MODULE 05  RECOGNITION OF STATES

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The number and identity of the state is not fixed rather variable. It changes with the march of history. Due to passage of time, old states disappear or unite with other state to form a new state or disintegrate and split into several new states or even in the cases of existing States, due to revolutions or military conquest, the status of new government changes. These transformations bring problems for recognition of new States or new governments, to the international community. It may be pointed out that the subject of recognition of States is not based on consistent and clearly defined rules or principles rather it is a subject involving unsystematic State-practices.

Due to following reasons, Recognition is much more a question of policy than of law. ¹

1. The policy of the recognizing state is governed by the principles of protecting its own interest which lie in the maintaining proper relation with the new state or new government that is likely to be stable and permanent.
2. Granting of recognition depends upon the attitude of the recognizing state towards the new state in providing recognition to it. As there are several kind of recognition and what type of recognition is going to be conferred, whether it is de jure recognition or de facto recognition.

**MEANING AND DEFINITION**

State Recognition is defined as “The free act by which one or more states acknowledge the existence of a definite territory of a human society politically organized, independent of any other existing states and capable of observing obligations of international law by which they manifest through their intention to consider it a member of the International Community”²

Recognition may be defined as formal acknowledgement by an existing member of the international community of the international personality of a state or political group not hitherto maintaining official relation with it.

²Ibid, p.128
Therefore the conditions of the statehood are, people, territory, government and sovereignty. International law however does not provide as to how these essential conditions are to be determined.

In other words, the existing states in the world through the process of ‘Recognition’ acknowledge the existence of a political entity which possesses the essential conditions of statehood. International Law gives the discretion to the states to determine whether a new state possesses all the conditions of statehood.³ This is one reason why the instrument of recognition is used as a diplomatic tool by the states to gain political mileage.

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³ Shilpa Jain: Introduction to Public International Law (EBC 2016)
In fact, international law leaves members of international community free to determine by themselves whether the recognized States contain the essential conditions of statehood. It is because of this reason that very often recognition is said to be a political diplomatic function.

**SIGNIFICANCE OF RECOGNITION**

The recognized state becomes entitled to sue in the courts of the recognized courts. The Courts of recognizing state given effect to the past as well as present legislations and executive acts of the recognized states. In case of de jure recognition, diplomatic relations are established and the rules of international law relating to privileges and immunities apply. A recognized state is entitled to sovereign immunity for itself as well as its property in the court of the recognized state.\(^4\)

The recognized state is also entitled to the succession and possession of the property situated in the territory of the recognizing state. E.g. State X deposited some gold in State Y. there is a rebellion in State X and the rebels are successful in establishing a parallel government. After some time Y grants de jure recognition to the new government. The new government claim the gold deposited by the old government. The new govt. which has been granted recognition will be entitled to the succession and possession of the gold deposited by the old government.

**CONSEQUENCES OF NON-RECOGNITION**

An unrecognized State cannot sue in the courts of non-recognizing State. A state which has not been recognized is not entitled to enter into diplomatic relations with the non-recognizing States. The diplomatic representatives of a State which has not been recognized do not possess immunities from legal processes in foreign States. Such States are also not entitled to get their property situated in foreign States.\(^5\)

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\(^4\) V.K. Ahuja, Public International Law (Lexis Nexus 2016)

THEORIES OF RECOGNITION

CONSTITUTIVE THEORY

According to this theory, recognition clothes the recognized state with rights and duties under international law. Recognition is a process through which a political community acquires international personality by becoming a member of family of nations. Hegel, Anzilloti, Oppenheim etc. are the chief exponents of this theory. According to Oppenheim, a state is, and becomes, an international person, though, recognition only and exclusively. According to Holland, recognition confers maturity upon State and until and unless a State is recognized, it cannot acquire rights under international law.\(^6\)

Therefore according to this theory, Statehood and participation in the international legal order are attained by political group only in so far as they are recognized by established states.

