

A Fight for Statehood? ISIS and Its Quest for Political Domination

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ADELE BELANGER-MCMURDO, OCT 5 2015

Known worldwide as the Islamic *State*, the Islamic State of Iraq and al Sham (ISIS)[1] is rejected as an official, independent, and sovereign state under international law. Its territorial heartland of Iraq and Syria has permitted it to establish political roots: it has a de facto administrative capital, Al Raqqah; the imposition of its own legislation of Sharia Law; and the organization of a potent military force. Although it exhibits certain state-like qualities and characteristics recognised by the Montevideo Convention, the international community has not accorded it recognition as a legitimate political entity. ISIS' barbaric use of force to establish dominant power has morally delegitimized its claims to statehood in the eyes of the rest of the world. Nevertheless, ISIS is neither a terrorist organization nor a political party; instead, it is a theocratic proto-state. To explore the extent to which ISIS can be deemed a state, both declarative (expressed in the form of the Montevideo Convention) and constitutive statehood theories can be applied to assess ISIS claims to legitimate statehood. [2] Identifying what ISIS is, in terms of international protocols, is needed in order to determine the basis on which states should, or can, engage with it, and how to strategize the response to its violent expansion in the Middle East.

Declarative theory

The declarative theory of statehood underpins the idea that once a political entity achieves a "criteria of statehood," such as the Montevideo Convention of 1933, it is deemed a state.[3] The guidelines, as presented under the Convention, argue that a state must have a permanent population, a defined territory, a government, and a capacity to enter into relations with other states.[4] It is therefore reliant on internal sovereignty, the supreme authority over a territory, rather than the international claim of legitimacy of the state in question. In Article 3 of the Convention, it clearly states that "the political existence of the state is independent of recognition by the other states." [5] In this light, ISIS encapsulates the four criteria of the Convention to a strong extent.

Firstly, a permanent population can be defined as citizens who reside within the territory claimed by the political entity. Within ISIS-controlled Syria and Iraq, there certainly is a population that resides under its authority. In July 2014, ISIS announced the issuance of "caliphate passports" to approximately 11,000 citizens in a conscious effort to create a new permanent Islamic State identity.[6] The Montevideo Convention does not, however, explicitly articulate that the population must be freely willing to live under a certain rule. Those within ISIS' territory are forced to comply and identify with the group. The claims of ISIS' permanent population are somewhat dubious and unclear, as there is constant movement of the population, either refugees escaping ISIS' rule or the influx of foreign fighters to contribute to ISIS' cause.[7] In July 2014, Caliph Abu Bakr al Baghdadi encouraged Muslims worldwide to "rush to your state because *hijrah* (emigration) to the land of Islam is obligatory." [8] Estimations of ISIS' forces are wide-ranging, from a minimum of 9,000 fighters to a maximum of 200,000.[9] Furthermore, there is an estimated eight million residents living within ISIS-controlled territory in Syria and Iraq.[10] The criteria of a permanent population is therefore partially met; the individuals (including fighters) currently residing within ISIS' territory are legitimate, but the situation is still too unstable to confirm.

Secondly, a state requires a defined territory in which it exercises effective political control, which can be defined by the legal concept of *inter alia*: the ability to deny others from using coercion on its territory. Permanently contested

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land, therefore, can be deemed legitimately defined territory. According to ISIS' spokesman, the group's territory and population runs from "northern Syria to the Iraqi province of Diyala north-east of Baghdad." [11] As of May, 2015 with the seizing of the ancient Syrian city of Palmyra, ISIS is projected to control over 50 percent of Syria's landmass. [12] Although its borders are not permanently defined, ISIS holds a reasonably high degree of control over the territory and rejects the borders drawn by Sykes-Picot in 1916. ISIS regulates their territory through administrative control and operational military capability. [13] Baghdad and Damascus both contest the extent of ISIS's political influence, despite their own lack of control over the regions. Since ISIS' self-proclamation as Caliphate in July 2014, force and gross violations of international law have been regularly committed to expand its area of control. [14] The extent of ISIS' influence and control over the territories it has conquered would be through to fully fulfill this criteria.

The means by which ISIS has acquired its territory in Iraq and Syria, however, violate Article 11 of the Montevideo Convention, therefore removing the legitimacy of ISIS' territorial expansion. The Article reads that there can be no recognition of territory procured through force, including "the employment of arms in threatening diplomatic representations or any other effective coercive measure." States that have signed the Montevideo Convention are subsequently unable to recognise ISIS' territory, but this does not remove ISIS' effective control over the territory. Although ISIS ultimately fulfills the condition of control over a defined territory, it would be deemed illegitimate by the Montevideo Convention due to its aggressive forms of expansion.

