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State Recognition: Admission (Im)Possible

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Abstract

This article focuses on state recognition in the European context and on the admission of states to the Council of Europe after the end of the Cold War. It argues that two global trends identified by John Dugard in the 1980s have continued since then: a common approach to state recognition has been adopted and the criteria for state recognition have increasingly been given normative content. This reflects that the constitutive theory of state recognition continued to be popular. The two trends have not automatically resulted in a more legal approach to the issues, as the case study of Bosnia and Herzegovina illustrates.

Key words

admission to international organizations; Bosnia and Herzegovina; constitutive theory; Council of Europe; state recognition

1. Introduction

Professor John Dugard has very old ties with the *Leiden Journal of International Law* – much older than he himself may realize. The very first issue of this journal, which was published in May 1988, featured a review of his book *Recognition and the United Nations*.[1] At the time John Dugard was professor of international law at Witwatersrand; the author of the book review studied international law in Leiden. Twenty years later we pay tribute to John Dugard for his achievements as professor of international law in Leiden. What would be more appropriate than to return to the issue of state recognition?

As many readers will recall, the central argument in John Dugard's book was that a 'modern law of recognition' had come into existence. On the one hand he observed that the recognition of states had gradually been collectivized. Over the years the role of the League of Nations and especially the United Nations had increased, through the procedures for admitting states to membership. This development took place at the expense of the traditional sovereign freedom of the individual state to grant or withhold recognition. On the other hand normative elements – non-aggression, self-determination, the outlawing of racial discrimination and apartheid, observance of human rights – increasingly determined whether an entity should be recognized as a state.

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1. J. Dugard, *Recognition and the United Nations* (1987). Reviewed by Rick Lawson in (1988) 1 LJIL 102.

These two developments led Dugard to believe that the traditional law of recognition, based on the classic criteria for statehood of the Montevideo Convention and given shape in bilateral relations, was outdated. Instead, Dugard argued, the United Nations 'has for practical purposes become the collective arbiter of statehood through the process of admission and non-recognition'.[2] Dugard welcomed this development, as it granted a central place for the community interest in international relations. It also changed the classic debate between the 'constitutivists' (who maintain that the act of recognition will create a state) and 'declaratorists' (who claim that recognition merely acknowledges that an entity has become a state on meeting the requirements of statehood). Collective recognition through admission to the United Nations may simply end the anomalous situation where a state is 'recognized' by state A but not by state B.

To John Dugard, the modern law of recognition required 'a community law of recognition which determines the subjects of international law and the law of the Charter by collective means'.[3] Thus a *common* and *legal* approach was called for, as he emphasized in the closing line of his monograph: 'Recognition remains, as Sir Hersch Lauterpacht contended in 1947, a central branch of international law, and not the plaything of the politician.'[4]

Sixty years after the appearance of Sir Hersch's *Recognition in International Law*, and twenty years after John's book was published, we should like to revisit the role of international organizations in the area of state recognition. Did the developments sketched above continue during the last twenty years? Given the modest scope of this essay we shall have to limit our enquiry. In an attempt to find some tentative answers, we shall analyse the way in which European organizations have responded to the disintegration of Yugoslavia in the 1990s. First, in section 2, we shall survey whether the recognition of states, *inter alia* through their admission to international organizations, in the regional context of Europe, differs from or resembles the global situation. Section 3 will then focus on the case of Bosnia and Herzegovina.

2. Recognition and admission: the European perspective

2.1. Two trends

What can we say about the recognition of states and their admission to international organizations in the European context? From the end of the Cold War onwards, two trends can be distinguished. First, the traditional criteria of statehood have become overshadowed by less neutral and more political yardsticks, such as the presence of democracy and human rights protection. Second – and partly in parallel – regional organizations have started to supplement the formal admission criteria in their constitutional treaties with very elaborate and precise additional entry requirements. If anything, this has made the recognition of states more normative rather than simply factual. Simultaneously, this normative turn has meant that

2. Dugard, *supra* note 1, at 126.
3. Ibid., at 51.
4. Ibid., at 170.

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recognition and admission have become more political and more dependent on outsiders. After all, the assessment of whether human rights are respected is of a more subjective character than the verification of the existence of a permanent population – to mention just one example. This may have the negative effect of recognition becoming more susceptible to political caprice but the positive effect of including core values such as human rights and democracy in assessing possible new participants in the arena of international law.[5]

Nevertheless, it seems that the evolution and refinement on paper has not been followed by the same strictness in practice. The actual recognition and admission practice has at least in part been characterized by flexibility regarding or even outright neglect of the newly developed criteria. Before delving into this matter it is essential to emphasize that the communal aspect of state recognition and admission was on the rise at the beginning of the 1990s. The west European countries, united in the European Community, were keen to maintain a common stance vis-à-vis the developments at their eastern borders following the collapse of communist regimes. The central and east European states, for their part, were eager to (re)join the European family of free nations. This rang true for those states freeing themselves from communism and Russian control and influence, but even more so for the newly independent offspring of the Soviet and Yugoslav federations. For them, admission to the established west European organizations was an important policy goal and could almost be equated to recognition itself.