DECLARATORY 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 of an existing fact that a particular state or government possesses the essential attributes as required under international law. The chief exponent of this theory are Hall and Briefly.\(^7\)

According to Prof. Hall, a State enters into the family of nations as of right when it has acquired the essential attributes of statehood. As per Brierly, the granting of recognition to a new state is not a Constitutive but a declaratory act.\(^8\) A state may exist

\(^6\) Ibid p. 65
\(^7\) Ibid p. 68
\(^8\) Ibid p. 75
without being recognized and if it exists in fact, then whether or not, it has been formally recognized by other states it has a right to be treated by them as a state.

**STIMSON DOCTRINE**

This doctrine was propounded by Mr. Stimson, Secretary of State of the United States of America. This doctrine was also often called as doctrine on non-recognition. According to this doctrine if a state grants recognition to another state in violation of international treaty, such recognition would not be valid. e.g. Pact of Paris 1928, through which the state parties renounced war as an instrument of their national policy. The league assembly also passed a resolution that any State who violated the Pact of Paris, 1928, would not be granted recognition. Mr. Stimson propounded this doctrine after Japan attacked Manchuria in 1931. It may be noted here that China, Japan and America were all parties to the Pact of Paris, 1928. In practice States refuse to accept any such obligation, and treat recognition as a political diplomatic function.

**ESTRADA DOCTRINE**

This doctrine was propounded by Mr. Estrada, the foreign minister of Mexico. In his doctrine he declared that regarding the establishment of diplomatic establishment of diplomatic relations with other States, Mexico Government considers itself free to determine it in accordance with the facts and circumstance of each case.

A revolutionary governments commands the support of the people, it may establish diplomatic relations with it. This doctrine has been subject to severe criticism because it disregards the rules of international law. It encourages the individual appraisal in this field. Therefore this doctrine does not seem to be correct and needs to be discouraged.

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9 Ibid p. 78
10 Ibid p. 82
11 Ibid p. 85
Recognition may be of two kinds de facto and de jure recognition. The practice of states shows that in first stage the state generally give de facto recognition. Later on, when they are satisfied that the recognized state is capable of fulfilling international obligations, they confer de jure recognition on it.\(^\text{12}\) Therefore it is sometimes said; de facto recognition of state is a step towards de jure recognition.

**DE FACTO RECOGNITION**

According to Prof. Schwarzenberger, “when a state want to delay the de jure recognition of any state, it may, in the first state grant de facto recognition.”\(^\text{13}\) The reason for granting de facto recognition is that it is doubted that the state recognized may be stable or it may be able and willing to fulfill its obligations under international law. It means that the State recognized possesses the essential elements of statehood and is fit to be subject of international law. As remarked by Prof. Oppenheim, de facto recognition is, in a sense, provisional and liable to be withdrawn if the absent requirement of recognition fails to materialize.\(^\text{14}\)

**DE JURE RECOGNITION**

De jure recognition is granted when in the opinion of the recognizing State, the recognized State or its Government possesses all the essential requirements of statehood, and it is capable of being a member of the international community. As per Prof. H.A. Smith, the British Practice shows that three conditions precedent are required for the grant of de jure recognition of a new state or a new Government.\(^\text{15}\) The three conditions are as:

- A reasonable assurance of stability and permanence
- The Government should command the general support of the population
- It should be able and willing to fulfill its international obligations.

\(^{13}\) Ibid p. 131
\(^{14}\) Ibid p. 138
\(^{15}\) Ibid p. 143
De jure recognition results from an expressed declaration or from a positive act indicating clearly the intention to grant this recognition such as establishment of Diplomatic relations. It is final and once given cannot be withdrawn.\textsuperscript{16}

**DIFFERENCE BETWEEN DE JURE RECOGNITION AND DE FACTO RECOGNITION**

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<th>DE JURE RECOGNITION</th>
<th>DE FACTO RECOGNITION</th>
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<tr>
<td>Final and complete</td>
<td>Provisional</td>
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<tr>
<td>Nothings is to be complied with</td>
<td>Dependent on condition which the new entity have to comply</td>
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<tr>
<td>Formal exchange of diplomatic representatives</td>
<td>No Formal exchange of diplomatic representatives</td>
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<td>Being final cannot be withdrawn</td>
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**RECOGNITION OF INSURGENCY AND BELLIGERENCY**

