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# Could Territorial Entities in the Territory of the GUAM<sup>1</sup> be Considered as Sovereign States?

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## Abstract

The issue with the recognition of de facto states has existed for a long time. Some territories exist for decades with only limited recognition. The emergence of unrecognized states peaked after the collapse of the Soviet Union. The populations of some territories did not agree with the new borders and unilaterally declared their independence. Can these territories be considered as fully-fledged states, as their inhabitants consider themselves to be? To answer this question, it might be useful to consider the definition of a concept of a state before analysing what characteristics a territory should be called a 'sovereign state', and it is also necessary to consider the implications for the territorial entities in the territory of the GUAM Organization for Democracy and Economic Development. Such an analysis is the purpose of this article. The goal is also to discover what official symbols de facto states in the post-Soviet space have. The following documents in this research were analysed in the article: 'the Montevideo Convention' and 'the Declaration of Guidelines on the Recognition of New States in Eastern Europe and in the Former Soviet Union.' Attention is also paid to the history of the development of the term 'state' as well as the works of scholars who dealt with this problem. The methodological basis of the research includes scientific methods of cognition (dialectics, analysis and synthesis, deduction and induction, comparative legal and historical methods). The main conclusion of the article

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<sup>1</sup>The GUAM Organization for Democracy and Economic Development is a regional organization of four post-Soviet states: Georgia, Ukraine, Azerbaijan, and Moldova.

can be formulated as this: the greatest problem of these territorial entities is that other states do not recognize them. Although they do have many important characteristics of the state, such as territory, population, currency, state symbols, and in some cases even an army, other states do not cooperate with them. Thus, it is extremely problematic to consider these territories as sovereign states.

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**Keywords:** De facto states, GUAM, Montevideo Convention, state recognition

## 1. Introduction

What is a state? Everyone from childhood probably understands what a state is, in which state he/she resides, and can possibly give a vague definition of what a state might be. However, although it is possible to explain what a state is in layman's terms, the scientific sphere still has yet to develop an undisputed definition.

People started to think about the topic of defining a state several centuries ago during the emergence of the first States. The reasoning of great philosophers regarding the subject has remained relevant even until now. For instance, Plato in 360 BC wrote his famous dialogue, which he called 'Republic.' From Plato's point of view, the state is the expression of the idea of justice. Plato argues that everyone in the state should do his own work and should not do what is not his business. He defined both the types and the best form of a state. Nevertheless, Plato did not give a clear definition of one, or its features (Muhaev, 2019).

Ancient philosophers reasoned the origin of a state and based on such reasoning, we can conclude what they understood by their concept of it. It is important to mention here the student of Plato, Aristotle, who also reasoned a lot about political philosophy. In his treatise Politics, Aristotle defines the state (Polis) as a community organized for the common good. Aristotle argued that man is by nature "a political animal" and therefore carries within himself an instinctive desire to live together with other people. He argued that the development of society goes from the family to the community, and from the community to the state. As a result, Aristotle connects the functions and goals of the state with the highest (and at the same time 'natural') goal of a state formation: communication (Muhaev, 2019).

There is the widely known reasoning of an ancient Roman philosopher Marcus Tullius Cicero about the states' origin. He wrote a political treatise on the state issues titled 'De re Publica'. In this treatise, Cicero gives the following definition of the state: "the place where people have assembled not guided by their weakness but by their sociable nature... people were connected by agreement on matters of law and common interests". Cicero also argues

that the state does not arise arbitrarily, but in accordance with the universal requirement of nature, and the reason for its formation is the protection of property.

During the Enlightenment, the most notable contributions to the development of the features and functions of the state were made by John Locke, C. L. Montesquieu and Thomas Hobbes. Their works brought the understanding of the term 'state' closer to its modern concept. However, the most important work that influenced the scientific understanding of the concept of the state is 'Politics as a Vocation' (1919) by Max Weber. Weber claims that the fundamental characteristic of statehood is that the state has a monopoly on the legitimate use of physical force or monopoly on violence. Weber describes a state as an organization that succeeds in holding the exclusive right to use, threaten, or authorize physical force against residents of its territory (Mitropolitski, 2011). Such a monopoly, according to Weber, must occur via a process of legitimation. Weber argued that the modern state was not defined in terms of its goals or ends. In addition, as the well-known Austrian lawyer, Hans Kelsen correctly noted, "the difficulties in defining the concept of a 'state' are aggravated by the fact that this term usually refers to a wide variety of objects and phenomena" (Sievers, 2015).