These developments caused the two trends mentioned above to become heavily intertwined. We will elaborate upon these trends by looking at the recognition criteria developed by the Badinter Commission for the (then) European Economic Community and at the admission practice of the Council of Europe respectively, as specific examples of the changes in regard to state recognition since the end of the Cold War. In the subsequent section, a closer look at the practical application of both of these will be taken by zooming in on the recognition of Bosnia and Herzegovina.

2.2. The European Community and the Badinter Commission

The Badinter Commission, or the Arbitration Commission of the Peace Conference on the Former Yugoslavia, as it was formally known, was set up in 1991 by the Council of Ministers of the European Community (EC). Aside from its French chairman, Robert Badinter, it consisted of judges from various European constitutional courts. Its purpose was to assist the Peace Conference with legal advice in relation to the break-up of the Yugoslav Federation.

The Commission became known mainly for a set of criteria developed to assist the European states in deciding whether to recognize new states on the territory of crumbling Yugoslavia. It issued opinions to assess the particular claims to statehood of any break-away entity.[6] The Commission went in very express terms beyond the traditional criteria of statehood. In the same year, on 16 December 1991, the foreign

5. R. Rich, 'Recognition of States: The Collapse of Yugoslavia and the Soviet Union', (1993) 4 EJIL 39, at 64.
6. S. D. Murphy, 'Democratic Legitimacy and the Recognition of States and Governments', (1999) 48 *International and Comparative Law Quarterly* 545, at 562; J. Paquin, 'Understanding US Foreign Policy toward Emerging

ministers of the European Community adopted these criteria as the 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union'.[7] The Guidelines stipulated that – among other things – democracy, the rule of law, human rights, the rights of minorities, and a commitment to respect the inviolability of frontiers and to peaceful settlement of disputes were all necessary criteria for state recognition. An important proviso in the Guidelines was that the willingness to recognize would still be 'subject to the normal standards of international practice and the political realities in each case'. Thus, while imposing detailed requirements on incumbent states, the west European states reserved maximum discretion for themselves. The United States developed almost identical policy documents, including democracy and respect for human rights as requirements for recognition.[8]

The mere formulation of additional criteria and the accompanying political discretion seem to indicate that this approach was very close to the constitutive theory of state recognition. Such an inference is even more justified when looking at a second text adopted by the ministers on the same day: the Declaration on Yugoslavia. The Declaration was an invitation – with deadline – to all Yugoslav republics to indicate whether they wished to be recognized as independent states. In order to be 'eligible', these republics not only had to fulfil the criteria of the Guidelines, but they also had to continue to support the international community's efforts to end the armed conflict in the region. Written applications would be assessed by the Badinter Commission. The Declaration in fact amounted to the creation of an application procedure for statehood. The background of this rather remarkable development is that for both the EC and the United States recognition was perceived as an important tool to influence the Yugoslav conflict for the better. Sticking to more traditional requirements of state recognition, without normative content, would decrease that leverage.[9] This in itself is a strong indication that the odds were against a mere technical application of detailed new criteria. As section 3, on the recognition of Bosnia and Herzegovina, will show, politics indeed ruled supreme in the recognition process.

2.3. The Council of Europe

The common stance of the EC countries was just one example of a regional institution taking a new approach to recognition. The changes in the admission practice of the Council of Europe (CoE) were very similar. In the latter case, formal admission to the organization was perceived by the new states both as recognition as a state and as a possibility to integrate into the existing (mostly western) European structures. The CoE was seen as the portal to two regional organizations with very practical security and economic benefits: NATO and the EC/European Union (EU).[10]

Secessionist States: A Close Look at the Balkan Regional Context', paper presented at the annual meeting of the Canadian Political Science Association, 2–4 June 2005, at 15.

