliland' (Martinus Nijhoff, 2004).

²⁰ Michael Bobick, 'Sovereignty and the Vicissitudes of Recognition: Peoplehood and Performance in a De Facto State' (2017) 40(1) *Polar* 158, 159.

²¹ *Dixon* (n 3), 116.

²² *Island of Palmas case (Netherlands, U.S.A)* (1928), UN Reports of International Arbitral Awards, 829.

5. Legal Capacity to Enter Into Relations with Other States

The next criterion is the legal capacity of the state to enter into relations with other States.²³ In this regard, Article 1 has failed to lay out the elements of legal capacity for states to enter into relations with others. Although relevant, it is not specific to states but applies to other entities such as international organizations, including non-governmental agencies, the United Nations and regional bodies like the European Union. However, the key difference here is that states are capable of having full legal capacity, unlike other entities that may have partial legal capacity.²⁴ Thus, the question is not about the extent of legal capacity but its presence or absence.

It must be emphasized that this is the most important criterion since it goes into the core aspect of the existence of member states, as well as an indication of the importance attached to its recognition by other member states.²⁵ The most crucial element is the presence of a sovereign state that is not in the direct or indirect control of another.²⁶ Although this criterion is vital, we must readily acknowledge that no state is entirely independent. States often rely on one another for resources, financial aid, political support and more. For instance, the Czech Republic and Slovakia are heavily dependent on each other for trade despite having achieved individual sovereignty.

Restrictions upon a state's liberty do not affect its independence if such restrictions do not place the state under the legal authority of another.²⁷ For instance, Austria was recognised as an independent state despite having various restrictions on its economic and military freedom. The ability of another state to control the economic or legislative elements of another would dampen a state's independence. This is seen in *The North Atlantic Coast Fisheries case* wherein allowing the U.S. to have a right in the preparation of fishing legislation would give it a right in the legislative affairs of Great Britain and cause it to be dependent.²⁸

A state is independent despite having an external body overseeing its government functions.²⁹ This is seen in the recognition of Bosnia and Herzegovina, despite having a High Representative appointed to implement the peace settlement, following the end of the Bosnian War.³⁰ A similar approach was taken in Kosovo where it was seen to have 'independence with international supervision' in the form of an International Civilian Representative.

However, this approach differed when it came to the independence of Lithuania, where it is termed as not truly 'independent' as the Soviets possessed substantive control over it. Although this criterion is essential as it dives deep into the sovereignty of a state, there are certain elements regarding 'independence' which ought to be considered. Drawing from the idea that 'no man is an island', this concept can be critically applied to states as well; no state can be fully independent or self-sufficient, as there is always some degree of dependency on other states for resources, as previously mentioned.

²³ *Montevideo Convention* (n 1).

²⁴ Cecily Rose, *An Introduction to Public International Law* (Cambridge University Press 2022), 35.

²⁵ *Shaw* (n 7), 185.

²⁶ *Dixon* (n 3), 120.

²⁷ *Austro-German Customs Union Case* (1931), PCIJ Rep Series A/B, No 41.

²⁸ *The North Atlantic Coast Fisheries Case (Great Britain, United States)* (1910), XI UN RIAA 167, 186.

²⁹ *Shaw* (n 7), 186.

³⁰ The General Framework Agreement for Peace in Bosnia and Herzegovina (adopted 21 November 1995, entered into force 14 December 1995) UN Doc S/1995/999, Annex 10.

A state need not have full control nor eliminate all forms of dependency on other states to be recognised, but would need to ensure that no other state or entity has effective control over it and that it, in every sense of the term, is truly ‘independent.’