Thirdly, a state must have a government: "a ruling entity that exercises governmental authority within the territory." [15] Currently, ISIS meets this requirement, as there is a clear functioning governmental authority and administrative system within ISIS-controlled territory. [16] According to Cronin, the military hierarchy is led by Caliph Abu Bakr Al Baghdadi and two deputies, whilst the civilian bureaucracy is managed by twelve administrators. [17] There is a clear governmental system that is separate from its military structure, and the expectation is that it "would carry on quite ably without Baghdadi or his closest lieutenants," which demonstrates an organizational viability similar to a functioning government. [18] Islamic laws of Sharia are imposed at the household level, and the judicial system is regulated through Sharia Courts. [19] Local businesses are regulated, and taxes are imposed (including the *jizya*: the poll tax that non-Muslims must pay to continue living within a Sharia-controlled area). [20] Although the means by which ISIS exercises its governmental authority are brutal and exceptionally violent, their governmental system nonetheless reflects a coherent structure with administrative systems of governance.

Constituted within a state's government is its military capacity, which, to Max Weber, is a crucial feature of statehood. Weber argues that a "monopoly of the legitimate use of force" is necessary as it ensures that the state holds ultimate power and authority. Without power struggles and territory, a state would supposedly cease to exist and society would succumb to anarchy. [21] The case of ISIS fits neatly within Weber's definition, as its power is fundamentally due to its impressively organized military. ISIS' Military Council (*al majlis al askari*) plans strategic advances and monitors the smaller military forces and bases throughout ISIS-controlled territory. [22] Most conventional weaponry is looted from the Syrian and Iraqi armies or purchased from abroad, which demonstrates their military sophistication, both in terms of strategy and military capability. [23] Without territorial rule, ISIS' top-down military structure would weaken as it would no longer be able to exercise substantial force. [24] ISIS' reliance on terror and military force could supposedly make ISIS a state at the most fundamental behavioural level. Weber stressed, however, that the use of force must be legitimate, which potentially poses as a dilemma as to the extent of ISIS' behaviour. There is, however, a certain degree of legitimacy in ISIS' use of force through their expressed ideological objectives.

Lastly, the Montevideo Convention argues the need for a state's capacity to engage in foreign relations. This poses the greatest challenge to the recognition of ISIS's declarative statehood, as states worldwide refuse to give legitimacy to a state that operates so far beyond the limits of international convention and norms. The definition reads, however, that there must be a *potential* for foreign relations, which is partly true for ISIS. It has arguably engaged in informal inter-state relations through social media platforms, where the group readily posts messages to states such as Italy, and the US [25]. The dialogue, however, has remained one-dimensional; were ISIS to establish a stable and more defined state, the international system may be forced, however reluctantly, to treat the Islamic state as a legitimate form of authority and respond officially to its communications on an internationally recognised

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platform. The Montevideo Convention therefore largely applies to ISIS; if only internal sovereignty was necessary to achieve statehood, the Islamic state would then, by definition, be deemed legitimate. The conception of legitimacy within the Montevideo Convention is fairly pragmatic; a political entity must merely fulfil the criteria to be deemed a state, and no moral or social implications are considered. The declarative theory, however, is a 'partial description, not a definition' of statehood, and thus the constitutive theory must be fully investigated against ISIS statehood claims[26].

Constitutive theory

The constitutive theory is reliant on the concept that a state can only exist if it is recognised as legitimate by other sovereign states. External sovereignty is regarded as the only means of accepting a state as a member of the international sovereign state system. Under current international law, however, both external and internal recognition of the state's authority should be necessary; the people within the territory should likewise desire self-determination.[27] Acceptance into the state system is challenging, as it is arguably an "exclusive club": "While no formal procedure exists to determine membership status, the other members must voice acceptance in substantial numbers before membership is legitimately obtained." [28]

With regard to ISIS, it is clear that the constitutive theory rejects its claims as a legitimate sovereign state. International recognition of ISIS will be withheld due to its well-publicised breaches of international law. Hence, it is not a state in the current modern concept as it is "an enemy of every state in the region – and, indeed, the world." [29] The international outlook on ISIS is a dynamic process, dependent on the group's interactions with neighbouring states. So far, however, ISIS has had no official state relations with any other nation. Only militant and jihadist organisations, such as Al Shabaab in Somalia and Boko Haram in Nigeria, for instance, have claimed allegiance to ISIS. In order to achieve state-acceptance by the international system, ISIS may have to follow an alternative path to securing their power through less violent means, as it is not allowed under international law to violently invade an existing state's territory. For example, despite a violent land grab by Egypt, and then by the Anglo-Egyptian condominium, South Sudan was nonetheless successful in achieving statehood through a referendum. Were ISIS to similarly use less violent means to establish itself, the international system, and the constitutive theory, would agree with ISIS' claims to statehood.

Although international recognition may not be feasible, ISIS adheres to *Islamic law*, and therefore deems itself a legitimate and theocratic state. In July 2014, it proclaimed itself a caliphate after the golden age model of the Abbasid Caliphate from the Middle Ages.[30] The Abbasid Caliphate is remembered as a time when "pure Islam," the literal interpretation of and adherence to the Qur'an, ruled the Middle East and North Africa. ISIS similarly seeks to reinstate "justice and true Islam" back into society through the enforcement of Sharia law, an Islamic state model, and the usage of the Qur'an as a constitution. [31] For the Islamic State, Islam is both a state religion and a civil system of law.[32] As Cronin suggests, "ISIS...seeks to create a pure Sunni Islamist state governed by brutal interpretations of Sharia, and uses this ideology to inspire its territorial expansion.[33] ISIS' core is its "prophetic methodology"; "following the prophecy and example of Muhammad in punctilious detail." [34] ISIS' religious motivations and emphasis on an Islamic rule of law classifies it as a theocracy.