7. To be found in 31 ILM 1486 (1992).
8. Paquin, *supra* note 6, at 10.
9. Ibid., at 9–10; Rich, *supra* note 5, at 55.
10. P.A. Jordan, 'Does Membership Have Its Privileges? Entrance into the Council of Europe and Compliance with Human Rights Norms', (2003) 25 *Human Rights Quarterly* 660, at 662.

All three organizations were at the forefront of a development that appears to be taking place globally. International organizations are increasingly promoting democracy and human rights by including respect for both in their admissibility criteria.[11] For the three European organizations this entailed supplementing the usually very general criteria in their constitutional instruments with more precise ones in political or quasi-legal documents or practice. For each organization the desire to grow and include new European member states and thus to achieve regionally 'universal' membership could clash with the wish to uphold strictly the new standards.[12] Regularly the latter had to yield to the former. This clearly increased inconsistencies in the application of the new membership criteria. It has been asserted that the Council of Europe was the organization least capable of upholding its own standards throughout the process of its own enlargement.[13] It is therefore interesting to look into the admission of states to that organization.

The Statute of the Council of Europe spells out the way in which new members can accede. Article 3 provides that CoE members must 'accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I'. That aim is to achieve greater unity among its members in order to safeguard and realize their common principles. Although it is not made explicit what these are, the preamble refers to the rule of law, democracy, political liberty, and individual freedom, amongst other things. Article 4 stipulates that *European* states 'deemed to be able and willing to fulfil the provisions of Article 3 may be invited to become a member of the Council of Europe by the Committee of Ministers'. The admission criteria in the Statute are thus relatively vague. In recent years the reference to human rights has been equated with ratification of the European Convention on Human Rights (ECHR) and its protocols, but apart from that more specific criteria initially did not exist.

During the Cold War, 13 states whose democratic and human rights credentials were not in doubt, and therefore not specifically tested, joined the Council of Europe.[14] It was only at the beginning of the 1990s, when former communist countries started to apply for membership, that the Council started to develop more precise admission requirements.[15] Compliance with ECHR standards was now tested in much more detail than before. Moreover, the protection of minorities – for example in the cases of Estonia and Slovakia – was added as a criterion. These criteria were formally formulated at the 1993 Summit of Heads of State and Government in Vienna. Democracy, the rule of law, and human rights were explicitly referred to, as

11. A. Duxbury, 'Bigger or Better? The Role of Human Rights and Democracy in Determining Membership of the European Institutions', (2004) 73 *Nordic Journal of International Law* 421, at 422.
12. Ibid., at 424–5.
13. P. Harvey, 'The Future of the European Court of Human Rights', Ph.D. thesis, Florence, defended 12 April 2007, at 21.
14. H. Winkler, 'Democracy and Human Rights in Europe: A Survey of the Admission Practice of the Council of Europe', (1995) 47 *Austrian Journal of Public and International Law* 148, as cited in Duxbury, *supra* note 11, at 440.
15. J. F. Flauss, 'Les conditions d'admission des pays d'Europe centrale et orientale au sein de Conseil de l'Europe', (1994) 5 EJIL 401.

were the existence of free elections, respect for international law, and acceptance of the jurisdiction of the European Court of Human Rights.[16]

In parallel, elaborate procedural mechanisms were set in place. From the outset, the Committee of Ministers was the decision-making institution, but in practice it was the Parliamentary Assembly of the Council of Europe (PACE) which conducted the 'screening' of potential new members. The Committee then followed PACE's advice. This relatively simple procedure was refined after the Iron Curtain had been brought down. The Assembly started to ask for reasoned opinions per country by specifically appointed jurists, who were mostly members of either the European Commission or Court of Human Rights. Subsequently, a few members of the Assembly would be nominated as rapporteurs. These rapporteurs usually visited the country at stake and wrote reports used by the Assembly as the basis for its deliberations. Finally, the commitments made by acceding countries were monitored during the accession procedure.[17] Increasingly, the Committee of Ministers took a more active role in this regard.

