

James Crawford

THE  
CREATION  
OF STATES IN  
INTERNATIONAL  
LAW

# The Creation of States in International Law

James Crawford

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## Foreword

A MAJOR study of the creation of States has long been wanted. Scholars are commonly diverted from areas of the first importance by the lure of the more conspicuously up-to-date, and by a concern to avoid the more extensive zones of inquiry. Another factor is a reserve in the face of material which is said to be 'political' and, therefore, not a proper subject of legal analysis. Dr. Crawford has had the nerve and the energy to tackle a set of problems central to the workings of state relations. In doing so he has not only teased out a range of difficult questions of principle but has also provided a most useful handbook of information on the formation and extinction of states and the related phenomena of mandates, trusteeships, non-self-governing territories, international dispositive powers, and collective recognition.

It is a pleasant task to introduce a work which will make a considerable contribution to the literature both of international law and of international relations in the broader context. The book is a fairly reduced version of a very substantial text submitted for the degree of Doctor of Philosophy at Oxford. Since I acted as supervisor, I can claim a certain credit in the manner of an impresario. By the same token, the performance was Dr. Crawford's.

IAN BROWNLIE

*31 January 1977*

## Preface

SINCE THE development of the modern international system, statehood has been regarded as the paramount type of international personality; indeed, in doctrine if not in practice, States were for a time regarded as the only international persons. This is no longer so; but the political paramountcy of States over other international actors, with whatever qualifications, continues, and statehood remains the central type of legal personality. Problems of definition, and of application of the definition, of statehood thus occupy an important place in the structure of international law. None the less, the topic of statehood has been rather neglected by writers. There is an abundance of practice, a surprising volume of case law, and a large number of studies of particular instances or problems of territorial status. The general treatises all contain the mandatory section on statehood and legal personality, and some of these treatments are of a high order. But, apart from Marek's study on identity and continuity of States (published in 1954 and reissued in 1968), and various accounts of recognition of States in books on recognition generally, there is, to the writer's knowledge, no monograph dealing with the topic of statehood as such, in the light of the substantial modern practice in that field. This observation is not of course original: the writer's interest in the topic was engaged by observations in two leading works to this effect.<sup>1</sup> This study attempts to deal with the representative modern doctrine and practice in relation to the public international law of statehood and territorial status; and thus, however inadequately, to contribute to filling the void mentioned by Professors Jennings and Brownlie.

Perhaps the most controversial issue in this area is the relationship between statehood and recognition. The view that recognition is constitutive of State personality derives historically from the positive theory of international obligation. However, this view does not correspond with State practice; nor is it adopted by most modern writers. On the other hand, in this as in

<sup>1</sup> Jennings, *Acquisition of Territory*, 11-12; Brownlie, *Principles*, 74.

other areas, relevant State practice—including recognition practice, especially where recognition is granted or withheld on grounds of the status of the entity in question—is of considerable importance. Against this background, this study examines the criteria for statehood in international law, and the various ways in which new States have been created in the period since 1815.

Traditionally, the criteria for statehood have been regarded as resting solely on considerations of effectiveness. Entities with a reasonably defined territory, a permanent population, a more or less stable government and a substantial degree of independence of other States have been treated as States. Other factors, such as permanence, willingness to obey international law, and recognition, have usually been regarded as of rather peripheral importance. To some extent this represents the modern position. However, several qualifications are necessary.

In the first place, this standard view is too simple. Much depends on the claims made by the entities in question, and on the context in which such claims are made. In some circumstances, criteria such as independence or stable government may be treated as flexible or even quite nominal; in other cases they will be strictly applied. Apart however from the necessary elaboration of the criteria for statehood based on effectiveness, a serious question arises whether new criteria have not become established, conditioning claims based on effectiveness by reference to fundamental considerations of legality. Practice in the field of self-determination territories is the more developed, but the same problem arises in relation to entities created by illegal use of force. These criteria, taken together, are on the whole reflected in United Nations practice; they also provide a flexible but generally applicable standard against which to consider the status of the numerous unusual or 'anomalous' territorial entities (Taiwan, the Holy See, Andorra, and so on).

