ČLANCI / ARTICLES

TIJANA ŠURLAN, PhD, Associate Professor
Department of Criminalistics, University of Criminal Investigation and Police Studies
Belgrade, Republic of Serbia
tijana.surlan@kpu.edu.rs

UDK 341.218(497.1)"1919/1920"
94(497.1)"1919/1920"

pregledni rad / review article
primljeno / received: 8. 9. 2022
prihvaćeno / accepted: 23. 11. 2022.

https://doi.org/10.29362/ist20veka.2023.1.sur.1-18

INTERNATIONAL LEGAL RECOGNITION OF THE KINGDOM OF SERBS, CROATS AND SLOVENES

ABSTRACT: *The paper studies international legal recognition of a state using the example of the recognition of the Kingdom of Serbs, Croats and Slovenes in 1919-1920. One aspect of the paper is based on historiographical literature, presenting and analysing the factual situation, which forms the basis for the legal analysis. The legal analysis is based on the nature of state recognition, as perceived at the beginning of the 20th century. The backbone of the paper is the actual course of recognition of the Kingdom of SCS. Nevertheless, the paper also touches on the topic of the origin of the Kingdom of SCS and problematizes the issue of whether that state was new or old. The main emphasis for the topic is the exploration of whether the Kingdom of SCS, at the time when it was striving to obtain recognition from the allies in the Great War, satisfied the conditions of statehood from the point of view of the then relevant norms of International Public Law. The paper follows a dual theoretical understanding of the international legal concept of recognition through both declarative and constitutive theories, reflecting different understanding of recognition both in the period following the end of the First World War and today in the 21st century. To that extent, consideration of the historical concept of legal recognition contributes to a more complete understanding of this issue in contemporary international law as well.*

KEYWORDS: Creation of a State, Recognition of a State, Types of Recognition, Constitutive and Declarative Theories, Peace Conference in Paris, International Peace Treaties

Introduction

From the point of view of International Public Law, the entire First World War represents a field of application and operation of a large number of existing international legal concepts, as well as the emergence of new ones. The conceptions such as initiation of war, means and methods of warfare, armistice agreements, peace treaties, capitulation - represent ideas defined by internation-

al law before the First World War, some even centuries before in the form of common law, and some in written form through the conclusion of contracts. New legal concepts, very important for the further life of the international community and the development of international law, emerged during or with the termination of the war. One example of such provision was the establishment of individual criminal responsibility for the initiation of war and for crimes committed during the war, led to the separation of this type of responsibility from the well-established civil responsibility of the state, manifested in the form of war compensation or reparations.[1]

The topic of this paper, recognition of a state, refers to a legal concept that was already well known in International Public Law in the period of the First World War. It is an area of classical international law developed together with the notion of the creation of a state, regulating possible reactions of existing states to the appearance of a new state on the international scene. From the very beginning, up to contemporary international law, recognition of statehood has been described as lying between law and politics. The dilemma surrounding its nature still exists.[2]

From the point of view of the history of International Public Law, the issues that arose are: what was the expression of the recognition of a state, its conceptual definition, application, and the consequences of its application or lack of application. From the point of view of contemporary International Public Law, the example of the recognition of the Kingdom of SCS certainly represents a source of knowledge and experience that helps the proper understanding of the functioning of state recognition today.

The concept of International Legal Recognition at the beginning of the 20th century

International legal recognition of a state continues from the legal creation of a state.[3] In order to recognise a state, it is necessary that a new state has

[1] Тијана Шурлан, „Злочини у Првом светском рату – међународноправни аспект“, у: *Први свјетски рат – узроци и посљедице* (Бања Лука: Академија наука и умјетности Републике Српске, 2014), 363–382; Тијана Шурлан, „Одговорност кајзера Вилхелма II за Први светски рат – међународноправни аспект“, у*: Срби и Први светски рат 1914–1918*, уредник Драгољуб Живојиновић (Београд: Српска академија наука и уметности, 2015), 667–684.

[2] See: Paul Fauchille and Henry Bonfils, *Manuel de Droit International Public* (Paris: Droit des Gens, 1901); Lassa Oppenheim, *International Law: A Treatise* (London: Longmans, Green and CO, 1905); Hersch Lauterpacht, *Recognition in International Law* (Cambridge: Cambridge University Press, 1947); Ti-Chiang Chen, *The International Law of Recognition - With Special Reference to Practice in Great Britain and the United States* (London: Stevens, 1951); Hans Kelsen, "Recognition in International Law – Theoretical Observations", in: *International Law in the Twentieth Century*, editor Leo Gross (The American Society of International Law, 1969), 589–601; Thomas D. Grant, *Recognition of States: Law and Practice in Debate and Evolution* (Greenwood Publishing Group, 1999); James Crawford, *The Creation of States in International Law* (Oxford University Press, 2006); Daniel Hogger, *The Recognition of States: A Study on the Historical Development in Doctrine and Practice with the Special Focus on Requirements* (Zurich: Lit Verlag, 2014).

[3] See: James Crawford, *The Creation of States in International Law* (Oxford University Press, 2006).

been created in the first place, meaning that the entity that appears on the international scene is new, and has achieved statehood.

Until today, international law has not created a legal definition of a state, nor has it created a formula by which a state should be created. The emergence of a state is a question of fact - *ex factis jus oritur*.[4] Attempts to establish order into the event of the creation of a state proceeded by introducing principles or guiding principles under which the creation of a new state would be acceptable. The dominant political principles were the principle of political balance, the principle of nationality, and the principle of legality, up to the principle of self-determination. Over time, the principle of self-determination has grown from a political principle into a legal principle.[5] The absence of a legal norm that could prescribe how a state should be created, as well as the absence of an international legal definition of a state, has led international law to formulate a rule that a new state would be considered to have been created when three elements are cumulatively fulfilled: a permanent population, a defined territory, and a government holding effective power on the defined territory, which the population living on that territory recognizes as its government.

