PUBLIC INTERNATIONAL LAW

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Recognition of State

- Main addressors of the international law are the sovereign states.
- For an entity of being called a state and to enjoy rights, duties and obligations under international law, it is necessary that the existing state have given awareness of its capability of being a state.
- Such awareness by existing states is called recognition.

Recognition:

- The term recognition as an international legal term may be defined as under: "The acknowledgement or acceptance by the members of international community, that a new state has acquired international personality, is said to be recognition."

Introduction

- Recognition of state under the International Legal System can be defined as "***the formal acknowledgement or acceptance of a new state as an international personality by the existing States of the International community" .It the acknowledgement by the existing state that a political entity has the characteristics of statehood.***

- The international community is the community of sovereign states at an international platform.
- For any state to enjoy the rights, duties and obligations of international law and to be a member of the international community, recognition of the entity as a state is very important.

- Only after recognition of the entity as a state, it becomes acknowledged by other states who are a member of the International Community. International law considers the act of recognition as an independent act of the existing statehood community.

Essentials

- The main essentials of recognition may be given as under:
- That the community (of new state) must be politically organized,
- That it should have control over a definite territory,

- That the control should tend towards permanency,
- That such community must be independent. In other words, the attributes of statehood are people, territory, Government, and sovereignty.

Theories of Recognition

- There are mainly two theories of recognition which may discussed as under:
- Constitutive Theory.
- Declarative Theory or Evidentiary Theory.

Constitutive Theory

- Oppenheim, Hegal and Anziloti are the chief exponents of this theory.
- According to this theory the only certificate to issue international personality to a new born state is the consent of the already existing states.

- In other words a new entity shall only be called a state when the existing states acknowledges about its statehood.
- So, the independence of a new entity shall not amount it to be called a state unless it has not recognized by the existing states.

Criticism

- The theory has severely been criticized by a number of jurists.
- Because, at first instance that states do not seem to accept recognition as a legal duty.

- And at the second instance, it creates many difficulties when a community claims of being a new state and its non-recognition will, according to this theory, imply that it has no rights, duties and obligations under international law.
- The theory is not correct in any sense so shall be rejected.

Declaratory Theory

- The chief exponents of this theory are Hall, Wagner, Fisher and Brierly.
- According to this theory, the statehood or the authority of new Government is not dependent on the consent of the existing state but is based on some prior or existing fact.

- According the followers of this theory, the recognition by the existing states is merely a formal acknowledgement of the statehood and not the condition.
- In fact the statehood is dependent on the some prior conditions necessary for an entity to be called as a state.

Criticism:

- This theory has also been criticized, because it is not correct that in all cases the existing fact shall imply the statehood, rather some time the statehood may be constitutive.

Modes of Recognition

- There are two modes of recognition, which may be given;
- De facto Recognition.
- De jure Recognition.

De facto Recognition

- The provisionally grant; that is subject to fulfillment of all the attributes of statehood, of recognition to a new state which has acquired sufficient territory and control over the same, but the recognizing states considers it not stable more, is said to be De facto Recognition.

De jure Recognition

- The grant of recognition to a new born state by an existing state, when it considers that such new born state has attained all the attributes of statehood with stability and permanency, is called De jure Recognition.

Differences Between De facto and De jure Recognition

- De facto and De jure recognition may differentiate on the basis of following points of distinction.
- De facto Recognition is provisional recognition subject to fulfillment all attributes of statehood. De jure Recognition is absolute recognition granted to a state which have attained all the attributes of statehood, possesses sufficient control with permanency.

- De facto Recognition creates few essential rights and duties for recognized and recognizing states. De jure Recognition creates absolute rights for the parties thereto.
- De facto Recognition does not create full diplomatic intercourse between the parties. De jure recognition creates full diplomatic intercourse between the parties.

- The full diplomatic immunities are not granted in this De facto Recognition. In full diplomatic relations are granted to the recognized state in de jure Recognition.
- In de facto recognition, the official visits and dealings may be subjected to limitations. In de jure recognition, limitations are not necessary.

Forms of Recognition

- There are following two forms for the declaration of recognition.
- Express Recognition.
- Implied Recognition.

Express Recognition

- The declaration or notification by an existing state which purports the intention to recognize a newly born state, the recognition is said to be express recognition.
- In other words, when a formal and express declaration or statement is made and published or sent to the opposite party, the recognition is said to be express recognition.