6. The Right of Self Determination

One of the considerations for statehood, aside from Article 1, is the people’s right to self-determination under the UN Charter 1945.³¹ The right of self-determination is recognised as a rule of *jus cogens* giving rise to ‘*erga omnes*’ obligations.³² The right comprises two aspects: internal self-determination which pertains to a people’s rights to political, economic, social and cultural development³³ and external self-determination, which encompasses the right to unilateral secession.³⁴

The emergence of the right to self-determination has affected the criteria for an independent government in member states undergoing decolonization. In such cases, a lower standard of effectiveness in situations of decolonization has been accepted.³⁵ As argued above, the requirement of an independent and effective government is a crucial criterion for statehood. However, in instances of decolonisation, the standard for fulfilling the criterion of an effective government is significantly lowered allowing for the self-government of the state and its people, as per Article 73(b) of the UN Charter.

As a result, academics argue that it is now necessary for international law to allow democracies to validate the governance of their states.³⁶ For instance, Katanga’s secession from Congo was recognised by several states and was admitted to the United Nations despite a breakdown of its government. However, the approach differed for the Portuguese colony of Guinea-Bissau. The United Nations recognised the independence of the Republic of Guinea-Bissau through a resolution passed by the General Assembly, which passed with over 93 votes in favour from member states.³⁷

Although some Western states including Portugal denied that the criteria for statehood had been complied with, the admission of Guinea-Bissau as a member of the United Nations was in accordance with the decision of the General Assembly under the UN Charter 1945.³⁸

Therefore, it can be viewed that the right of self-determination is an additional criterion for statehood. However, it is crucial that there is sufficient recognition from other states regarding the independence of the state based on self-determination. However, the question of how much recognition is required poses a range of complexities. For instance, in the case of Rhodesia, a resolution was passed by the United Nations General Assembly condemning the actions of Rhodesian authorities for independence through illegal methods and called upon

³¹ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945), Art 55.

³² *Case Concerning East Timor (Portugal v. Australia)* (Judgment) (1995) ICJ Rep 90, 102.

³³ United Nations General Assembly Resolution ‘Declaration on the Granting of Independence to Colonial Countries and Peoples’ (14 December 1960) UN Doc A/RES/1514(XV).

³⁴ *Re Secession of Quebec* (1998) 2 SCR 217.

³⁵ Crawford (n 11).

³⁶ Thomas M. Franck, ‘The Emerging Right to Democratic Governance’ (1992) 86(46) AJIL 47.

³⁷ United Nations General Assembly ‘Illegal Occupation By Portuguese Military Forces Of Certain Sectors Of The Republic Of Guinea-Bissau And Acts Of Aggression Committed By Them Against The People Of The Republic’ (2 November 1973) UN Doc A/RES/3061 (XXVIII).

³⁸ *Charter of the United Nations* (n 31), Art 4.

other member states to not recognise Rhodesia.³⁹ It was eventually recognised as Zimbabwe after a civil war. Although Rhodesia had fulfilled the necessary factual requirements of statehood and had a strong movement of self-determination, the absence of total recognition from other states led to it not being recognised.

7. Recognition from Other States

In recent years, we have noticed how recognition from other states can give rise to statehood despite the state in question's failure to fulfil the requirements for statehood (for instance, Congo). However, to what extent does recognition 'fill in the void' for states that do not fulfil the requirements? In this regard, there are two theories in place.

7.1. The Constitutive Theory

The constitutive theory asserts that a state gains statehood solely upon recognition. This means that an entity becomes a state, subject to the will of member states. The Montevideo Convention, however, only guides us that recognition allows a state to be a personality with all the rights under international law.⁴⁰ However, caution must be exercised since recognition plays a far bigger role than what is maintained in the Montevideo Convention. In this theory, the recognition of a state by another could be more political rather than factual⁴¹. The decision to recognise a state often depends on the political relationships between states, and more powerful states typically have a greater influence on the recognition of less powerful states. An instance of such a political tug-war is when the U.S. refused to recognise China due to concerns over legal and economic implications, while simultaneously asserting its own sovereignty and influence on the international stage. This demonstrates how recognition can be driven by strategic and political interests, rather than just the fulfilment of statehood criteria.