International law, for similar reasons regarding the creation of states, did not formulate a legal norm that would define recognition. Reasons for the lack of one generally accepted definition of this term are reflected in two schools of thought. One school insists that recognition is not a legal concept, but a political category, based solely on political notions. This approach is grounded on the fact that a new state does not have the right to be recognized, nor do other states have the obligation to grant recognition. The absence of correlation between rights and obligations on both sides is followed with the conclusion that recognition is not a legal concept. Another school of thought considers recognition to be a legal notion, formulated in a legal act based on political reasons. The absence of a correlation of rights and obligations still does not allow existing states to treat the new entity as if it does not exist. The very fact of the existence of an organized entity nevertheless puts it to a certain extent in legal relations, the position of a temporary international legal subject, whose fate is to be decided over time.

The second and even more important aspect of distinction between two theories is based on the function of recognition. On the one hand, there is the understanding that recognition is a constitutive element of the process of the creation of a state, and that a state is created when, in addition to its three constitutive elements, there is recognition by states within the international community that finalises the process of its creation. On the other hand, there is the understanding that the act of recognition is only a declarative act, by which an

[4] J. Crawford, *op. cit*., 46; Ian Brownlie, *Principles of Public International Law* (Oxford University Press, 2003), 77.

[5] Antonio Cassese, *Self-Determination of People: A Legal Reappraisal* (Cambridge University Press, 1995), 21–24; Milena Sterio, *The Right to Self-Determination Under International Law* (Routledge, 2013), 35–39.

established and recognised state declares to a new state that has obtained the three constitutive elements of statehood that it recognises and supports its existence as a state. The theory of declarative recognition rests on the premise that a state is created when the three constitutive elements are fulfilled, where recognition itself does not participate in the creation of a state. For supporters of the declarative theory, the purpose and consequences of recognition are usually the establishment of diplomatic relations between two states, as well as supporting a new state as it takes its place within the international community. The consequences of recognition, according to the understanding of supporters of the constitutive school of thought, are woven into the very process of the creation of a state, enabling it to be finally constituted. The understanding of supporters of the constitutive theory indicates a tendency to control the emergence of new states by already existing states. This understanding tends to influence the processes of creation of new states, allowing both premature recognition, in the absence of the three constitutive elements, and denial of recognition of states that have obtained the three constitutive elements.

In order to form the whole picture, it is necessary to recall the theoretical approach of International Public Law at the beginning of and during the 20th century. Fossil, Oppenheim, and Lauterpacht, professors who left an impressive mark on international law theory at the beginning and in the middle of the 20th century laid the theoretical foundations of the constitutive theory. Fossil advocated the understanding that even an unrecognized state is a state, but as such it has no personality under international law.[6] For Oppenheim, a state becomes an international entity only and exclusively through recognition.[7] Lauterpacht, recognizing the existence of the state as a fact, insisted that the new state derives its legal existence only from the will of existing states.[8] French professors Louis le Fur and Marcel Moa, whose textbooks on public international law were translated into Serbian after the First World War, also present the institute of recognition mainly in the spirit of constitutive theory, noting, however, that this approach was slowly being abandoned in favour of declarative theory.[9] It was precisely these approaches that led to the conclusion that constitutive theory was characteristic for the period up to the Second World War, while the declarative theory prevailed afterwards. Thus, our famous professor of international law, Milan Bartoš, in a textbook printed after the Second World War, presents recognition as a declarative act. He points out that the modern international society is democratic and as such it is unacceptable that individual states hold the power to decide the fate of any peoples, since peoples decide on their own destiny according to the principle of self-determination.[10]

---

[6] P. Fauchille and H. Bonfils, *op. cit*., 190–192.
[7] L. Oppenheim*, op. cit*., 134.
[8] H. Lauterpacht*, op. cit*., 45.
[9] Луј ле Фир, *Међународно јавно право* (Београд: Геца Кон, 1924), 390–391; Марсел Моа, *Међународно јавно право* (Београд: Геца Кон, 1925), 45–47.
[10] Milan Bartoš, *Međunarodno javno pravo* (Beograd: Kultura, 1954), 197.

However, the legal concept of recognition has not progressed in its physiognomy even in contemporary international law. On the contrary, constitutive and declarative theories are still present.[11]

The Course of Recognition of the Kingdom of SCS

The first question that arises from the point of view of international law and the previous question in relation to the topic of recognition is – was the Kingdom of SCS a new state or was it the enlarged territory of the Kingdom of Serbia?[12]

Two opposing viewpoints were formed even then, at the end of the First World War, and until now scientists have not reconciled their views on this issue: that it was not a new state or that it was a new state.[13]

An interesting attempt to reconcile these views on the new-old state was also made. In an attempt to clarify whether the Kingdom of SCS was a new state or just a "transformed" Kingdom of Serbia, professor of International Public Law Radoslav Stojanović strongly advocates the position that the state was not new from the point of view of a positive legal approach, but from a political-sociological approach he presented the opposite conclusion. This approach was based on the understanding that the act, which is most often referred to in the literature as the act of unification issued by the heir to the throne Alexander I Karadjordjević, was a political act, and as such could not produce legal consequences. Namely, the competence to change sovereignty and legal personality lay exclusively with the National Assembly of the Kingdom of Serbia, so the act of the heir to the throne was actually only an expression of the intention to present the decision of the National Council of Slovenes, Croats, and Serbs to the Government. According to Professor Stojanović's point of view, the Kingdom of SCS was established only with the Vidovdan Constitution of 1921. This understanding is based on the distinction between the political and legal manifestation of the state.[14]

Another question is whether that new entity could be subsumed under the concept of a state, as international law understands a state, that is, from what specific moment the new entity meets the elements of statehood.

---

[11] J. Crawford, *op. cit*., 17–28; Malcolm Shaw, *International Law* (Cambridge University Press, 2003), 367–376.