Problems of the creation of States have commonly been regarded as matters 'of fact and not of law'. This view was again simplistic, since it assumed the automatic identification of States, whether by recognition or the application of criteria based on effectiveness. In practice, identification and application of the criteria to specific cases or problems raise interesting and difficult problems, some of which are dealt with in Part II of this study. These problems do not of course occur in isolation; they are

classifications, rather than exclusive mandatory 'modes' of the creation of States. However, the problems discussed in each context (dependent States, devolution, secession, and so on) have common features which justify such separate classification.

Superimposed on these classifications of the methods of the creation of States are the various more overtly international competences or authorities affecting the creation of States: these are dealt with in Part III. The problem of international powers of disposition has attracted a good deal of practice since 1815. More specifically, the development of self-government of colonial territories under the Mandate and Trusteeship systems, and pursuant to Chapter XI of the Charter (non-self-governing territories) has attracted a substantial body of practice.

Finally, certain incidents of the creation of States, such as commencement or acquisition of territory by new States, and certain related problems (identity, continuity, reversion, and extinction) are discussed in a concluding section.

So far as is possible, the text is correct to 31 December 1977.

#### NOTE

In this study, the word 'State' in the sense of the political unit will be capitalized. This practice avoids confusion with other meanings of the word, and is as recommended in Fowler's *Modern English Usage*. The State is not however allocated a sex: where necessary the pronouns 'it' and 'its' are used.

See also Dowdall, 'The Word "State"' (1923), 39 *LQR* 98-125, 98.

## Acknowledgements

THIS STUDY is a revised and condensed version of a thesis submitted in 1976 for the degree of Doctor of Philosophy in the University of Oxford. Part of the research was done while I was at University College, Oxford, under an Australian Shell Scholarship: the remainder, and the bulk of the writing, was completed in Adelaide. During this time, I was fortunate in having as supervisor Professor Ian Brownlie. Professor Brownlie's rigorous but sympathetic guidance and advice have been invaluable. I wish to thank my examiners, Professor James Fawcett of King's College, London, and Dr. Maurice Mendelson of St. John's College, Oxford, for their valuable criticism and for the tolerance shown towards an over-large thesis. Professor D. P. O'Connell, Chichele Professor of Public International Law in the University of Oxford and formerly Professor of International Law in the University of Adelaide; Dr. J. M. Finnis, of University College, Oxford; Mr. E. Lauterpacht Q.C., Legal Adviser to the Australian Government; Professor Arthur Rogerson, Bonython Professor of Law in the University of Adelaide, and Dr. D. J. Devine, also made helpful comments or offers of assistance. I must also thank the following for their support and assistance: the Librarian and staff of the Law Library, the University of Adelaide; the Librarians and staff of the Bodleian Law and Codrington Libraries, Oxford; the Shell Company of Australia, and in particular Mr. R. L. Dahlenburg; the Chairman, Professor H. K. Lücke and members of the Department of Law in the University of Adelaide; Professor A. C. Castles; Mr. David St. L. Kelly, A.L.R.C.; Dr. Julius Varsanyi; Dr. R. S. White of the University of Newcastle-upon-Tyne; Mrs. J. Johnson and Mrs. J. Smith, who patiently deciphered the manuscript.

Finally, my deepest thanks are owed to my wife, Marisa Luigina, to whom this work is also dedicated, for her support and encouragement.

*Adelaide*

*28 February 1977*



Whereas the States of the world form a community governed by international law . . .