One more important scholar who developed a definition of the state is Georg Jellinek. He established a theory called 'Two-Sides-Theory.' Jellinek claims that a state in its origin has a twofold nature being both a social entity and a legal institution. Thus, the complexity of the definition of the state can be determined not only from a legal point of view but also from a social one. Investigating the nature of a state, Jellinek used two different methods which are a 'causal' approach (to determine the factual side of the state) and 'normative' approach (to determine the legal side of the state). According to Jellinek, a normative or juridical approach prevails below social aspects in the definition of a state. He rightly notes that: "only the juridical approach can establish the epistemological object—the State—despite its differentiation into the two sides" (Lepsius, 2019).

In the view of the judicial or legal approach to the state definition, it is impossible not to mention the Montevideo Convention. The Convention was signed in Montevideo (Uruguay) in 1933, during the Seventh International Conference of American States. Currently, only 17 states have ratified the Convention, however, this fact does not detract from the significance of this document. According to Hersch Lauterpacht, the most important characteristic of the Montevideo Convention is that it "codifies the declarative theory of statehood as accepted as part of customary international law" (Lauterpacht, 2012, p.204). An essential feature of the Montevideo Convention is the circumstances of its adoption. The majority of delegations at the International Conference of American States were represented by independent states with

limited recognition which had arisen from former colonies. Due to their own struggles of having their sovereignty recognised they developed certain criteria that are inherent for states. Therefore, in the Montevideo Convention the 1st Article declares that “the state as a person of international law should possess the following qualifications:

- a permanent population;
- a defined territory;
- government; and
- capacity to enter into relations with the other states.”

Moreover, the Convention sets out the definition, rights and duties of statehood, whilst Article 11 prohibits using military force to gain sovereignty.

Because the former colonial territories participated in the drafting of the Convention, one of the key elements of the text included the issues related to a state’s recognition. The third Article unambiguously declares “the political existence of the state is independent of recognition by the other states.” This provision is known as the declarative theory of statehood and contradicts the alternative constitutive theory of statehood, which claims that a state exists only insofar as it is recognized by other states.

Given the fact that only seventeen states have ratified the Convention, an interesting question that arises is why this document is so important within international law. Since the Convention is recognized as customary international law, the provisions apply not only to the signatories but to all subjects of international law. In addition, the European Union follows the Montevideo Convention in its definition of a state: by having a territory, a population, and a political authority (Pellet, 1992).

Thus, it is not so easy to define the term. Ancient philosophers reasoned about features of a state and later scientists in the 19<sup>th</sup> century made a significant contribution to the definition. It was only at the beginning of the 20<sup>th</sup> century that an international document was signed which defined the characteristics of what it should be, and later the document became customary international law. Confounding the definition problem is that ‘state’ and ‘government’ are often used as synonyms in common conversation and even some academic discourse. According to this definition schema, the states are nonphysical persons of international law and governments are organizations of people. The most commonly used definition is Max Weber's, which describes a state as a compulsory political organization with a centralized government that maintains a monopoly of the legitimate use of force within a certain territory.

## **2. Unrecognized and partially recognized states**

Due to the contradiction between the constitutive theory of statehood and the declarative theory of statehood, there is still no simple answer in international law on the question of how a sovereign state should recognize an independent territory. In the contemporary world, there are sixteen statehoods with limited recognition and three of them are not recognized by any other UN member state. Unrecognized or partially recognized states are usually understood as the statehoods that proclaimed themselves sovereign and possess some features of a sovereign state, but at the same time do not have diplomatic recognition and their territory is regarded by the UN as being under the sovereignty of one or several UN members states. Additionally, a state with limited recognition has the follow characteristics:

- the entity had achieved de-facto independence
- its leadership is seeking to build further state institutions and demonstrate its own legitimacy
- the entity has sought, but not achieved, international recognition
- it has existed for at least two years (Caspersen, 2011, p.6).

Thus, the participation of states with limited recognition in international relations is limited by the legal field of the states that recognize them.

Although the United Nations do not have the right to recognize sovereign states, membership of the UN has become the most important symbol of universal recognition of statehood in the modern system of international relations. However, the state can be considered as internationally recognized even if it does not participate in the UN (such as Switzerland before 2002). Moreover, a number of UN member states are not recognized by some other UN member states.

Therefore, some countries might not have UN membership but still be recognized by other states or statehood. Recognition could be accorded on a de facto, de jure basis or it can be recognized ad hoc in some occasions. The rules of recognition for states are usually governed by international customary law. Recognition may be a statement to that effect by recognising government or it might be implied from an 'act of recognition', such as entering into a treaty with another state or making a state visit.