[12] Никола Б. Поповић, *Срби у Првом светском рату 1914–1918* (Нови Сад: Друштво историчара Јужнобачког и Сремског округа, 2000), 110–115.

[13] Љубомирка Кркљуш, „О правној природи Прводецембарског акта 1918. године и стварању Краљевине Срба, Хрвата и Словенаца", у: *Први светски рат и уједињење – зборник радова*, уредник Ђорђе Ђурић (Нови Сад: Матица српска, 2018), 217–240; Мирјана Стефановски, „Уговорни концепт конституисања југословенске државе", у: *Зборник радова, Књига 7 – Србија 1918. године и стварање југословенске државе* (Београд: Историјски институт, 1989), 243–257.

[14] Радослав Стојановић, „Државноправни положај Србије од 1. децембра 1918. до 28. јуна 1921.", у: *Зборник радова, Књига 7 – Србија 1918. године и стварање југословенске државе* (Београд: Историјски институт, 1989), 389–396.

The creation of a state, as noted above, is not subjected to legal procedure, but nevertheless takes place under certain principles. Following international legal principles on the formation of states as a preliminary question, the necessity of clarifying who has united with whom appears. Was the state of the Kingdom of SCS a newly created state as a product of the unification of peoples with an internationally recognized state the Kingdom of Serbia or was it the unification of states? The clarification of this issue turned out to be unimportant in the final outcome, but during the recognition process it did represent a potential source of danger for the legal personality of the new state. Namely, the principle of self-determination by definition is reflected in the right of peoples to decide for themselves in which and in what kind of state they want to live.[15] In other words, the right to self-determination is not a right of a state. Even more specifically, the right to self-determination is defined as the right of peoples under foreign rule.[16] Throughout the process of the creation of the Kingdom of SCS, the grounding principles for its creation and existence had been elaborated. The consequences of the answer to this question were striking, starting from the Peace Conference in Paris, until the end of the 20th century and the disappearance of that same state.

Without further consideration of the process of the formation of the Kingdom of SCS, and the basis for considering the Kingdom of SCS as a new or old state, I will continue my analysis from the official position of the Kingdom of SCS itself, which considered itself to be a new state, and initiated its international legal recognition.

One important favourable aspect for the new emerging state was reflected in the fact that it emerged from the war, on the winning side, in a period when the map of Europe changed on a large scale.[17] Another important aspect for gaining recognition was reflected in the general climate that was in favour of the changes. It is clear that easy recognition by the allied countries was expected, with full rights.

From a formal and legal point of view, the process of recognizing the Kingdom of SCS began on December 24th 1918, when the Ministry of Foreign Affairs of the Kingdom of SCS sent information to the embassies in Belgrade of France, Italy, Great Britain, Russia, the USA, Belgium and Greece, that a new state and a new government had been formed with an indication of their composition. From that moment on, it was a fact that an entity called the Kingdom of SCS had appeared on the international scene, with Crown Prince Alexander I Karadjordjević on the thrown and Stojan Protić as Prime Minister.

However, the communication that followed in the first weeks after the announcement of the formation of the Kingdom of SCS showed that the allied states were not ready to promptly perform recognition, but that certain dilem-

[15] A. Cassese, *op. cit.*, 21–24.

[16] Смиља Аврамов и Миленко Крећа, *Међународно јавно право* (Београд: Савремена администрација, 1999), 79.

[17] Н. Б. Поповић, *op. cit*., 115.

mas had appeared regarding the composition of the state, how it was created, and the form of unification, annexation, and subjugation, etc. The most controversial issue was the issue of territory, that is, state borders. For the states of Europe, the main allies of the war, the decision was made to leave this subject for resolution at the International Peace Conference that was to follow.

The USA, on the other hand, approached recognition differently. After communication with the Montenegrin King Nikola I Petrović, the President of the USA was in a dilemma regarding the recognition and decided that it was necessary to consider in more detail how Montenegro came to be part of the Kingdom of SCS, i.e. whether there was an illegal coup and some kind of takeover of the territory of the state of Montenegro against its will. The diplomatic activity of Foreign Minister Ante Trumbić and his negotiations with State Secretary Robert Lansing clarified the sequence of events in Montenegro and clearly presented the decision adopted by the Great National Assembly of the Serbian People in Montenegro on November 26th 1918 in Podgorica. The assembly was composed of 165 deputies, who voted for the decision to oust King Nikola I Petrović and his dynasty from the Montenegrin throne, to unite Montenegro with fraternal Serbia into a single state under the Karadjordjević dynasty, and to join the common Motherland of the three-named nation of Serbs, Croats and Slovenes. Trumbić's diplomatic action was successful and the USA recognized the Kingdom of SCS.[18] The recognition was formally given in writing on February 6, 1919, signed by Lansing, the US Secretary of State. There was some apprehension regarding his powers, but in international law the signature of the Minister of Foreign Affairs brings about legal consequences and it is considered to be fully-fledged without special authority. However, even more important than formal legal recognition was the clear and firm determination of the USA to respect the principle of self-determination of peoples. Once Lansing was convinced that the new state was created in compliance with this principle, it was easy to complete the formalities. The USA was the main source of support for the new state. That state was able to reason and declare recognition without additional burdens resulting from relations during the war, which European countries had among themselves. On the other hand, it is important to note that Norway was the first to give recognition on January 26, 1919, in response to the note of Foreign Affairs Minister Trumbić. Nevertheless, the recognition given by the USA represented a linchpin for other countries to follow. Soon afterwards, recognition came from Greece, Switzerland, and Czechoslovakia.[19]

The turning point for the resolution of comprehensive international legal status for the Kingdom of SCS was the Paris Peace Conference, despite the fact that independently and before it the new state had been recognised by several states, as well as the fact that after the Conference it took several years for recognition to be given by a number of other countries.

