***Pavlopoulos, Niko*: The Identity of Governments in International Law.** Oxford Monographs in International Law. Oxford UK: Oxford University Press 2024. ISBN 978-0-19-888292-3. xl, 288 pp. £95.00

'What do we learn from this?', the late Karl Zemanek once asked at a Roundtable of the Section of International Law and International Relations of the University of Vienna before standing up and leaving. It is an equal sentiment that this book conjures. After all, the recognition of governments has been the subject of extensive research into both theory and practice. What a new monograph can do is either present a novel approach, update what can be found in existing treatises, or present a descriptive synthesis of the state of the art. Aside from the inclusion of most recent state practice, what this book delivers instead is a kind of '*Kosovo* Advisory Opinion on the recognition of governments': international law contains no applicable law on the recognition of governments. While this might be the honest answer to a rigid academic analysis, it is fair to ask whether this alone should suffice for a book proposal on such an important topic. As another reviewer has noted, 'this book lacks the doctrinal insights necessary to address the structural problems associated with the issue of government recognition'.[1]

Confusion already arises from the title which invokes the question of who composes the government of a state, a question one might consider distinct from that of recognition.[2] This issue is addressed only in a short chapter as a preliminary question leading to the statement that the identity lies in '[t]he person or collectivity of persons comprising the government of a state occup [ying] certain specific offices' (p. 38). The analysis provides a formalistic staccato of different forms of office and title to clarify what might constitute the government of a state. There is no word of George Scelles' enlightening theory of 'dédoublement fonctionnel'[3] or any other attempt to explain how international law impacts the identity of government or properly attaches to domestic affairs.[4] By applying the *Lotus* principle, Pavlopoulos simply concludes that there is – 'often over-looked' (p. 38) – no limit to the decision

1 Abhishek Trivedi, Asian Journal of International Law 16 (2026), 194-195 (194).

2 While the introduction contains elaborate 'terminological clarifications' (pp. 8-11), Pavlopoulos appears to use the term identity and recognition synonymously throughout the book. This becomes particularly clear in Section 2.5. (pp. 36-38) where Pavlopoulos speaks of the objective identity of a state's government while clearly discussing questions of recognition.

3 Georges Scelle, Règles Générales du Droit de la Paix, Recueil des Cours de l'Académie de Droit International de La Haye 46 (1933), 327-703 (358).

4 Pavlopoulos does clarify at the outset that the book 'considers the regulation of the identity of a state's government by the municipal legal system of that state only insofar as this is relevant to the content or application of a rule of international law on the identity of the government of that state' (p. 7). However, if there were even any such treatment, it has eluded the reviewer.

DOI 10.17104/0044-2348-2026-2-725

over the identity of government in absence of a prohibitive rule. Perhaps it is often over-looked because it adds no value to the question of whether international law has anything to say on the matter.

The primary subject of enquiry is instead the recognition of governments. This both fascinating and elusive subject still lends itself to the ambition of elaborating for once a conclusive theory. For such a vast topic, the book is refreshingly concise, spanning just over 200 pages. Following a brief introduction, the first substantive chapter deals with the concept of government – i. e. the rules to discern its identity – under international law. Chapter 3 then moves on to discuss the rules of recognition under international law. This is continued in Chapter 4 with a consideration of different criteria states might apply and in Chapter 5 from the perspective of international organisations. The final chapter offers a set of 'conclusions' to the analysis.

As for the rules of recognition, Pavlopoulos finds that '[a] state can recognize or deny governmental status in various ways' (p. 93). It would have been more informative to explore the various shades of grey in which states neither recognise nor deny. Instead, this all-or-nothing depiction of state practice evokes Bruno Simma's famous criticism of the *Lotus* principle – that Pavlopoulos appears to declare as the maxim of his analysis (p. 38) – in his Declaration to the *Kosovo* Advisory Opinion that 'everything which is not expressly prohibited carries with it the same colour of legality; it ignores the possible degrees of non-prohibition, ranging from "tolerated" to "permissible" to "desirable".'[5] Pavlopoulos sees only one limit to recognition of a proclaimed government, that of the prohibition of intervention under international law. He does not enlighten the reader, however, in which cases the act of recognition might actually constitute such an illegal intervention into the internal affairs of states (pp. 73-78 and 93).

Methodologically, it is difficult to draw from the analysis what can be considered qualitative statements based on an empirical analysis of state practice and what is merely anecdotal.[6] Many of the findings appear subject to particular political circumstance. When Pavlopoulos writes that '[a]n autonomous "constitutional" claimant to governmental status will invariably enjoy governmental status as a matter of customary international law as long as it maintains its claim, regardless of whether it exercises or has ever exercised effective control over the territory and population of the state'

5 ICJ, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, Advisory Opinion of 22 July 2010, ICJ Reports 2010, 403, Declaration of Judge Simma, 480, para. 8.

6 After all, Pavlopoulos also adds as a disclaimer that 'the present work does not attempt to catalogue, let alone analyse, every situation in which the identity of a state's government has been controversial or unclear' (p. 8).

 DOI 10.17104/0044-2348-2026-2-725

(p. 140) it is immediately evident that this is true until it is not (take the example of the failure to establish a government-in-exile in the case of Afghanistan). While the book rejects any requirement of 'democratic legitimacy' applied to governments in this regard, it equally proposes that 'international law may be seen to at least permit the preferential treatment of ostensible governments on grounds connected to democratic representativity and compliance with international legal obligations, despite the formal irrelevance of such considerations to the enjoyment of governmental status' (p. 212). One is left none the wiser – the reader is left to put together the pieces of the puzzle.