*Draft Declaration on Rights and Duties  
of States*, Preambular Paragraph 1, annexed  
to G. A. Resolution 375(IV), 6 December 1949

# Select Table of Abbreviations

AD	<i>Annual Digest of Public International Law Cases</i>
AFDI	<i>Annuaire Français de Droit International</i>
AJ	<i>American Journal of International Law</i>
AJ Supp.	<i>American Journal of International Law, Supplement</i>
Akehurst, <i>Modern Introduction</i>	M. Akehurst, <i>A Modern Introduction to International Law</i> (London, 3rd edn., 1977)
Al-Baharna	H. Al-Baharna, <i>The Legal Status of the Arabian Gulf States</i> (1968)
ALJ	<i>Australian Law Journal</i>
ALR	Australian Law Reports
Am. Pol. Sc. R.	<i>American Political Science Review</i>
Annuaire	<i>Annuaire de l'Institut de Droit International</i>
Arangio-Ruiz	G. Arangio-Ruiz, <i>L'État dans le sens de droit des gens et la notion du droit international</i> (Bologna, 1975; and in (1975) 26 OZJFOR 3-63, 265-406)
ASCL	<i>Annual Survey of Commonwealth Law</i>
BFSP	<i>British and Foreign State Papers</i>
Bibl. Viss.	<i>Bibliotheca Visseriana, Dissertationum Ius Internationale Illustrantium</i>
BPIL	<i>British Practice in International Law</i>
Brierly, <i>Collected Papers</i>	J. L. Brierly, <i>The Basis of Obligation in International Law and Other Papers</i> (ed. H. Lauterpacht and C. H. M. Waldock, Oxford, 1958)
Brierly, <i>Law of Nations</i>	J. L. Brierly, <i>The Law of Nations</i> (6th edn., ed. Waldock, Oxford, 1963)
Briggs, <i>Law of Nations</i>	H. W. Briggs, <i>The Law of Nations. Cases, Documents and Notes</i> (2nd edn., N.Y., 1952)
Brownlie, <i>Principles</i>	I. Brownlie, <i>Principles of Public International Law</i> (Oxford, 2nd edn., 1973)
Brownlie, <i>Use of Force</i>	I. Brownlie, <i>International Law and the Use of Force by States</i> (Oxford, 1963)
BY	<i>British Yearbook of International Law</i>
Can. B.R.	<i>Canadian Bar Review</i>
Can. YIL	<i>Canadian Yearbook of International Law</i>

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Charpentier, <i>Reconnaissance</i>	J. Charpentier, <i>La Reconnaissance internationale et l'évolution du droit des gens</i> (Paris, 1956)
Chen, <i>Recognition</i>	T. C. Chen, <i>The International Law of Recognition</i> (ed. L. C. Green, London, 1951)
<i>CILSA</i>	<i>Comparative and International Law Journal of Southern Africa</i>
<i>CMLR</i>	Common Market Law Reports
<i>CMLR</i>	<i>Common Market Law Review</i>
<i>Col. JTL</i>	<i>Columbia Journal of Transnational Law</i>
<i>CTS</i>	<i>Consolidated Treaty Series</i>
<i>Dir. Int.</i>	<i>Diritto Internazionale</i>
<i>DSB</i>	<i>Department of State Bulletin</i>
ECJ Rep.	European Court of Justice, <i>Reports of the Jurisprudence of the Court</i>
Fawcett, <i>British Commonwealth</i>	J. E. S. Fawcett, <i>The British Commonwealth in International Law</i> (London, 1963)
For. Aff.	<i>Foreign Affairs</i> (Washington)
GAOR	<i>General Assembly Official Records</i>
<i>Grotius ST</i>	<i>Transactions of the Grotius Society</i>
<i>Grotius SP</i>	C. H. Alexandrowicz, ed., <i>Grotius Society Papers 1968 Studies in the history of the law of nations</i> (The Hague, 1970); <i>id.</i> 1972 (The Hague, 1972)
Hackworth, <i>Digest</i>	G. H. Hackworth, <i>Digest of International Law</i> (15 vols., Washington, 1940-44)
<i>HR</i>	Académie de Droit International, <i>Recueil des cours</i>
<i>H.C. Deb.</i>	<i>House of Commons Debates</i> (5th series unless otherwise stated)
<i>H.L. Deb.</i>	<i>House of Lords Debates</i>
Higgins, <i>Development</i>	R. Higgins, <i>The Development of International Law through the Political Organs of the United Nations</i> (London, 1963)
I.C.J. Rep.	International Court of Justice, <i>Reports of Judgments, Advisory Opinions and Orders</i>
<i>ICJ Rev.</i>	<i>Review of the International Commission of Jurists</i>
<i>ICLQ</i>	<i>International and Comparative Law Quarterly</i>
<i>ILC Ybk.</i>	<i>Yearbook of the International Law Commission</i>
<i>ILM</i>	<i>International Legal Materials</i>
<i>ILQ</i>	<i>International Law Quarterly</i>