---

[18] Livija Kardum, „Pitanje međunarodnog priznanja Kraljevine Srba, Hrvata i Slovenaca", *Politička misao*, XXIII, br. 3, (1986), 119–130.

[19] *Ibid.*

The European states, wartime allies, were restrained regarding the recognition of the Kingdom of SCS. The most difficult, significant, and strongest rival of the newly created state was Italy, a formally allied state.[20] Precisely due to the fact that both countries were on the same side during the war, but after the end of the war they found themselves interested in the same territories or at least recognized themselves as competitors in relation to some areas, it led to a certain delay and avoidance on the part of the main allies to give recognition to the new state. It should be underlined that the problem in relations with allied states did not exist in relation to the recognition as such, but regarding the definition of the borders of the newly created state. The approach was therefore directed towards the definition of the territory and its borders.

That approach influenced yet another aspect important for the new state. The participation of the delegation of the Kingdom of Serbia and Montenegro at the Paris Peace Conference began under the name of the Kingdom of Serbia. The Kingdom of Serbia was a full member of the international community until the war, a sovereign state that maintained diplomatic relations with its allies, participated in diplomatic conferences, and was a signatory to international treaties, both bilateral and multilateral. On the other hand, the composition of the delegation undoubtedly depicted the peoples that were included in the new state and from the point of view of the legal structure of the state, it represented the new state, the Kingdom of SCS. The delegation was basically of a political nature and as such it exerted influence on the other delegates as well.[21] The political delegates represented the Kingdom of Serbia, the People's Council of the SCS, that is, the State of Slovenes, Croats and Serbs, and no one opposed this at the conference. Although during the Conference, the delegation was called the Serbian delegation, official communication did flow using the name the Kingdom of SCS – the credentials of the delegates were under the name of the Kingdom of SCS, and the delegates gave statements on behalf of the Kingdom of SCS. Ante Trumbić, as Minister of Foreign Affairs, spoke at the plenary session on January 25, 1919. It is important to emphasize that at the first session of the Peace Conference, Trumbić spoke for the first time as the Minister of Foreign Affairs of the new state.

From the very beginning of the Paris Peace Conference, the Kingdom of SCS strove for recognition. The delegates had to considered carefully what steps to take, the character of the letter signed by Lansing on behalf of the USA was under scrutiny, and the topic of recognition was complicated overall, both from the point of view of the recognition itself, and from the point of view of other important issues for the new state. During the Delegation Session held on February 24, 1919, there was an exchange of opinions: Trumbić believed that recognition should be sought from allies and friends again, and he pointed out that the

[20] Енес Милак, „Мусолини, Италија и настанак Краљевине СХС, Државноправни положај Србије од 1. децембра 1918. до 28. јуна 1921.“, у: *Зборник радова, Књига 7 – Србија 1918. године и стварање југословенске државе* (Београд: Историјски институт, 1989) 181–186.

[21] Андреј Митровић, *Југославија на Конференцији мира 1919–1920* (Београд: Завод за издавање уџбеника, 1969), 8–10.

letter he had received from Lansing still did not mean recognition. Vesnić believed that the written act of the USA openly and clearly recognized the Kingdom of SCS and did not support turning to the allies for recognition again, believing that this would only weaken the position. Pašić also believed that recognition should not be sought again.[22] For their part, the Government and the King also emphasized the demands that the delegation again formally ask for recognition at the Conference.[23] The critical moment for the process of recognition was the arrival of the Italian representative in Belgrade, with credentials addressed to the Kingdom of Serbia, which nevertheless were not accepted as such.

The essence of the SCS delegation's apprehension and the slippery ground on which the delegation found itself regarding its status was most clearly reflected in the dilemma of who would appear as a contracting party to the peace treaties: the Kingdom of Serbia or the Kingdom of SCS.[24] Peace treaties covered a number of issues, from territories, demarcations, citizenships, status of minorities, to war compensation or reparations. If the Kingdom of Serbia, which was officially a participant at the Conference, had the position of a contracting party, it could then negotiate only issues regarding the territory of the Kingdom of Serbia. This would then mean that the rest of the territory under the auspices of the Kingdom of SCS, namely the territory that was previously under the sovereignty of Austria-Hungary, i.e. an integral part of the belligerent Central Powers, practically remained uncovered by the new arrangement, which could then lead to its participation in war reparations to the victorious states. If such a scenario had played out, it would not necessarily be disastrous for the subjectivity of the newly created state. That could be interpreted and understood as one of the aspects of the finalisation of war relations, without imposing any prejudice regarding its legal status *pro futuro*. However, since the matter of the peace treaties was not focused solely on the subject of war reparations, but also on a number of other aspects of the conclusion of peace, it was nevertheless important to ensure that the new state was a contracting party.

Nevertheless, from the legal aspect of the creation of a new state and the legal concept of recognition, the unresolved scope of its territory and the lack of clear demarcation of the borders of the newly created state turned out to be of existential importance. That issue was to be considered and resolved at the Conference as one of the most important aspects of peace treaties, not only for the Kingdom of SCS, but also for the other states that had gone through some form of transformation. Considering the fact that one of the constitutive elements of statehood had not been achieved, the question can rightly be asked – whether the recognitions given to the new state before the conclusion of the peace treaties were full-fledged recognitions or premature recognitions?

---

[22] *Zapisnici sa sednica Delegacije Kraljevine SHS na Mirovnoj konferenciji u Parizu 1919–1920*, priredili Bogdan Krizman, Bogumil Hrabak (Beograd: Institut društvenih nauka, Odeljenje za društvene nauke, 1960), 58–59.

[23] *Ibid.,* 76.

[24] А. Митровић, *Југославија на Конференцији мира 1919–1920*, 62–63.

The scenario that took place on the termination of the Paris Conference for the newly created state was the best outcome at that moment. Territories freed from the Austro-Hungarian Monarchy, completely and without any burdens became part of the new sovereign state, a victorious one. The newly created state did not find itself with additional financial obligations based on the territories that had participated in the war on the side of the enemy.