Insurgency denotes the state of a political revolt in a state. It presupposes a civil war. It denotes the condition of political revolt in a country where the rebels have not attained the character of belligerents.\textsuperscript{17} Thus Insurrection is aware of citizens against the state for the purposes of obtaining power in the whole or part it always implies a sustained armed struggle by a group of citizenry against an established order. It is an intermediate stage between tranquility and belligerency.\textsuperscript{18} If any state recognizes the insurgents of other state, it would imply that it would not treat such insurgents as violators of law.

\begin{itemize}
  \item \textsuperscript{16} Ibid p. 152
  \item \textsuperscript{17} Philip. C. Jessup, A Modern Law of Nations: An Introduction ,(1968)
  \item \textsuperscript{18} Oppenheim’s, International Law, (9th Ed. 1992) p. 122
\end{itemize}
It also imply that such a state wishes to establish relations with such insurgents on a temporary basis. The effect of insurgency is that it partially internationalize the conflict. It is not against international law to recognize insurgents as a de facto government over the territory under their control.\textsuperscript{19} It is merely an acknowledgement of fact situation for practical purposes.

### ESSENTIAL CONDITIONS FOR RECOGNIZING INSURGENTS

- Control over the considerable part of the territory
- Considerable support to the insurgents from the majority of the people living in the territory, and
- Insurgents should have the capacity and will to carry out the international obligations.

### EFFECTS OF RECOGNITION OF INSURGENTS

- They are not treated as pirates
- The rebels of civil strife are treated as public enemy until they recognized as insurgents.
- The international rules of war become applicable to them.

### BELLIGERENCY

When the insurgents are well organized, conduct hostilities according to laws of war and have a determinate territory under their control they may be recognized as belligerents whether or not the parent state has already recognized that status.\textsuperscript{20} As in the case of a recognition of a state recognition of belligerency is the question of policy and not of law. Consequently some states find it convenient to recognize belligerency and some do not. It is the acknowledgement of a judicial fact that there exists a state of hostilities between two factions contending for power or authority.\textsuperscript{21}

\textsuperscript{19} Ibid p. 128  
\textsuperscript{20} Ibid p. 135  
\textsuperscript{21} Ibid p. 140
The armed conflict is to be of general character. The insurgents occupy and administer a considerable portion of the national territory. They conduct hostilities through armed forces under a responsible authority and accordance with the rules of war. The hostilities are to be of such magnitude that the foreign states may find it necessary to define their attitude towards the belligerents and the established government. \(^ {22} \)

From the date on which the recognition of belligerency is accorded international law rules governing the conduct of hostilities apply. The conflict is international and the belligerents get some rights under international law. The relations between the recognized belligerent authorities established government and the recognizing States are governed by international law rather than municipal law. \(^ {23} \)

States are generally recognized when they possess the essential requisites of statehood, and International Law imposes a duty upon the states to grant recognition to such states. However, they do not accept any such obligation. Since, the act of recognition is considered as a diplomatic tool, the function of recognizing states is said to be a politico diplomatic function. The granting of recognition depends purely on the discretion of the state. Sometimes, states grant recognition to the new state to establish diplomatic relations with it. This may lead to a premature act, if the new state has not fulfilled the conditions of statehood. However, International Law does not consider such an act of premature recognition to be its violation, since it depends upon the discretion of the states.

Recognition is a unilateral act of a state and when a state recognizes another state, it makes the declaration in regard to the same either orally or in writing. If the act of recognition is not in writing, yet, if the two states establish diplomatic relations, and the intention and the gestures of the two states exhibits that recognition has been granted, then it is known as implied

\(^ {22} \) Ibid p. 145
\(^ {23} \) Ibid p. 152
recognition. Whereas, recognition is based on an instrument in writing, then, it is known as Express Recognition.