Unrecognised states can have difficulties joining international organisations. On the other hand, an entity can have a right to membership in multinational organisations when sufficient countries recognise it as a state. A somewhat different situation is with international treaties. If a state with limited recognition desires to be part of an international treaty it might need the unanimous agreement of admission from all existing member countries.

In modern international law, being a member state of the UN is an essential step for both its independence and its recognition, it is important to understand the process of joining. A vote by a member state in the United Nations in favour of the membership of another entity is an implicit recognition of that state by those who are voting, as only states may be members of the UN. A negative vote for UN membership does not necessarily mean non-recognition of the applicant as a state, as other criteria, requirements or special circumstances may be considered relevant for UN membership. Similarly, a country may choose not to join the UN due to its own reasons, as it was with the Vatican and Switzerland for some period of time.

In recent decades, the international community has faced the problem of recognizing new states during the disintegration of the Soviet Union and Yugoslavia. The collapse of these multinational states led to the formation of new states and, in many cases, nation-states. Therefore, some countries reacted to the new challenges in international law by issuing new declarations and statements. A vivid example is that of the EU countries who adopted the Declaration of Guidelines on the Recognition of New States in Eastern Europe and in the Former Soviet Union. The most important part of this document set out criteria for the recognition of these new states. New states are required to demonstrate:

- respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights;
- guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the Commission on Security and Cooperation in Europe (CSCE);
- respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement;
- acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation as well as to security and regional stability;
- commitment to settle by agreement, including where appropriate by recourse to arbitration, all questions concerning state succession and regional disputes.

Essential provision of the guidelines claims that states will not be recognised if they are the result of aggression. Moreover, in the process of recognising one state, it is important that the effects on neighbouring states should be taken into account. Despite the fact that those criteria have only a recommendatory nature, they were decisively important for the recognition of new states in the territory of Eastern Europe and the former USSR.

The importance of state recognition can hardly be overestimated. Only a recognized state can fully bear the rights and obligations based on the norms of international law, be part of international cooperation, and be heard when adopting new international documents. Ambassadors, consuls and state representatives may not enjoy immunities and privileges in a country whose representatives do not recognise the state of their origin.

Finally, the right to recognize other states is the sovereign right of a particular state. The act of recognition can only be made on behalf of the state or its government. Furthermore, international organisations, including the UN, do not have the right to recognise states or governments.

### **3. Why do we have a big number of states with limited recognition in the post-Soviet space?**

One can argue on how long the Soviet Union would have existed if it was possible to prevent the signing of the agreement on the creation of the Commonwealth of Independent States in Belovezhskaya Pushcha. However, the reality is that in 1991 this agreement was signed by representatives of the three Soviet Republics. The summit in Belovezhskaya Pushcha was attended by Boris Yeltsin (Russian Soviet Federative Socialist Republic), Leonid Kravchuk (Ukrainian Soviet Social Republic) and Stanislav Shushkevich (Byelorussian Soviet Socialist Republic). Therefore, in the summit only three leaders of Socialist Republics (instead of all fifteen) participated and decided for the entire multi-million state that the Soviet Union ceased to exist as a geopolitical reality. Did only three leaders have the right to decide the fate of the entire state? Moreover, approximately six months earlier the majority of the population of the USSR had voted in favour of preserving the union in a referendum. Since these 3 leaders rushed to sign the treaty, many of the problems following the collapse of the world's largest state have not been resolved.

After the Soviet Union collapsed, new states adopted the borders of the previous Soviet Republics using the principle *uti possidetis juris*. Hence it is important to find out not only the borders of the old republics but also to realise which criteria were used by the Soviet leaders in establishing borders of republics during the Soviet time. Kremnev argues that in the Soviet Union the borders of the republics were established in accordance with the national features, but at the same time the interests of the national leaders who governed the Communist Party were taken into account (Kremnev, 2005, p.27). It is difficult to argue with him. However, it is necessary to add that Soviet leaders made several mistakes during their leadership. One of the examples of the territorial division of the USSR is the separation of one nation into two socialist republics. It was Ossetians who were divided between the Russian Soviet Social Republic and the Georgian Soviet Social Republic.



After the collapse of the Soviet Union, one nation was divided between two different states. This resulted in the problem of South Ossetia's right to self-determination and attempt to secede from Georgia. Moreover, those so-called mistakes can include Nikita Khrushchev's territorial policy. For instance, he gave what could be considered 'gifts' during his leadership, such as the transfer of Crimea and Sevastopol to Ukraine (Marxsen, 2015, p.11).