During the Conference, even before the state borders of the new state were defined, the allied states gave *de jure* recognition - Great Britain on June 1, 1919 and France on June 5, 1919. In the first six months of its existence, the Kingdom of SCS received the most important recognitions for its future place on the new map of the world. However, the issue of recognition with Italy and with the states that were defeated in the war, and thus the final solution of the territorial issue, remained open. During the Paris Peace Conference, Italy was hostile towards the Kingdom of SCS, clearly basing its position on the secret London Treaty in which it agreed to receive territories in exchange for support in the war.[25]

Consequently, recognition from defeated states was incorporated within the peace treaties. The first peace treaty that resulted from the Paris Peace Conference was concluded with Germany. The Treaty of Versailles designated, *inter alia*, the Kingdom of SCS as a contracting party. Although the provision that directly regulated the issue of recognition was not included in the text of the treaty, the position of the Kingdom of SCS as a contracting party presented factual recognition, not only in relation to defeated Germany, but in relation to all contracting parties. The contractual provision that supported this conclusion is the reparation clause, which clearly defines this entity as the holder of reparations.

The Treaty of St. Germain concluded between the victors and Austria in September 1919 marked another additional step in the final establishment of the Kingdom of SCS. In addition to having the position of a contracting party, this contract contained an expressly stipulated recognition in Article 46, as recognition of the complete independence of the state of Serbs, Croats and Slovenes and a defined demarcation. Article 46 is of exceptional importance, considering the fact that part of the territory of the Kingdom of SCS was previously under Austro-Hungarian sovereignty. Article 36 of the Treaty of Neuilly concluded with Bulgaria (November 1919) also stipulates the explicit recognition of the SCS state, while in other treaty provisions it contributes to the institution of recognition by defining state borders. Until the conclusion of this contract, the border issue between the Kingdom of SCS and Bulgaria was unresolved.[26] The Treaty of Trianon concluded between the Allies and Hungary (June, 1920) regulates the relationship between Hungary and the Kingdom of SHS in the same way as the Treaty of Saint Germain. In Article 41, the complete independence of the Kingdom of SCS was recognized, covering the surrender of all territories

[25] *Ibid.,* 104–106.

[26] Desanka Todorović, „Pitanje jugoslovensko-bugarske granice na Mirovnoj konferenciji u Parizu 1919–1920“, u: *Istorija XX veka, Zbornik radova, knjiga IX* (Beograd: Institut društvenih nauka, Odeljenje za istorijske nauke, 1968), 63–126.

that were once an integral part of the Austro-Hungarian Monarchy and the establishment of a Commission that will start demarcating the borders.[27]

The relationship between Italy and the Kingdom of SCS had to be defined in a separate international agreement, which was achieved by concluding the Treaty of Rapallo on November 1920. The contracting parties to this contract were only Italy and the Kingdom of SCS. However, the importance of this contract far exceeds the interests of the two mentioned contracting parties alone. Within this treaty, the secret London Treaty between the allied countries and Italy was indirectly resolved, since the Rapallo Treaty finally resolved the topic conceived by the secret London Treaty - Italy's territorial claims as a victorious ally. The Rapallo Treaty regulated the issue of demarcation; it was clearly defined whose sovereign power would extend to what parts of undisclosed territory.[28] By this agreement, the issue of the territory of the Kingdom of SCS was finally concluded. From Italy's point of view, the Treaty of Rapallo did have the function of recognition of the Kingdom of SCS. From the point of view of the Kingdom of SCS, as well as all other countries that decided to grant recognition, the last dilemma regarding the territory was resolved by this agreement.

As for the rest of the world, there is one interesting fact. During 1919, none of the Latin American countries gave recognition to the Kingdom of SCS. This was a consequence of the absence of a note on the creation of a new state, that is, the failure to send such a note to the countries of Latin America.[29]

Elements of Recognition of the Kingdom of SCS

The example of the process of creation and recognition of the Kingdom of SCS is a valuable example and source of experience, viewed from the point of view of international public law. Although from a methodological point of view this example, and this paper itself, belong to the field of history of public international law, the knowledge we derive from it is relevant and significant for the understanding of the concept of recognition today.

In the historiographical literature, one comes across views that the Kingdom of SCS participated in the work of the Peace Conference in Paris, even before it was recognized. Such a statement could be understood as sup-

---

[27] Андреј Митровић, *Разграничење Југославије са Мађарском и Румунијом 1919–1920: прилог проучавању југословенске политике на Конференцији мира у Паризу* (Нови Сад: Институт за изучавање историје Војводине, 1975).

[28] Marina Cattaruzza, "The Making and Remaking of a Boundary – the Redrafting of the Eastern Border of Italy after the Two World Wars", *Journal of Modern European History*, vol. 9, no. 1, (2011), 66–86; Bogdan Krizman, „Savezнички ultimatum u jadranskom pitanju siječnja 1920. godine", *Jadranski zbornik: prilozi za povijest Istre, Rijeke i Hrvatskog primorja,* br. 2, (1957), 199–236; Dragan Bakić, "Nikola Pašić and the Foreign Policy of the Kingdom of Serbs, Croats and Slovenes, 1919–1926", *Balcanica,* XLVII, (2016), 285–316.

[29] Предраг Крејић, „Признање Краљевине Срба, Хрвата и Словенаца од стране држава Јужне и Централне Америке", *Архив*, *часопис Архива Србије и Црне Горе*, 1–2, (2006), 81–89.

porting the stand that recognition must be formal, written, and distinctive in order to be legally valid. However, there is a lack of specification regarding who did not recognize it, and it ignores those who did recognize it, and disregards the difference that existed then and now in recognition noticing types of recognition and the formation of different categories of recognition. It seems that it would be more correct to say that until the Paris Conference the Kingdom of SCS had not been a fully defined state, considering the major unresolved issue – that of its territory. In the situation in which the Kingdom of SCS found itself at the Peace Conference regarding the constitutive elements of a state, it is not surprising that the topic of its statehood was also questionable. Namely, not only was there a lack of defined borders, but even more importantly, there was uncertainty regarding the scope of the overall territory, as well as the coverage of population and the extent of sovereign power.