Implied Recognition

- When the existing state shows its intention of recognition of a newly born state by some acts, the recognition is said to be implied recognition.
- In other words, in case of implied recognition no formal statement or declaration is to be made, rather the intention of recognition is to be collected by the acts or transactions of the existing state. So, if such acts purport intention of recognition, it is said to be implied recognition.

Conditional Recognition

- The grant of recognition by an existing state to a newly born state stipulated on fulfillment some conditions in addition to the requirements of statehood is said to be conditional recognition.
- As for as, the recognition is concerned it is itself conditioned with the fulfillment of the essentials of statehood, that is to say, the new state must occupy some territory, has some population, government and sovereignty.

- If these requirements have been complied with by the new state, then that should be recognized by existing states. But as for as, the recognition is concerned it is usually based on some political considerations. So, in the pursuance of these considerations the existing states sometimes declare recognition but stipulated with certain other conditions for the recognized state to be fulfilled.

Criticism

- Many jurists have criticized conditional recognition. According to them recognition is a legal matter and it should not be accompanied with conditions other than required by law.
- It is due to this reason that when in case of conditional recognition the recognized state if didn't fulfill the prescribed condition the recognition shall be valid and not extinguished.
- Rather it will affect the relations between the recognized and recognizing states.

Withdrawal of Recognition

- Withdrawal of recognition may be explained as under:
- **Withdrawal of de facto Recognition: –** Withdrawal of de facto recognition is possible under international law only on the ground that if the recognized state has been failed to fulfill the pre requisite condition for statehood. In such a case the recognizing state may withdraw from the recognition by communicating a declaration to the authorities of recognized stated or by a public statement.

Withdrawal of de jure Recognition: –

- There are different views about the withdrawal of de jure recognition. But according to the strict letters of international law and by the virtue of some conventions in this behalf, it is evident that the withdrawal of de jure recognition is not valid in any case.
- Though recognition is a political act but de jure but it by nature and status it is a legal oriented.

- But some jurists think that de jure recognition may be withdrawn, because it is a political act. But in fact it is not so.
- Only those de jure recognitions may be withdrawn where a state subsequently loses any essential of statehood. In such a case the state withdrawing from recognition shall send his express intention to the concerned authority issue a public statement to that extent.

Recognition of Government

- As we know that government is an essential of statehood. By government it is meant the administrative and controlling tool of a state.
- Once a state comes into being, its government may change from time to time.
- If the change of government takes place in ordinary political life it the existing states are not required to recognize the new government.
- But sometimes the change of a government takes place as a result of a revolution.

- In such a case, it becomes necessary to ascertain that whether this new revolutionary government is;
- capable of having sufficient control over the people of the territory or not, and
- willing to maintain international responsibilities and duties or not. So, if the existing states consider that this new government is capable of fulfilling the above conditions then the new government may be recognized.

- The recognition of new regime means that the existing states are satisfied that the new government has a capacity to control and is willing to perform international duties and obligation.
- The recognition may be either de facto or de jure.
- And the intention may be expressed either by sending a message to the authority of the new government or to declare the same in a public statement.
- The modern practice is seemed to reject the doctrine of recognition of new government.

- Now, the some states as USA and UK and others have adopted a course to give assent to the above pre conditions for a government merely by extending relation or cessation of relations with such government.
- Non-recognition of government doesn't affect the recognition of a state.

- A state remains recognized the only consequence of the non-recognition of the new revolutionary government is the suspension of the bilateral relations between the existing state and the new government.
- And as soon as the said government is to be replaced by any other government, if recognized the relations shall be re-continued on the same pattern as were with the previous government of the revolutionary one.
- The consequences of the recognition of a new government means to keep the relations in the same manner as were with the previous government.

Theories of recognition:

- The recognition of a new entity as a sovereign state is based on two main theories:
- □ Consecutive Theory
- □ Declaratory Theory

1. Consecutive Theory

- The main exponents related to this theory are **Oppenheim, Hegal and Anziloti.**

- According to this theory, for a State to be considered as an **international person, its recognition by the existing states as a sovereign required. This theory is of the view that only after recognition a State gets the status of an International Person and becomes a subject to International Law.**

- So, even if an entity possesses all the characteristics of a state, it does not 5
- get the status of an international person unless recognised by the existing States.