Nowadays the following unrecognised and partially recognised states exist in the territory of the GUAM: Pridnestrovian Moldavian Republic, Republic of Artsakh (Nagorno-Karabakh Republic), Republic of South Ossetia, Republic of Abkhazia, Donetsk People's Republic and Luhansk People's Republic. According to the legal point of view, de facto states that emerged as a result of the collapse of the USSR do not exist for the international community. However, some states recognise those entities. The table below illustrates the recognition of the self-proclaimed states which emerged in the territory of the GUAM.

**Table 1.** The recognition of the self-proclaimed states in the post-Soviet space.

<b>Name</b>	<b>Declared</b>	<b>Recognized by</b>
Pridnestrovian Moldavian Republic (Transnistria)	1990	Abkhazia and South Ossetia
Republic of Artsakh (Nagorno-Karabakh Republic)	1991	Transnistria, Abkhazia and South Ossetia
Republic of South Ossetia	1991	Russia, Syria, Nicaragua, Venezuela, Nauru Abkhazia, Artsakh (Nagorno-Karabakh) and Transnistria.
Republic of Abkhazia	1999	Russia, Syria, Nicaragua, Venezuela, Nauru, South Ossetia, Artsakh (Nagorno-Karabakh) and Transnistria
Donetsk People's Republic	2014	South Ossetia, Luhansk People's Republic, Russia
Luhansk People's Republic	2014	South Ossetia, Donetsk People's Republic, Russia

As can be seen from the table, Abkhazia, South Ossetia, Donetsk People's Republic and Luhansk People's Republic have international recognition from some UN member states. Luhansk and Donetsk People's Republics received their recognition from the UN member state just recently. On the 21<sup>st</sup> of February, 2022, the Russian Federation recognized them as sovereign states. Transnistria has the smallest number of recognitions and this territory is recognized only by partially recognized republics.

Sergey Markidonov argues that “until the mid-2000s, it was believed in the United States and the EU countries that contacts with representatives of such formations were undesirable since they would mean justification for ethnic cleansing and would question the principal recognition of the borders



between the former republics of the Soviet Union as the interstate borders of the recently independent post-Soviet states” (Markedonov, 2008, p. 87). However, it does not prevent states from having relations with the international community. Many events in the CIS countries are somehow connected with political intricacies around the listed entities. Although recently, countries outside the CIS have started to communicate with these de facto entities. Mostly such communication was needed to develop peace treaties in the conflict regions. A vivid example is the 5+2 negotiations, where Moldova, Transnistria, OSCE, Russia, Ukraine and observers from the United States and the EU are represented. Such communication can be seen as an example of ad-hoc recognition of states.

#### 4. Can de facto states in the post-Soviet space be recognized as sovereign states?

The process of recognising a de facto state as a fully-fledged subject of international relations is long and complex. Therefore currently, there are many unrecognised and partially-recognised states. It seems possible to say that in the post-Soviet space there is the highest concentration of those de facto states.

However, if not considering that the states should necessarily be recognised by other actors of world politics, which other features of a state do the de facto states in the post-Soviet space have? The following chart analyses which qualifications from the Montevideo Convention these de facto states have.

**Table 2.** Montevideo Convention as applied to de facto states

Name	Permanent population	Defined territory	Government	Capacity to enter into relations with the other states
Pridnestrovian Moldavian Republic	•	•	•	(•)
Republic of Artsakh (Nagorno-Karabakh Republic)	•	•	•	(•)
Republic of South Ossetia	•	•	•	(•)
Republic of Abkhazia	•	•	•	(•)
Donetsk People's Republic	•	•	•	
Luhansk People's Republic	•	•	•	

In some aspects, it is difficult to unambiguously define whether a particular state has a certain qualification or not. For instance, it can be difficult to determine with de facto states if they have ‘capacity to enter into relations with the other states.’ Taking into account only the word ‘capacity,’

it would be something that these observing states definitely have. However, there is another problem, which is that not all other member states would like to communicate with such self-proclaimed states. Therefore, it is not clear how to deal with this method of qualification. Determining this point was useful for the following criteria: firstly, the duration of the existence of a particular state, and secondly, how many other states recognise this entity as a state and how many states are ready to communicate with them, considering that newly formed states (Donetsk People's Republic and Luhansk People's Republic) have not had many international contacts so far.