ILR	International Law Reports
<i>Indian JIL</i>	<i>Indian Journal of International Law</i>
<i>Indian YIA</i>	<i>Indian Yearbook of International Affairs</i>
<i>Int. Aff.</i>	<i>International Affairs</i> (London)
<i>Int. Conc.</i>	<i>International Conciliation</i>
<i>Int. Org.</i>	<i>International Organization</i>
IR	Irish Reports
<i>Is. Yb. HR</i>	<i>Israeli Yearbook of Human Rights</i>
<i>JDI</i>	<i>Journal du Droit International</i> (Clunet)
Jennings, <i>Acquisition of Territory</i>	R. Y. Jennings, <i>The Acquisition of Territory in International Law</i> (Manchester, 1963)
Kamanda, <i>Legal Status of Protectorates</i>	A. M. Kamanda, <i>A Study of the legal status of protectorates in public international law</i> (Geneva, 1961)
<i>Keesing's</i>	<i>Keesing's Contemporary Archives</i>
Kelsen, <i>Principles</i>	Hans Kelsen, <i>Principles of International Law</i> (2nd edn., rev. R. W. Tucker, N.Y., 1966)
Kiss, <i>Pratique Française</i>	A. C. Kiss, <i>Répertoire de la pratique française en matière de droit international public</i> (7 vols., Paris, 1962-72)
Lauterpacht, <i>Collected papers</i>	E. Lauterpacht, ed., <i>International Law. Being the Collected Papers of Hersch Lauterpacht</i> (Cambridge, vols. 1-3, 1970-77)
Lauterpacht, <i>Recognition</i>	H. Lauterpacht, <i>Recognition in International Law</i> (Cambridge, 1948)
Lauterpacht, <i>Development</i>	H. Lauterpacht, <i>Development of International Law by the International Court</i> (London, 1958)
<i>LNOJ</i>	League of Nations <i>Official Journal</i>
<i>LNTS</i>	League of Nations <i>Treaty Series</i>
<i>LQR</i>	<i>Law Quarterly Review</i>
Marek, <i>Identity and Continuity</i>	K. Marek, <i>Identity and Continuity of States in Public International Law</i> (Geneva, 1954)
Mendelson	M. H. Mendelson, 'Acquisition of Membership in Selected International Organizations' (Oxford, MS.D. Phil. d. 5229, 1971)
<i>MLR</i>	<i>Modern Law Review</i>
Moore, <i>Digest</i>	J. B. Moore, <i>A Digest of International Law</i> (Washington, 8 vols., 1906)
Moore, <i>IA</i>	J. B. Moore, <i>International Arbitrations</i>