Regarding the recognitions that were given before the Paris Peace Conference, as well as the possibility of the delegation of the Kingdom of SCS participating at the Conference, it is necessary to underline that the theory of public international law had developed several types of recognition.[30]

Even then, international public law had a developed theoretical concept that recognition could be either *de facto* or *de jure*, and that it could be individual or collective, conditional and unconditional, revocable and irrevocable. The example of recognition of the Kingdom of SCS speaks in favour of this. Namely, the first recognitions were given individually and unrelated to each other. The recognitions given by Norway, the USA, Greece, Switzerland, and Poland by type of recognition were individual and *de jure* recognitions. The characteristics of these types of recognition are written form, formal recognition, irrevocability of recognition, as well as recognition by the state from the moment of its creation, meaning that *de jure* recognition acts retroactively.[31]

If we consistently apply this same international legal categorization of recognition by types, regarding the events at the Paris Peace Conference, then the act of accepting the delegation as it was composed, with the official state functions that some delegates held and their equal status with other participants of the Conference, could speak in support of the conclusion of *de facto* recognition. According to the characteristics of this type of recognition, it is informal and tacit recognition, expressed by action. In addition, this type of recognition could also be characterized as collective recognition, given that it is related to participation in an international conference.[32]

---

[30] Родољуб Етински, *Међународно јавно право* (Београд: Службени гласник, 2010), 122–124; Миленко Креча и Тијана Шурлан, *Међународно јавно право* (Београд: Криминалистичко полицијска академија, 2016), 71–76.

[31] H. Lauterpacht, *op. cit.,* 343; Ti-Cheng Chian, *op. cit*., 172.

[32] The Berlin Congress is also an example of collective recognition of newly created states, including Serbia, see: D. Hogger, *op. cit.*, 167–169. Professor Janković assesses the recognition of Serbia at the Berlin Congress as collective but also *de jure* recognition, see: Branimir Janković*, International Public Law* (New York: Transnational Publishers, 1984), 114.

Recognition within peace treaties is a specific type of recognition. Peace treaties are characterised by lack of free will on the side of the vanquished, because they arise from the factual state of a defeat. However, from the point of view of the subject of recognition only, without entering into the subject of free will, the contractual provision on recognition is a fully-fledged recognition. Aspects of peace treaties, such as party status and participation in reparations can also be treated as version of *de facto* recognition.

Therefore, from the point of view of international legal theory and the presented example, it follows that recognition should be considered as a multifaceted concept, that can take different forms and extend through time, unlimited by deadlines.

However, the essential issue is what is the effect of the recognition? More precisely, why did representatives of a newly created state strive and worry so much about the recognition, and what was the significance of the time course of several years in which the recognition was successively obtained?

When we elaborate recognition from the angle of its function, the analysis must inevitably be placed in the framework of the constitutive and declarative theories of recognition, i.e. the view that the state is definitely constituted only by receiving recognition, and the view that the creation of the state is a fact that is reflected in the sum of the three elements of the state – population, territory, and government.

At the moment of declaring the statehood of the Kingdom of SCS, sending information that a new state was created, and even during the participation of the delegation at the Paris Peace Conference, the three constituent elements of the state were not fully defined. These open questions confirm that the anxiety of the delegation at the Conference, as well as of the King and the Government was justified.

However, the question that comes to light at this point is: if all three constitutive elements of a state lacked precision, how in such a situation could there have been recognition at all?

The general answer that international law offers to this dilemma is the creation of the concept of premature recognition. Through interpretation of the legal institute of recognition, the position was taken that it was not necessary for all three elements to be fully defined, but that it was possible to accept certain deviations.[33] Following such an explanation, it could be concluded that the existence of a clear state border in one part is enough to accept that the territory as a constitutive element is satisfied, and that the final definition of the state border will be achieved over time. In relation to sovereign power, the interpretation understands that it is not necessary for all legal acts to be passed, but that authorities have been established. This presented interpretation corresponds with the example of the recognition of the Kingdom of SCS. Despite the fact that the bodies were established, the Constitution as the highest legal act of the state was

[33] T. D. Grant, *op. cit*.; D. Hogger, *op. cit*., 32–36.

adopted only in 1921. Besides, the assessment of whether the constitutive elements were fulfilled was not considered separately for each one, but the elements were assessed together.

The example of the recognition of the Kingdom of SCS is useful for taking a stand on the significance and support of the political commitment of the state that gives recognition in relation to the newly created state. Also, it highlights how recognition influences overall relations among states within the international community.

It is particularly interesting to analyse the position of the USA. From the emergence of public international law in the middle of the 17th century until the end of the First World War, international law was considered *ius publicum europaeum*. From the second half of the 19th century the USA has become more interested in international law. With the termination of the First World War, the USA positioned itself as an important actor in international community, influencing from its specific position understanding and development of international law.

Regarding recognition, the USA gained its own experience during the 19th century in relation to the countries of Latin America, and then as an intermediary in the recognition of these countries.[34] Experience from the examples of the recognition of these countries crystallized how powerful recognition is, and it revealed how it could be used to influence not just the fate of peoples and states, and but also the whole world map. In that period, it became clear that recognition was the right of the state that gave recognition, and not of the state that strove to be recognized. To that extent, statehood is in the hands of existing states and inevitably becomes politically usable. Constitutive theory was developed in that direction.