Pavlopoulos also appears to err when he continues this ambivalence of thought in relation to peremptory norms. He concludes that '[w]ether states are prohibited from recognizing an ostensible government which arises in consequence of or the attainment by which of governmental status would amount to the violation of a peremptory norm is unclear' (p. 93) and 'that an ostensible government can enjoy governmental status as a matter of customary international law even if it is established in consequence of, or if its enjoyment of governmental status would amount to, the violation of an obligation arising under a peremptory norm of general international law' (p. 141). If one recognises the existence of *ius cogens* obligations – which Pavlopoulos indeed seems to leave open (p. 82) – then the consequence is one of an obligation of non-recognition in the case of a violation.[7] Countering this through a cursory account of select practice to the contrary (pp. 82-87) cannot convince without an individual analysis into the exigency of political circumstances of each case, particularly whether the violation of the *ius cogens* norm was committed by the government in question. Surely, the violation of peremptory norms by a prospective or existing government, while not necessarily determinative for its formal identity, will negatively impact the willingness of other states of the international community to engage with it in one way or another. It is perhaps this aspect that should have informed the argument rather than trying to engage with a kind of *lex specialis* consideration of the legal consequences of the violation of peremptory norms in the case of recognition of governments. As another reviewer noted in this regard, the elaborations on *ius cogens* 'may nevertheless raise eyebrows in some quarters'.[8]

Volume I of the 1973 Yearbook of the International Law Commission documents the Turkish representative, Ali Suat Bilge, as remarking that '[t]he

7 See Art. 42(2) Articles on Responsibility of States for Internationally Wrongful Acts 2001.

8 Patrick Dumberry, Canadian Yearbook of International Law/Annuaire canadien de droit international 2025, 1-7 (2).

question of recognition of States and governments should be set aside for the time being, for although it had legal consequences, it raised many political problems which did not lend themselves to regulations by law'.[9] Can that be the aspiration of a monograph on international law? For anyone looking for a theory on the identity of governments – or their recognition – under international law, the book offers little more than the initial shrug the question evokes. Essentially, Pavlopoulos repeats throughout his book the paradoxical dictum that while recognition is irrelevant to the status of a governments under international law, it does have some effect. Perhaps that is indeed all there is to say.

But the book also presents a valuable repository of state practice that has occurred since the publication of Stefan Talmon's *Recognition of Governments in International Law* published in 1998,[10] particularly with regard to the cases of Afghanistan, Iraq, Libya, Ukraine, and Venezuela. An aspiration voiced at the outset is that 'the book provides a basis for further research into such matters' (p. 8). It is the continued practice of states and international organisations in relation to the recognition of governments that Pavlopoulos manages to highlight that suggests indeed more could be learnt from 'this'.

Markus P. Beham, European University Viadrina,
Frankfurt (Oder), Germany

9 Yearbook of the International Law Commission 1973, Vol. I, 175, paras 33-39.

10 Or, for that matter, the works of M. J. Peterson, *Recognition of Governments: Legal Doctrine and State Practice, 1815-1995* (Macmillan 1997), and Brad R. Roth, *Governmental Illegitimacy in International Law* (Clarendon 1999).

 DOI 10.17104/0044-2348-2026-2-725

»…eine wertvolle Orientierungshilfe.

Dr. Bertold Huber, VorsRiVG a.D., in:
NVwZ 4/2023, zur Vorauflage

Karpenstein/Mayer
EMRK
Konvention zum Schutz der Menschenrechte und Grundfreiheiten

4. Auflage. 2026. Rund 960 Seiten.
Gebunden ca. € 169,–
ISBN 978-3-406-83424-0
Neu im Juli 2026

beck-shop.de/38523701

Auch in den beck-online-Modulen:
Verfassungsrecht PLUS | PREMIUM
Europarecht PLUS | PREMIUM
Ausländer- und Migrationsrecht PLUS | PREMIUM

EMRK kompakt und zuverlässig erklärt

Die Rechtsprechung des EGMR beeinflusst den Grundrechtsschutz in der Bundesrepublik. Der Kommentar gibt einen **raschen Überblick** über die bestehende Rechtslage und die in diesem Bereich ergangene Rechtsprechung. Das Werk kommentiert die **EMRK sowie die einschlägigen Vorschriften der Zusatzprotokolle.** Daneben erläutert es die **Auslegung nationalen Rechts,** den Mehrwert der EMRK-Vorschriften gegenüber nationalen Gewährleistungsrechten und die sich daraus ergebenden Konfliktfelder.

Die Neuauflage

bringt das Werk auf den **Rechtsstand März 2026.** Mit dem Erstarken autoritärer Tendenzen in und außerhalb von Europa geht eine Relativierung von rechtlichen Bindungen einher.

Die zunehmende **Infragestellung des Völkerrechts als Grundlage einer regelbasierten internationalen Ordnung** lässt auch den internationalen Menschenrechtsschutz nicht unberührt. Diese sowie andere Entwicklungen betreffend die EMRK werden in der Neuauflage behandelt. Sie berücksichtigt zudem zahlreiche **neue Entscheidungen sowie die aktuellste Literatur.**

”

…belegt den Mehrwert von Grundrechtsdogmatik als Mannschaftssport. Die Mannschaft spielt konsequent in einer europäischen Liga.

Prof. Dr. Michael Droege, in: fachbuchjournal 6/2022, zur Vorauflage

…ein vom Umfang und Inhalt beeindruckendes Werk ist, das eine Fülle von Erkenntnissen vermittelt und uneingeschränkt empfohlen werden kann.

Ulrich Lucks, RegDir, in: BWV 4/2023, zur Vorauflage