In the previous paragraphs, we have established that the requirements under Article 1 are not necessarily clear and concise. In situations of uncertainty, the constitutive theory provides that recognition from member states offers clarity in assessing the entity's status internationally. Recognition by other states is crucial for establishing statehood, and the lack of recognition by a majority of states can indicate that the entity has not fulfilled the requirements for statehood. For instance, when states were obligated not to recognise South Africa's presence in Namibia.⁴²

However, confusion arises if a member state's admission to the UN signifies recognition of statehood. Dixon argues that votes from member states in favour of a state's admission to the United Nations could imply recognition of statehood.⁴³ This perspective is illustrated in *The Yugoslav Republic of Macedonia case*, which, following United Nations Security Council Resolution 817, was recognised as a state and admitted as a member of the United Nations.⁴⁴ In this regard, it suggests that one can imply statehood recognition when a state is voted into membership of the United Nations.

³⁹ United Nations General Assembly Resolution 'Question of Southern Rhodesia' (11 November 1965) Un Doc A/RES/2024 (XX).

⁴⁰ *Montevideo Convention* (n 1), Art 6.

⁴¹ *Shaw* (n 7), 376.

⁴² *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276* [1970], ICJ Reports of Judgments, Advisory Opinions and Orders.

⁴³ *Dixon* (n 3), 131.

⁴⁴ United Nations Security Council Resolution 817 (7 April 1993) UN Doc S/RES/817 (1993).

However, Lauterpacht argues (and it is agreed) that even without admission to the United Nations, a state has the legal duty to recognise another state if the requirements under Article 1 are met.⁴⁵ Here, recognition plays no important role.

This theory raises several unresolved doubts. Firstly, in the event the requirements under Article 1 are not met, is there a minimum number of state recognitions needed for one to obtain the status of statehood? Secondly, are there political consequences if a state is not recognised by powerful states including permanent members of the United Nations Security Council? Thirdly, if there is a divide in opinion on recognition between member states, does that give rise to a partial legal personality of an entity? This was observed in Kosovo, wherein the international community was heavily divided in its recognition and resulted in a conundrum of Kosovo's legal personality. Since Kosovo is not a member of the United Nations, it seems that it is only entitled to diplomatic immunities offered by the member states that recognise it. This merely further complicates the problem. The constitutive theory does not provide clarity in instances of recognition (or lack of thereof) of self-proclaimed states; including Nagorno-Karabakh Republic and the Turkish Republic of Northern Cyprus, which remain unrecognised despite fulfilling the requirements under Article 1.⁴⁶ Although the constitutive theory provides brief guidance on the influence recognition may have on statehood, I maintain that it sparks confusion amongst international law thinkers since it fails to clarify the doubts raised above.

7.2. The Declaratory Theory

In contrast, the declaratory theory of statehood provides that when an entity fulfils the requirements under Article 1, recognition simply acknowledges the state's pre-existing legal capacity⁴⁷ and admits a factual situation.⁴⁸ This theory is more favourable as it is based on the fulfilment of the requirements of Article 1. The Montevideo Convention does consider this theory in recognizing that the political existence of a state is independent of its recognition by other states.⁴⁹ A state's refusal to recognise another state does not bear legal effects on its existence.⁵⁰

However, I insist that there are still important questions and ambiguities surrounding the criteria under Article 1. To what extent must these criteria be fulfilled before recognition from other states can be invoked? I agree with Shaw's argument that recognition here is merely an admission of a 'factual situation.' But can a state ever be a fact? A state cannot be a fact without having any legal status attached to it due to the rules and practices that define the entity of that state.⁵¹ This is because a state is an ever-changing entity with various elements at play.

Even if the requirements for statehood are met, there can be uncertainty in the state's fulfilment of the criteria (for instance, the criteria of a defined territory which is currently unclear in the Israel-Palestine conflict). There is also a lack of a central authority that can decide on whether recognition should be afforded to states or not. In circumstances like this, the

⁴⁵ Hersch Lauterpacht, 'Recognition of States in International Law' (1944) 53(3) YLJ 385.