Furthermore, Donetsk People's Republic and Luhansk People's Republic do not participate in the Community for Democracy and Rights of Nations. This is the international organisation uniting several states in the former Soviet Union, all of which have limited recognition from the international community. The next entities are members of the Community for Democracy and Rights of Nations: Abkhazia, Artsakh, South Ossetia and Transnistria. Despite the lack of membership in the UN, members of this commonwealth have continued to exist for a quite long time. The political and economic structures of the unrecognised states have more or less adapted to existence in the conditions of “no peace, no war, no international recognition,” although the process of restoring the destroyed economy in conditions of actual isolation from the outside world is progressing very slowly. The states belonging to this organisation show solidarity towards each other as they have the same problem. One of the examples of such solidarity is that the members of the organisation agreed to abolish the visa regimes for their citizens.

One more important document which contains characteristics of a sovereign State is the Declaration of Guidelines on the Recognition of New States in Eastern Europe and in the Former Soviet Union. Due to the fact that this document was elaborated by the EU countries and none of them recognise any de facto state in the post-Soviet space, there is no necessity for deep analysis of this document. However, according to the one guidelines' provisions; states will not be recognised if they are the result of aggression. Following this approach, all of the de facto states in the post-Soviet space are the result of ‘aggression’. In some cases, it is difficult to determine the first manifestation of aggression was: the ‘parent’ state or the separatist territory.

Currently, almost all of the de facto states in the post-Soviet space have the status of frozen conflict. Given the fact that these conflicts are not solved and probably far away from the solution, to ‘freeze’ them is probably the best solution. However, that does not prevent hostilities forever. The recent example is the resumption of hostilities in Nagorno-Karabakh in 2020. Thus, it is important to continue the negotiation process even if a conflict is frozen. The tactics of ‘Small Steps’ can be useful in this process. This tactic allows

for maintaining a dialogue between a sovereign state and an unrecognised entity that has arisen on its territory (Shevchuk, 2020).

Unrecognised entities in the post-Soviet space are confident that they are sovereign states while their ‘parent’ states pose these entities only as a part of their territory. However, we can observe that de facto entities have some state symbols that characterise these entities as states. The table below illustrates the presence of state symbols in the de facto states.

**Table 3.** State symbols in the de facto states

Name	Flag	Coat of arms	National motto	National colours	National anthem
Pridnestrovian Moldavian Republic	•	•	•	•	•
Republic of Artsakh (Nagorno-Karabakh Republic)	•	•	•	•	•
Republic of South Ossetia	•	•		•	•
Republic of Abkhazia	•	•		•	•
Donetsk People's Republic	•	•		•	•
Luhansk People's Republic	•	•		•	•

All de facto states have the most important state symbols and although some of them do not have a national motto, there are many old and recognised states that do not have a national motto either.

Another essential characteristic of a state proposed by Max Weber is the legal monopoly on violence, which can be expressed by the presence of the police and the army, with the fact that the right to violence was given to police by a legally elected government. There are police forces in each observing de facto state while some can argue about the legally elected government. Therefore, there is also no simple answer whether these de facto states have the right to a legal monopoly on violence.

## Conclusion

In conclusion, de facto states in the territory of the GUAM have many signs of statehood. These entities evolved due to protracted territorial disputes, identity problems, metropolitan narratives, complex historical narratives and conflicts of historical memories. However, their main problem is the lack of international recognition. This makes it difficult for them to interact with other states. It can be considered as the absence of the ability to enter into relations with the other states, which is one of the most important characteristics of the state according to the Montevideo Convention.

It should be also mentioned that the term ‘de facto state’ perfectly describes the problem of the unrecognised states. Such state formations can be recognised by several UN member states, or not recognised by any.

Nevertheless, such state entities exist. They possess some state symbols, such as their own currency, army and government, and also their own territories and borders.

Some compromises and the development of a common political and legal language seem unlikely at the diplomatic level, however such a discussion should continue among experts and scholars. It is difficult to perceive the world according to the logic of contradictory international law, which considers only UN members as states. It is difficult to analyse international relations as if there were no self-proclaimed states in reality. However, such territorial formations exist and they successfully maintain their internal stability, but they do not have external recognition. Consequently, a new approach can benefit the system of international relations, the actors of world politics, and basic international legal principles. This can contribute to the resolution of the dilemma between the territorial integrity of states and the right of people to self-determination.

It is possible to determine the de facto states of the “first wave,” which appeared almost immediately after the dissolution of the Soviet Union and the de facto states of the ‘second wave’, which appeared after the Ukrainian crisis. In view of the fact that the oldest de facto states have existed for almost thirty years, it is difficult to predict how long the ‘newly’ proclaimed states can exist without international recognition. However, one should not forget that in every de facto state the people defend their right to self-determination, and their opinion should be taken into account.

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