One would expect that the material and procedural changes in the accession procedure would have increased coherence within the organization and made accession more difficult. And indeed one could argue that the Council of Europe did not lower its standards in the face of growing membership.[18] If there was disagreement surrounding the admission of specific states, this related to their perceived ability or willingness to meet the standards; the standards themselves were not a subject of discussion. The following passage (taken from a PACE recommendation pressing for suspension of Russia because of the human rights crisis in Chechnya) illustrates the point:

> The Assembly recalls that Russia, upon its accession to the Council of Europe, committed itself in writing to observe the principles and standards of the Organisation and to fulfil all obligations arising from the Statute of the Council of Europe and its most important conventions. In particular, Russia's accession, it was assured, would not result in the lowering of the high standards of the Organisation. In keeping with these assurances the Assembly insists on the maintenance and respect of the standards of the Council of Europe.[19]

Individualized commitments have been introduced and special mechanisms have been devised to ensure compliance therewith. It is interesting to recall that the founding members of the Council of Europe were allowed much more freedom. France, for instance, became a party to the Council's Statute in 1949, but it ratified the Convention only in 1974 and waited until 1981 before recognizing the right of individual petition! And when Liechtenstein ratified the Convention in 1982, it was

16. The Vienna Declaration of the Council of Europe, 9 October 1993. See also Duxbury, *supra* note 11, at 435.
17. M. Nowak, 'Is Bosnia and Herzegovina Ready for Membership in the Council of Europe? The Responsibility of the Committee of Ministers and of the Parliamentary Assembly', (1999) 20 *Human Rights Law Journal* 285, at 285.
18. R. A. Lawson, 'Extending the European Family of Nations – The Response of the Council of Europe to Growing Membership', in N. M. Blokker and H. G. Schermers (eds.), *Proliferation of International Organizations* (2001), 415.
19. Recommendation 1456 (2000) of 6 April 2000, para. 14.

allowed to make far-reaching reservations, aiming to neutralize the famous *Marckx* and *Dudgeon* judgments.[20] Clearly this would be inconceivable today.

But other appraisals have been more critical. As the Council of Europe grew to encompass virtually all European states in a time span of less than two decades, it has been argued that the most stringent of democracy and human rights standards were not upheld entirely. And, indeed, in some instances new states were admitted after the Committee of Ministers was satisfied that the newcomers were able and willing to uphold the CoE standards *in the near future*.[21] Put differently, states not entirely – or, cynics would say, not at all – living up to the standards set were admitted to the organization, in the expectation that there were sufficient 'post-accession instruments'[22] to force the new member states into compliance. A striking example was offered by the accession of Croatia. When the Committee of Ministers invited Croatia to become a member of the Council of Europe, it expressly indicated that it might *reconsider* this decision in the light of the manner in which Croatia had respected its obligations deriving from the Dayton Peace Agreement, had demonstrated its willingness to honour all its commitments, and was co-operating with the Council of Europe *inter alia* in applying the Constitutional Law on Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities.[23] The example of Bosnia and Herzegovina is another case in point, as we shall see in the next section.

It is safe to conclude, therefore, that detailed admission criteria were developed, but in practice these were applied with flexibility. The same applies to expulsion from the Council of Europe, made possible under Article 8 of the Statute. In theory this could happen in case of serious violations of Article 3 of the Statute.[24] In practice the general opinion within the Council was that it would be wiser to persuade recent members to uphold human rights standards than to expel them. Internal influencing was deemed to be more effective than the hard approach.[25] Again, this meant that a flexible approach was preferred over a zero-tolerance policy. The unification of the European continent gained precedence over other interests.

Since admission to the Council of Europe was decided upon collectively, it served as an important element in (renewed) recognition of certain entities as states. Although the relation of accession to state recognition is close, it also has its limits.

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20. The reservation was withdrawn in 1991 ((1991) 34 *Yearbook of the European Court of Human Rights*, at 5).
21. Thus in the case of Armenia and Azerbaijan it was asserted that both countries were '*moving towards* a democratic, pluralist society' (Opinions No. 221 and No. 222 of 28 June 2000) (emphasis added). See also Duxbury, *supra* note 11, at 443.
22. In the mid-1990s the Committee of Ministers adopted a monitoring procedure, which applies by the way to *all* member states; see the Declaration on Compliance with Commitments Accepted by the Member States of the Council of Europe, adopted by the Committee of Ministers on 10 November 1994. Another monitoring procedure was established by the Parliamentary Assembly in 1993. In 1997 a special committee was set up for this purpose; see Resolution 1115 of 29 January 1997. Again both old and new member states are examined.
23. Resolution (96)31 of 2 July 1996.
24. In response to Russia's conduct in the Chechen conflict the Parliamentary Assembly recommended that the Committee of Ministers initiate the procedure for the suspension of Russia from its rights of representation in the Council of Europe: Recommendation 1456 (2000) of 6 April 2000. Greece withdrew from the organization in 1969, when it was about to be expelled in response to widespread violations of human rights perpetrated by a military junta.
25. Jordan, *supra* note 10, at 688.

