

REGISTRATION NUMBER: BALLB / 1-18 /M013

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SUBMISSION DATE: 09 / 09 / 2021

DEFINE IN DETAIL STATE RECOGNITION? AND ALSO DEFINE DE FACTO AND DE JURE RECOGNITION?

Introduction:

A new state is born out from an existing State or an old State which disappeared and comes with a new name or by splitting an existing State into two States. If a new state enjoys certain rights, privileges and obligations then it must get recognition as a state, which is very essential. However, there are some minimum criteria required before a State is considered to be a State. A State must get the De Jure (when a state is legally recognized) recognition for considering a State as a sovereign State. Political thought plays an important role in this decision whether to grant recognition or not. For recognition as a State, it must enter into relations with the other existing States. The elements, theories, and processes are reflected in this article.

State recognition:

A state acknowledgment or acceptance as an international personality by the existing State of the international community. The declaration to fulfill certain essential conditions of Statehood as required by International Law. According to Phillip Jessup, recognition means that an existing State acknowledges the political entity of another State, by overt or covert act. It may be noted that recognition is neither a contractual arrangement nor a political concession. It is a declaration of the existence of certain facts. Permanent population, definite territory Government, and capacity to enter into relations with other States. When possession of these attributes (of Statehood) in a State is acknowledged by other existing States, it is known as recognition of a State. Recognition may, therefore, be defined as a formal acknowledgement by the existing members of the international community of the international personality of a new State. Problem of recognition of a State arises when a State disintegrates into several States; a former colonial territory gains Statehood, or when two or

more States merges to form a new State. Very often recognition is said to be a political diplomatic function (Jessup).

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.
3. 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.

Theories of Recognition:

The legal significance of recognition is controversial. The theories attempt to explain the nature, basis and effect of the act of recognition:

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 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 recognized, 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 traditional constitutive theory is criticized on a number of grounds:**
 - a. Firstly, if this theory were accepted, it would mean that other States would determine the fate of new State. It may be noted that recognition by no means produces subjects of international law. The acceptance of this theory would mean that a State exists for some States (which have granted recognition) and does not exist for others (which have not granted recognition). This situation shows that recognition is not a conclusive proof for the existence of a State.

- b. Secondly, there is no legal duty on the part of the existing States to recognize any community that has in fact acquired the characteristics of Statehood.
- c. Thirdly, a State exists prior to its recognition.
- d. Fourthly, a State does have some rights and obligations under international law, even without recognition.

However, in support of the constitutive theory, it must be admitted that once a State is recognized it acquires status and is recognized as such by the municipal courts of the recognizing States. Sometimes, existence alone is not sufficient to create an international personality. Thus, in the case of Vatican City recognition alone is conclusive proof of its existence and not its automatic existence as a State.

- **Declaratory/Evidentiary Theory:**

According to this theory, Statehood or the authority of the new government exists as such prior to and independently of recognition. Recognition is merely a formal acknowledgement through which established facts are accepted. The act of recognition is merely declaratory or evidence of an existing fact that a particular State or government possesses the essential attributes as required under international law. Recognition is necessary only because it enables new State to enter into official intercourse with other States. This theory has been advocated by Hall, Wagner, Brierly, Fisher, etc. There is no legal duty to recognize States even after it has attained statehood.

Thus, according to this theory, recognition depends upon the discretion or sweet will of the recognizing States. In practice, most of the States accept the declaratory theory. Recognition frequently been withheld for political reasons. The theory also finds support in the fact that recognition has retrospective effect.

The Tinocco Concessions Case seems to support this theory. However, the view

that recognition is only a declaratory act is not completely correct. In fact when a State is recognized, it is a declaratory act. But the moment it is recognized, there ensue some legal effects of recognition which may be said to be of constitutive nature.

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 unsettling 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. The state having de facto recognition are not eligible for being a member of the United Nations. e.g., Israel, Taiwan, Bangladesh.

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.

In the case of *Luther v. Sagar*, it was held in this case that for the purpose of giving effect to the internal acts of the recognised authority there is no distinction between de facto and de jure

Example of de facto and de jure recognition:

- One of the examples of de facto and de jure recognition is the recognition of the Soviet Union. It was established in 1917. It was de facto recognised by the government of UK in 1921 but it was not given de jure recognition until 1924.
- Bangladesh was established in March 1971. India and Bhutan recognised it just after 9 months of establishment but the United States gave it legal recognition after nearly 1 year in April 1972.