Example of the recognition of the Kingdom of SCS, showed that the USA used the opportunity to influence the course of history. This statement becomes even more important from the point of view that recognition given to the Kingdom of SCS was a premature recognition since three constitutive elements had not been defined at the time when the USA recognised the new state. The recognition of the Kingdom of SCS by the USA is a typical example of recognition given in the spirit of constitutive theory. The same could be stated for Great Britain and France. However, these two allied states walked more cautiously on the terrain of recognition. They showed their tacit consent and support by allowing the delegation of the Kingdom of SCS to participate in the work of the Paris Peace Conference, but formally adhering to international legal subjectivity as it was known before the war, the subjectivity of the Kingdom of Serbia. The sequence of steps that Great Britain and France then took had the same goal as the USA when it gave its recognition, only at a slightly slower pace. Recognition from Great Britain and France was also given in compliance with the logic of the constitutive school of thought. Recognition from two powerful allies strengthened the status of the Kingdom of SCS, supported its inter-

[34] William R. Manning, *Diplomatic Correspondence of the United States concerning the Independence of Latin-American Nations* (Oxford University Press, 1925).

national legal personality, and enabled its position as a contracting party in peace treaties.

The example of the recognition of the Kingdom of SCS therefore clearly shows the dominance of the understanding of recognition as a constitutive element in the process of the creation of the state. Fulfilment of the elements of defined territory, permanent population and sovereign power were not decisive themselves, but it was the assessment of the states that gave recognition that the entity claiming to be a state had completed its statehood.

Concluding with the final goal of this paper, contemporary understanding of the institute of recognition through the example of the recognition of the Kingdom of SCS, it should be underlined that despite the fact that the constitutive theory in the contemporary science of international public law is marked as unacceptable,[35] the reality of the 21st century and current examples of the emergence of new states, show that the constitutive approach to the decision-making of states on granting recognition is still present.[36]

Conclusion

What does the example of the recognition of the Kingdom of SCS teach us? Would there be a state even if it had not been recognized? Yes, there would be a state, but it is currently impossible to answer what kind of state that would be, with what territorial scope, scope of population, and government. In this example, the interweaving of the institute of the creation of state and the institute of state recognition is clearly shown. Also, it is illustrative that it is not necessary to wait for all the elements of statehood to be completed. The slippery slope arises precisely in the assessment of whether the constituent elements of a state are sufficiently fulfilled for granting recognition.

The example of recognition of the Kingdom of SCS shows the tendency to treat recognition as a constitutive element of the creation of the state. The support that a new state had from allied states illustrates the importance of the circumstances in which new state enters the international scene, for the application of legal recognition. And finally, creating a state on the wings of victory is certainly more accessible than when it happens in conditions of insufficient support.

The example of the recognition of the Kingdom of SCS clearly crystallizes the right of recognition. Recognition is the right of member states of the international community, that is, states that already exist. Recognition is not the right of a state that has yet to take its place in the international community. States that are about to give recognition are legally not obliged to give it, and in such a situation, the nascent state has no legal means to force the recognition.

---

[35] С. Аврамов и М. Крећа, *op. cit*., 84.

[36] Тијана Шурлан, „Признање у међународном праву: случај Косова и Метохије“, *Зборник за друштвене науке Матице српске*, свеска 151, бр. 2, (2015), 289–306.

REFERENCES

- Avramov Smilja, i Milenko Kreća. *Međunarodno javno pravo*. Beograd: Savremena administracija, 1999.
- Bakić, Dragan. "Nikola Pašić and the Foreign Policy of the Kingdom of Serbs, Croats and Slovenes, 1919–1926". *Balcanica,* XLVII, (2016), 285–316. DOI: https://doi.org/10.2298/BALC1647285B
- Bartoš, Milan. *Međunarodno javno pravo*. Beograd: Kultura, 1954.
- Brownlie, Ian. *Principles of Public International Law*. Oxford: Oxford University Press, 2003.
- Cassese, Antonio. *Self-Determination of People: A Legal Reappraisal.* Cambridge: Cambridge University Press, 1995.
- Cattaruzza, Marina. „The Making and Remaking of a Boundary – the Redrafting of the Eastern Border of Italy after the Two World Wars". *Journal of Modern European History*, vol. 9, no. 1, (2011), 66–86. DOI: https://doi.org/10.17104/1611-8944_2011_1_66
- Chen, Ti-Chiang. *The International Law of Recognition - With Special Reference to Practice in Great Britain and the United States.* London: Stevens, 1951.
- Crawford, James. *The Creation of States in International Law.* Oxford: Oxford University Press, 2006.
- Etinski, Rodoljub. *Međunarodno javno pravo.* Beograd: Službeni glasnik, 2010.
- Fauchille Paul, and Henry Bonfils. *Manuel de Droit International Public.* Paris: Droit des Gens, 1901.
- Fir, Luj le. *Međunarodno javno pravo*. Beograd: Geca Kon, 1924.
- Grant, Thomas D. *Recognition of States: Law and Practice in Debate and Evolution*. Greenwood Publishing Group, 1999.
- Hogger, Daniel. *The Recognition of States: A Study on the Historical Development in Doctrine and Practice with the Special Focus on Requirements*. Zurich: Lit Verlag, 2014.
- Janković, Branimir. *International Public Law.* New York: Transnational Publishers, 1984.
- Kardum, Livija. „Pitanje međunarodnog priznanja Kraljevine Srba, Hrvata i Slovenaca". *Politička misao*, XXIII, br. 3, (1986), 119–130.
- Kelsen, Hans. "Recognition in International Law – Theoretical Observations". In: *International Law in the Twentieth Century*. Editor Leo Gross, 589–601. The American Society of International Law, 1969.
- Kreća Milenko, i Tijana Šurlan. *Međunarodno javno pravo.* Beograd: Kriminalističko policijska akademija, 2016.
- Krejić, Predrag. „Priznanje Kraljevine Srba, Hrvata i Slovenaca od strane država Južne i Centralne Amerike". *Arhiv*, *časopis Arhiva Srbije i Crne Gore*, 1–2, (2006), 81–89.