- This theory does not mean that a State does not exist unless recognised, but according to this theory, a state only gets the exclusive rights and obligations and becomes a subject to International Law after its recognition by other existing States.

- The constitutive theory considers that the act of recognition by other States creates a new State and grants it the international legal personality.
- This implies that the new State is established as an international person by virtue of the will and consent of already existing States.
- In case of a new government, it is the recognition that grants it the status at the international level.
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- The Constitutive theory is opposed by the declaratory theory. According to the declaratory theory, recognition has no legal effects; statehood or the status of a new government exists as such prior to and independently of recognition.

Criticism of the theory

- This theory has been criticised by several jurists. Few of the criticisms of this theory are:
- This theory is criticised because unless a state is recognised by other existing states, rights, duties and obligations of statehood community under International Law is not applicable to it.

- This theory also leads to confusion when a new state is acknowledged and recognised by some of the existing states and not recognised by other states.

2. Declaratory Theory

- The main exponents of the Declaratory Theory of Statehood are **Wigner, Hall, Fisher and Brierly.**
- **According to this theory, any new state is independent of the consent by existing states.**

- **This theory has been laid down under Article 3 of the Montevideo Conference of 1933.**
- **This theory states that the existence of a new state does not depend on being recognised by the existing state.**

Criticism of the theory

- The declaratory **theory of statehood has also been criticized.**
- **This theory has been criticized on the ground that this theory alone cannot be applicable for recognition of a state.**

- **When a state having essential characteristics comes into existence as a state, it can exercise international rights and obligations but when other states acknowledge its existence and the state gets the legal rights of recognition, the consecutive theory comes into play.**

Modes of Recognition:

- There are two modes of recognition of State:
- 1. De facto Recognition
- 2. De Jure Recognition

1. De facto Recognition

- De facto recognition is a provisional recognition of statehood. It is a primary step to de jure recognition. It is a temporary and factual recognition as a state, and it can either be conditional or without any condition.

- This mode recognition is granted when a new state holds a sufficient territory and control over a particular territory, but the other existing states consider that it does not have enough stability or any other unsetting issues.
- So, we can consider it as a test of control for newly formed states.
- De facto recognition is a process of acknowledging a new state by a non-committal act.

2. De jure Recognition

- **De jure recognition is the recognition of a new state by the existing state when they consider that the new state fulfils all the essential characteristics of a state.**
- **The de jure recognition can be granted either with or without granting de facto recognition.**

- **This mode of recognition is granted when the newly formed state acquires permanent stability and statehood.**
- **The De jure mode of recognition grants the permanent status of a newborn state as a sovereign state.**

Essentials for recognition as a state:

- Under the International Law, **Article 1 of the Montevideo Conference, 1933 defines the state as a person and lays down following essentials that an entity should possess in order to acquire recognition as a state:**

- 1. It should have a permanent population.
- 2. A definite territory should be controlled by it.
- 3. There should be a government of that particular territory.
- 4. That entity should have the capacity to enter into relations with other states.

Legal Effects of such recognition

- When a state acquires recognition, it gains certain rights, obligations and immunities such as.
- 1. It acquires the capacity to enter into diplomatic relations with other states.
- 2. It acquires the capacity to enter into treaties with other states.

- The state is able to enjoy the rights and privileges of international statehood.
- 4. The state can undergo state succession.
- 5. With the recognition of state comes the right to sue and to be sued.
- 6. The state can become a member of the United Nations organisation.

Conclusion

- From the above discussion it may be concluded that both the theories are insufficient to reflect the real explanation of recognition.
- In fact there shall be intermediate course of approach between the two theories to understand recognition.

- Briefly, speaking, the definition of recognition depends upon the mode, scope and nature of each case.
- In other words, recognition may be sometimes constitutive and sometimes declaratory.

- The recognition of the state is an essential procedure so that it can enjoy all the privileges of statehood community under international law.
- There is a controversy between Consecutive Theory and Declaratory theory of Recognition by different jurists, but we can conclude that the theory followed for recognition is in between the consecutive and declaratory theory.

- The recognition being either de facto or de jure, it provides rights, privileges and obligations.
- When a state gets its de facto recognition, the rights, privileges and obligations are less but when it is recognised de jure, it gets absolute rights, liabilities and privileges.

- The recognition of the state is too much politically influences on the International platform.


Thank You!