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Moore, <i>Int. Adj.</i> ( <i>M.S.</i> )	J. B. Moore, <i>International Adjudications (Modern Series)</i>
<i>NILR</i>	<i>Nederlands International Law Review</i>
<i>NRG</i>	G. F. de Martens, <i>Nouveau Recueil Général de Traités</i>
<i>NYIL</i>	<i>Netherlands Yearbook of International Law</i>
<i>NYUJILP</i>	<i>New York University Journal of International Law and Politics</i>
<i>NZULR</i>	<i>New Zealand Universities Law Review</i>
O'Brien, <i>New Nations</i>	W. V. O'Brien, ed., <i>The New Nations in International Law and Diplomacy</i> (N.Y., 1965)
O'Brien & Goebel, 'U.S. Recognition Policy'	W. V. O'Brien & J. Goebel, 'United States Recognition Policy and the New Nations', in O'Brien, ed., op. cit. 98-228
O'Connell, <i>State Succession</i>	D. P. O'Connell, <i>State Succession in Municipal Law and International Law</i> (Cambridge, 2 vols., 1967)
Oppenheim	L. Oppenheim, <i>International Law—A Treatise</i> (1st edn., London, 1905; Vol. 1, 8th edn. (ed. Lauterpacht), 1955; Vol. II, 7th edn., 1952)
<i>OZFOR</i>	<i>Osterreichische Zeitschrift für öffentliches Recht</i>
<i>PAS</i>	<i>Proceedings of the American Society of International Law</i>
<i>RDI</i>	<i>Revue de Droit International (de la Pradelle)</i>
<i>Rdi</i>	<i>Rivista di Diritto Internazionale</i>
<i>RDILC</i>	<i>Revue de Droit International et de Legislation Comparée</i>
<i>RDISDP</i>	<i>Revue de Droit International, de Sciences Diplomatiques et Politiques</i>
<i>Répertoire suisse</i>	P. Guggenheim, ed., <i>Répertoire suisse de droit international public (1914-1939)</i> , I-IV (Basle, 1975)
<i>Rep. MAT</i>	<i>Reports of Decisions of Mixed Arbitral Tribunals</i>
<i>Rest. 2nd</i>	American Law Institute, <i>Restatement, Second. Foreign Relations Law of the United States</i> (1965)
<i>RGDIP</i>	<i>Revue Général de Droit International Public</i>
<i>RIAA</i>	<i>Reports of International Arbitral Awards</i>
<i>RJPIC</i>	<i>Revue Juridique et Politique Indépendance et Cooperation</i>
Rollet	H. Rollet, <i>Liste des engagements bilatéraux et multilatéraux au 30 juin 1972; accords et traités souscrits par la France . . .</i> (Paris, 1973)

Rousseau, <i>DIP</i> II	Charles Rousseau, <i>Droit international public</i> , Tome II <i>Les sujets de droit</i> (Paris, 1974)
Schwarzenberger, <i>International Law</i>	G. Schwarzenberger, <i>International Law as applied by International Courts and Tribunals</i> (3 vols., London, 1957-1976)
Schwarzenberger, <i>Manual</i>	G. Schwarzenberger, <i>A Manual of International Law</i> (6th edn., London, 1976)
SCOR	<i>Security Council Official Records</i>
Smith, <i>GB &amp; LN</i>	H. A. Smith, <i>Great Britain and the Law of Nations</i> (2 vols., London, 1932)
Sørensen, <i>Manual</i>	M. Sørensen, ed., <i>Manual of Public International Law</i> (London, 1968)
UNCIO	<i>United Nations Conference on International Organization, San Francisco, 1945</i>
UN <i>Jur. Ybk.</i>	United Nations <i>Juridical Yearbook</i>
UNMC	<i>United Nations Monthly Chronicle</i>
Repertory	United Nations, <i>Repertory of Practice of United Nations Organs</i>
UNTS	<i>United Nations Treaty Series</i>
U.S. Digest	<i>Digest of United States Practice in International Law</i> (1973-76)
USFR	<i>Papers Relating to the Foreign Relations of the United States</i>
Verhoeven, <i>Reconnaissance</i>	J. Verhoeven, <i>La Reconnaissance internationale dans la pratique contemporaine: les relations publiques internationales</i> (Paris, 1975)
Whiteman, <i>Digest</i>	M. M. Whiteman, <i>Digest of International Law</i> (Washington, 15 vols., 1963-1973)
<i>Ybk. AAA</i>	<i>Association des Auditeurs et Anciens Auditeurs de l'Académie de Droit International de la Haye, Annuaire</i>
YBWA	<i>Yearbook of World Affairs</i>
ZfV	<i>Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht</i>

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