When the Baltic states asked to be accepted as observers by the Parliamentary Assembly, this was initially not granted. The Assembly wanted to wait until CoE member states *and* the Soviet Union itself had recognized Estonia, Latvia, and Lithuania as independent states.[26] Once more, this was an indication that the constitutive theory of state recognition was closer to reality than the declaratory one.

3. The case of Bosnia and Herzegovina

3.1. Recognition of statehood

Bosnia and Herzegovina was one of the constituent republics of the state of Yugoslavia. With the implosion of that state, Bosnia and Herzegovina sought to gain recognition as an independent state. Together with Slovenia, Croatia, and Macedonia, Bosnia applied to the EC countries for recognition at the end of 1991. The Badinter Commission initially issued a negative opinion, finding that Bosnia was not yet a clearly independent state.[27] No independence referendum had been held as yet. As a consequence, Bosnia proceeded to organize such a referendum on 1 March 1992. In spite of a boycott by the Bosnian Serbs, a large majority voted in favour of independence. Subsequently, the European Community, its member states, and other countries such as the United States, proceeded to recognize Bosnia. On 22 May Bosnia was admitted to the United Nations. The same happened to Croatia and Slovenia, but not to Macedonia. Although the Badinter Commission had issued a positive opinion on that country, the European states for several years declined to recognize Macedonia because of Greek political resistance.[28]

The difference between the recognition of Bosnia and the non-recognition of Macedonia is striking. Merely applying the traditional criteria of statehood would lead to the opposite conclusion: the Bosnian government had no control over very large parts of its own territory, whereas the Macedonian one had. And even when assessing the credentials of the two entities on the basis of the newer criteria of democracy and human rights, it is not clear why one would recognize the former entity but not the latter. Thus, the recognition of Bosnia as a state, in spite of the quasi-legal criteria of the Badinter Commission, was – when push came to shove – a political decision. Bosnia was recognized as a state because the European states and the United States wanted to prevent it from being broken into pieces by the bordering Croat and (Serbo-Montenegran) Yugoslav states. As Australian legal adviser Roland Rich put it, 'There can be few better examples of the attempt to constitute a State through widespread recognition than the case of the Republic of Bosnia and Herzegovina.'[29] Thus, the case of Bosnia may very well represent the high-water mark of the constitutive theory of state recognition. One may note, in passing, that on the same day on which Europe and the United States recognized Bosnia, the Bosnian Serbs declared their independence. The move in that sense proved to be

26. E. Gelin, 'Les critères d'admission des nouveaux états indépendants au Conseil de l'Europe', (1996) 73 *Revue de droit international et de droit comparé* 339, at 341–4.
27. Opinion No. 4, 11 January 1992, to be found in (1992) 31 ILM 1501.
28. Murphy, *supra* note 6, at 562–4.
29. Rich, *supra* note 5, at 56.

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counterproductive. Although the relatively recent normative criteria did play some role in the international recognition of Bosnia – by requiring a referendum as a way to ascertain a democratic basis for independence – they were not in themselves decisive. The normative turn therefore was thus less radical in practice than one may surmise from theory.

3.2. Admission to the Council of Europe

What about the second way of looking at state recognition, admission to the Council of Europe? This proved to be a somewhat more difficult hurdle for the fledgling country to take. Even before the Bosnian civil war was concluded by the Dayton Peace Agreement, the country applied for membership on 10 April 1995. This started a long procedure of accession that would take more than seven years.[30] The Parliamentary Assembly formulated a number of requirements which had to be fulfilled before the accession procedure proper would start: co-operation with the Yugoslavia Tribunal, functioning state institutions, return of the displaced, and so on.

In spite of the fact that none of these requirements was entirely met, the accession procedure was formally started in March 1998. The initial stance of the Council of Europe was tough:

> The Council urges Bosnia and Herzegovina to make every effort to meet the entry criteria as the first step towards closer association with all of the European institutions. It pledges its assistance in helping Bosnia and Herzegovina to do so. But it gives notice that the standards are high and will not be relaxed to secure admission. It is up to Bosnia and Herzegovina to meet those standards. In the view of the Council there is no reason why, with sufficient effort, this should not be possible given sufficient political will. The pace of integration of Bosnia and Herzegovina into European structures will be governed by its performance in implementing its Dayton obligations.[31]

Two legal experts – one from the Commission and one from the Court of Human Rights[32] – investigated the situation concerning the rule of law and human rights. Their conclusion was that the Bosnian situation was not even meeting the CoE's most basic standards.[33] The report of the experts did not serve as decisive, however. In March 1999 two parliamentarians from the Assembly visited Europe and drafted their own report.[34] They noted the problems in Bosnia, but drew the conclusion that the admission criteria should be 'realistic and leave room for the country's rapid accession, which would be a recognition of its population's deserving efforts'.[35] Thus the rapporteurs perceived accession as a tool to strengthen the fragile state of Bosnia – an obvious parallel with the earlier European moves to recognize Bosnia as a state.