- Krizman, Bogdan. „Saveznički ultimatum u jadranskom pitanju siječnja 1920. godine“. *Jadranski zbornik: prilozi za povijest Istre, Rijeke i Hrvatskog primorja,* br. 2, (1957), 199–236.
- Krkljuš, Ljubomirka. „O pravnoj prirodi Prvodecembarskog akta 1918. godine i stvaranju Kraljevine Srba, Hrvata i Slovenaca“. U: *Prvi svetski rat i ujedinjenje – zbornik radova*. Urednik Đorđe Đurić, 217–240. Novi Sad: Matica srpska, 2018.
- Lauterpacht, Hersch. *Recognition in International Law.* Cambridge: Cambridge University Press, 1947.
- Manning, William R. *Diplomatic Correspondence of the United States concerning the Independence of Latin-American Nations.* Oxford: Oxford University Press, 1925.
- Milak, Enes. „Musolini, Italija i nastanak Kraljevine SHS, Državnopravni položaj Srbije od 1. decembra 1918. do 28. juna 1921“. U: *Zbornik radova, Knjiga 7 – Srbija 1918. godine i stvaranje jugoslovenske države*, 181–186. Beograd: Istorijski institut, 1989.
- Mitrović, Andrej. *Jugoslavija na Konferenciji mira 1919–1920.* Beograd: Zavod za izdavanje udžbenika, 1969.
- Mitrović, Andrej. *Razgraničenje Jugoslavije sa Mađarskom i Rumunijom 1919–1920: prilog proučavanju jugoslovenske politike na Konferenciji mira u Parizu*. Novi Sad: Institut za izučavanje istorije Vojvodine, 1975.
- Moa, Marsel. *Međunarodno javno pravo*. Beograd: Geca Kon, 1925.
- Oppenheim, Lassa. *International Law: A Treatise*. London: Longmans, Green and CO, 1905.
- Popović, Nikola B. *Srbi u Prvom svetskom ratu 1914–1918*. Novi Sad: Društvo istoričara Južnobačkog i Sremskog okruga, 2000.
- Shaw, Malcolm. *International Law*. Cambridge: Cambridge University Press, 2003.
- Stefanovski, Mirjana. „Ugovorni koncept konstituisanja jugoslovenske države“. U: *Zbornik radova, Knjiga 7 – Srbija 1918. godine i stvaranje jugoslovenske države,* 243–257. Beograd: Istorijski institut, 1989.
- Sterio, Milena. *The Right to Self-Determination under International Law*. Routledge, 2013. DOI: https://doi.org/10.4324/9780203083963
- Stojanović, Radoslav. „Državnopravni položaj Srbije od 1. decembra 1918. do 28. juna 1921“. U: *Zbornik radova, Knjiga 7 – Srbija 1918. godine i stvaranje jugoslovenske države*, 389–396. Beograd: Istorijski institut, 1989.
- Šurlan, Tijana. „Zločini u Prvom svetskom ratu – međunarodnopravni aspekt“. U: *Prvi svjetski rat – uzroci i posljedice*, 363–382. Banja Luka: Akademija nauka i umjetnosti Republike Srpske, 2014.
- Šurlan, Tijana. „Odgovornost kajzera Vilhelma II za Prvi svetski rat – međunarodnopravni aspekt“. U*: Srbi i Prvi svetski rat 1914–1918*. Urednik Dragoljub Živojinović, 667–684. Beograd: Srpska akademija nauka i umetnosti, 2015.
- Šurlan, Tijana. „Priznanje u međunarodnom pravu: slučaj Kosova i Metohije“. *Zbornik za društvene nauke Matice srpske*, sveska 151, br. 2, (2015), 289–306. DOI: https://doi.org/10.2298/ZMSDN1551289S

• Todorović, Desanka. „Pitanje jugoslovensko-bugarske granice na Mirovnoj konferenciji u Parizu 1919–1920“. U: *Istorija XX veka, Zbornik radova, knjiga IX*, 63–126. Beograd: Institut društvenih nauka, Odeljenje za istorijske nauke, 1968.
• *Zapisnici sa sednica Delegacije Kraljevine SHS na Mirovnoj konferenciji u Parizu 1919–1920*. Priredili Bogdan Krizman i Bogumil Hrabak. Beograd: Institut društvenih nauka, Odeljenje za društvene nauke, 1960.

TIJANA ŠURLAN, PhD, Associate Professor
Department of Criminalistics, University of Criminal Investigation and Police Studies
Belgrade, Republic of Serbia
tijana.surlan@kpu.edu.rs

INTERNATIONAL LEGAL RECOGNITION OF THE KINGDOM OF SERBS, CROATS AND SLOVENES

Summary

At the end of the First World War, the Kingdom of SCS appeared at the international scene, as one of several new states that were created as the outcome of the war. As such, the new state should go through the procedure of recognition, which was not a simple task, both from the factual position of the entity and from the position of the international law. The example of international legal recognition of the Kingdom of SCS presents a valuable example of the course of recognition. It shows that the potential for recognition rests with each state itself, and that a state would decide on recognition from its own point of view and its own interests. First recognitions given by Norway, the USA, Greece, Switzerland and Poland were given individually, they were *de jure* recognitions and they were unrelated. On the other hand, recognitions given in the course of the Paris Peace Conference present variety of recognitions, from *de facto* recognition to collective recognition, formulated within the peace treaties. This example clearly shows that the overall political position of a new state is of the utmost importance for the issue of recognition. The Kingdom of SCS, as a new state, belonged to the group of victorious states and, as such, it could count on the support from its allies. Although the course of international legal recognition did not happen to be easy and straightforward, final outcome of the whole process was supportive toward new state.

KEYWORDS: Creation of a State, Recognition of a State, Types of Recognition, Constitutive and Declarative Theories, Peace Conference in Paris, International Peace Treaties