Conclusion

As a newly created, rapidly expanding entity, ISIS remains a problem for both the people in the region and the international system. Its fundamental state-like qualities generally agree with the international criteria of the Montevideo Convention; it has a permanent population (albeit transitional), a roughly defined territory, a structured governmental system, and the capacity to enter into state relations. With regard to the constitutional theory, ISIS holds no legitimate grounds for state-creation as it is not recognized by any states or political institutions (such as the United Nations) worldwide. Although not entirely fulfilling either state-defining theories, were ISIS to embrace a morally acceptable means of establishing and maintaining power, such as through a referendum, it could be on its way to making a justifiable claim for legitimate statehood. Similarly Sharia law-ruled states, such as Saudi Arabia, Sudan, and Qatar, are fully integrated into the international system, and have seats in the United Nations. It would therefore be possible for ISIS to be similarly recognised. Such states, however, have not pursued extensive territorial

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expansion, nor have they grossly violated international law. Otherwise, ISIS will continue to be regarded as a violently expanding group with no encompassing political institutions to facilitate a just governance that is worthy of international recognition.

In ISIS' view, however, it does *not* need nor does it deliberately seek international statehood recognition by the international society. It proclaims itself as not only a state but also as a super-state, above all other sovereign nations. ISIS only seeks recognition as the Islamic Caliphate, the most wide-ranging and legitimate political entity in the world. International law is overruled in favour of what it sees as the future for the world – Islamic law. It “rejects the modern international system born out of the 1648 Peace of Westphalia,” regarding its association with it as “apostasy.” Simply put, ISIS is a theocratic proto-state with self-asserted state-like qualities, but it is rendered illegitimate by the international society and therefore cannot be officially recognized.

Were ISIS to create a sense of legitimacy under international law by settling borders and establishing a formal governmental structure, other states may have to accept interaction with it for diplomatic, political, economic, or military reasons. Alternatively, ISIS may seek further expansion, such as into Saudi Arabia, or obtain nuclear weapons, and in so doing create a power base that demands *de facto* recognition. In doing so, there will be a new threshold for what is morally acceptable and politically tolerable, which will have repercussions on dictatorships and extreme political movements internationally. Were ISIS to obtain nuclear weapons, which they claim will be economically feasible in the succeeding twelve months, there is sufficient past extreme violence to expect that they would follow through on threats to use them. This would not only have severe implications on worldwide security but may further encourage states who currently have nuclear weapons, such as North Korea, to act similarly. This is the worst case scenario to which the international society is headed if ISIS, along with its violations of international law, were to fulfill the constitutional theory and be accepted in the international community as a sovereign state.

In the coming months, how one defines ISIS may fluctuate according to its military successes. With the capture of the Iraqi provincial capital of Ramadi on in May, ISIS is only an hour's drive from Baghdad. Furthermore, with the invasion and occupation of the ancient Syrian city of Palmyra only four days later, the group has greater access to the key city of Homs and to Syria's capital, Damascus. Were ISIS to successfully seize either capital city and overthrow the established Syrian or Iraqi governments, the international society, including the United Nations, may be forced to recognise ISIS' political authority, which would permit the declaration of a conventional war or the initiation of peace talks.

ISIS' rise has been similar to a surprise attack on the international society; two years ago, it was still a little known regional terrorist group expanding in Syria. Following its extensive invasion of Iraq and Syria, ISIS has arguably become a primary international security concern and much more than a mere terrorist risk. It not only threatens the sovereignty of Syria and Iraq but also the legal and political structures that the international society is founded upon. How the international society defines and acknowledges ISIS role in the Middle East will not only frame the political outcome of the current conflict, which may even lead to the redefining of national borders, but also it will also redefine the means by which a state can be born and integrated into the international political system.

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[1] The acronym 'ISIS', the Islamic State of Iraq and Al Sham, will be used throughout the essay to refer to the area specific to Iraq and Syria. As the Levant includes the greater Mediterranean area of Turkey, Cyprus, Israel, Jordan, Lebanon, and Palestine, it encompasses a much larger area, and therefore will not be used. *Daesh*, *al-Dawla al-Islamiya al-Iraq al-Sham*, will similarly not be used in this essay as the English acronym will be preferable.

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[2] Although there is no wholly recognized binding agreement within the international system on what constitutes a legitimate state, both theories are widely accredited in international law.

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Other 'pariah' states, such as the Taliban in Afghanistan and Saddam Hussein's Iraq had United Nations (UN) recognition for reasons that are not transferable to ISIS. Both Afghanistan and Iraq obtained seats within the UN before the rise of the Taliban and Hussein. As the UN is primarily a platform for cooperation and the promotion of peaceful means of resolving conflict, removing state recognition would have involved conflict and therefore was avoided. ISIS is different from the Taliban and Hussein's regime as they seek to create a new state, and ignores the legitimacy of Iraq and Syria's statehood.

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