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30. The description of the accession process of Bosnia is derived from Nowak, *supra* note 17.
31. Statement at the Peace Implementation Council in Madrid on 15 December 1998, contained as an annex to PACE Doc. 8303, 22 January 1999, 'Bosnia and Herzegovina's Request to Become a Member State of the Council of Europe – Request for an opinion by the Committee of Ministers'.
32. The Andorran Marc Vila Amigo and the Austrian Franz Matscher respectively.
33. Parliamentary Assembly of the Council of Europe, 'Report on the Conformity of the Legal Order of Bosnia and Herzegovina with CoE Standards', reprinted in (1999) 20 *Human Rights Law Journal* 393.
34. PACE Doc. 8381, 20 April 1999, 'Political Situation in Bosnia and Herzegovina', Rapporteurs: Mr Peter Bloetzer and Mrs Gelderblom-Lankhout.
35. Ibid., para. 43.

In the following years Bosnia was monitored to see to what extent it was complying with a range of conditions, varying from complying with the decisions of institutions set up under Dayton to achieving progress on police reform. Eventually, on 24 April 2002, Bosnia and Herzegovina formally acceded to the Council of Europe as its 44th member state. Three months later, on 12 July, it ratified the European Convention on Human Rights. At that point, Bosnia was still far from being a functioning state with a fully fledged democracy and high respect for human rights. For this reason, it was subjected – as were several other acceding states for that matter – to post-accession monitoring. In spite of this, one can conclude that the elaborate and rigorous accession criteria were applied very flexibly in practice.

4. Conclusion: recognition as 'the plaything of the politician'?

This essay was written in recognition of the great vision and achievements of John Dugard. What did it tell us about the practice of state recognition since the appearance of his book *Recognition and the United Nations* in 1987? Several conclusions can be drawn from the above.

A first conclusion is that the two trends discerned by John in the mid-1980s continued after the end of the Cold War: a common approach was adopted and the criteria for state recognition were given an increasingly normative content. As a caveat, one should bear in mind that the present analysis focused entirely on Europe. Since this is arguably the most politically and legally integrated region in the world, it may not be surprising that these trends are visible in Europe. It remains to be seen if such trends also occurred elsewhere.

The common approach resulted in many instances of collective recognition through mechanisms in which the initial assessment was done through common procedures. The Badinter Commission is the clearest example of this. Often the European countries' position was shared by the United States. This commonality through international institutions had its limits, however. The hesitant stance of PACE in the admission of the Baltic states as observers shows this. Another, almost infamous, illustration is the recognition of Slovenia and Croatia by Germany, which made the other European countries face a fait accompli.

The second trend – increased normativity – is also very notable in post-Cold War Europe. Normative standards, with democracy and human rights at the forefront, were developed and even dominated the traditional criteria for statehood. In his book John had already argued that 'while some of the traditional requirements for statehood, such as permanent population and defined territory, remained intact, it seems that others, such as effective government and independence, are no longer strictly insisted on where they run counter to developments in international law regarding self-determination'.[36] This is clearly confirmed by the approach, both of the EC and the CoE, towards Bosnia and Herzegovina.

36. Dugard , *supra* note 1, at 72.

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A second conclusion is that there has been a clear attempt to develop general criteria for state recognition, as the European Guidelines and the work of the Badinter Commission show. It remains to be unveiled by historians and political scientists whether the purpose of this was to avoid arbitrariness and to make the process of recognition and admission more transparent. One cannot exclude that it simply served to exert pressure on candidate states.

Third, the constitutive theory continued to be popular, the work of the Badinter Commission and the case of Bosnia representing fine examples. The instrument of state recognition was clearly used in an attempt to engineer developments on the ground.

Finally, in the case of the recognition of Bosnia as a state and of its accession to the Council of Europe, it is clear that the increased normative elements of the procedure have not yielded a more legal approach to it. To return to Dugard's call, in the case of Bosnia a common approach may have been reached, but it can barely be called a legal one. Recognition may not be the politician's plaything; nevertheless, it certainly remains a political tool.