⁴⁶ Sascha Dov Bachmann and Martinas Prazauskas, 'The Status of Unrecognized Quasi-States and Their Responsibilities Under the Montevideo Convention' (2019) 52(3) TIL 393, 394.

⁴⁷ *Dixon* (n 3), 132.

⁴⁸ *Shaw* (n 7), 382.

⁴⁹ *Montevideo Convention* (n 1), Art 3.

⁵⁰ Institut De Droit International, 'Resolutions Concerning the Recognition of New States and New Governments' (2017) 30(4) AJIL 185.

⁵¹ *Crawford* (n 11).

obligation would probably fall on member states.⁵² Here, the arguments on political influence put forth under the constitutive theory (as mentioned above) apply.

8. Challenges facing the Montevideo Convention: Climate Change in Perspective

It has been extensively argued that the criteria under Article 1 is not effective in addressing the challenges of statehood. Nevertheless, how is one of the requirements, namely the requirement for a defined territory, relevant in respect of extinction and re-emergence of states because of climate change? It is argued and strongly echoed that climate change may render a state both factually and legally extinct.⁵³ As a result, there will be displacement of permanent populations, ambiguity as to the effectiveness of governments and their capacity to enter into legal relations and inevitably, the lack of a defined physical territory. With a lack of precedence regarding this matter, it is obvious we need to redefine the requirements for statehood under Article 1 considering climate change.

Since we have established that a strict approach to the requirements in Article 1 is not required, there is room for flexibility when it comes to climate-threatened states. For a state to maintain its statehood and (as much as possible) adhere to the requirements of Article 1, a submerging state may remain sovereign by purchasing new territories. For instance, Indonesia agreeing to rent out its island to The Maldives.⁵⁴

There could also be a possibility for the construction of man-made islands that would permanently be above the sea level, for the resettlement of citizens of submerging states. However, the challenge is the inadequacy of the United Nations Convention on the Law of the Sea in addressing these concerns.⁵⁵ Since recognition from member states play a critical role for statehood, states could still be recognised as legally independent (as compared to factually independent) if they satisfy certain elements in Article 1.

For instance, a state can be recognised as independent while having a largely decreasing number of populations or in the event of full submersion, a state could be independent with the presence of a functioning government situated in another state.⁵⁶ It is evident that the Montevideo Convention has significantly failed to consider the relevance of its requirements under Article 1 in light of one of the biggest threats in the 21st century, which is climate change.

9. Conclusion

The criteria for statehood as stipulated in Article 1 is vital but there is no clear approach taken in fulfilling such requirements. Article 1 fails to address the concerns attached to each requirement; which begs the need for an academic exploration into the tenets of international law. Although certain requirements simply cannot be ignored (like the requirement for a permanent population), Article 1 is silent on the importance of the right of self-determination and the substantial role played by recognition from other states. Branching from the arguments put forth above, it cannot be denied that recognition amplifies a state's claim to statehood; the

⁵² *Lauterpacht* (n 42).

⁵³ Seokwoo Lee and Lowell Bautista, 'Climate Change and Sea Level Rise: Nature of the State and of State Extinction' in Richard Barnes and Ronan Long (eds), *Frontiers in International Environmental Law: Oceans and Climate Challenges* (Koninklijke Brill, 2021) 209.

⁵⁴ Jane McAdam, *Climate Change, Forced Migration and International Law* (Oxford University Press, 2012) 122.

⁵⁵ United Nations Convention on the Law of the Sea (adopted 16 November 1982, entered into force 16 November 1994) 1833 UNTS 3.

⁵⁶ *Crawford* (n 11), 678.

more the recognition, the less the need for adherence to the requirements,⁵⁷ but it cannot completely replace it. With an increase in climate change and the possible submersion of smaller states, there is an obvious lacuna in the Montevideo Convention in addressing such issues and providing guidance on the statehood of re-emerging states. Therefore, the Montevideo Convention requires an urgent revamp to ensure its relevancy in a post-colonial and ever-changing world like ours.

⁵⁷ *Shaw* (n 7).