

Quadrant II - Glossary

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Module Name: Recognition of States, recognition of governments

Module No: 10

Glossary

Recognition- Recognition means acknowledgement of an existing situation or fact.

Recognition of States- free act by which one or more states acknowledge the existence of a definite territory of human society which is politically independent and which is capable of observing obligations under international law.

Recognition in general

Emergence of new States and changes in existing States. Recognition as a subject is difficult at this stage of development of International Law because the rules or principles are inconsistent and unsystematic State practices. The reasons for this is two fold:

1. Recognition is more a question of policy than of law. Policy of the recognizing State is conditioned by the necessity of protecting its own interests i.e. maintaining proper relations with any new State or government likely to be stable and permanent. Political considerations such as trade, strategy etc. may influence the decision of the State.
2. Different categories of recognition. Recognition of new States, recognition of new governments. Apart from the other heads of recognition:-
 - a) Recognition of entities as entitled to right of belligerency.
 - b) Recognition of entities to be considered as insurgent governments.
 - c) Recognition of National Liberation movements.
 - d) Recognition of territorial changes or other changes.

e) Distinction to be borne in mind of de facto and de jure recognition.

Recognition is accorded either express or implied. Express form of recognition includes diplomatic note, personal message from the head of the State or Minister of Foreign affairs, Parliamentary declaration, or treaty, or note verbale etc. Implied forms of recognition means inference from the relations between recognising state and the new state or government. Manner of recognition is not important, the intention must be indicated.

Recognition of States

Institute of International Law-“free act by which one or more States acknowledge the existence in a definite territory of a human society, politically organised, Independent, or any other existing State and capable of observing the obligation of International Law and by which they manifest therefore their intention to consider it a member of the International Community.”

State must possess the four Characteristics mentioned in the Montevideo Convention, 1933.

A State as a person of international law should possess the following qualifications:

- i. A permanent population,
- ii. A definite territory,
- iii. Government and
- iv. Capacity to enter into relations with other States.

For recognition of States the criteria of statehood is the condition for grant of recognition.

Hans Kelsen said a community to be recognised as a member of international community must fulfil the following conditions:-

- a) A community should be politically organised
- b) Control over definite territory,
- c) This definite control should be towards permanence
- d) Community must be independent.

Oppenheim stated that in recognising the members of the international community, the existing states declare that in their opinion the State fulfils the conditions of Statehood as required by International law.

Theories of Recognition

1. CONSTITUTIVE THEORY

Chief Exponents:-**Hegel, Anzilotti, Oppenheim.**

According to the Constitutive Theory- A State is and becomes an International Person (member of the family of nations) through recognition only and exclusively i.e. only when it is recognised by an established State.

Holland:-“A State cannot be said to have attained maturity unless it is stamped with the seal of recognition, which is indispensable to the full enjoyment of rights which it connotes.”

It is the act of recognition alone which creates statehood or clothes a new government with authority or status in the international sphere.

Criticism of the theory

It creates difficulties for a new State which is recognized by few States and not by others. Non-recognition of State by others is not conclusive evidence of absence of qualification required for Statehood.

e.g. China was not recognized by USA and other western countries for many years although it possessed the elements of Statehood.

Bangladesh was not recognized by Pakistan, China, Albania etc.

2. Declaratory theory

Chief Exponents:-**Hall, Wagner, Brierly, Fisher, Piitt Cobbett.**

Theory:- A State enters into the family of nations as of right when it has acquired the essential attributes of Statehood. Statehood or authority of new government exists prior to and independently of recognition.

Pitt Cobbet stated that “So long as a political community possesses the requisites of a Statehood,, a formal recognition would not appear to be a condition precedent to acquisition of rights and obligations.”

Brierly stated that the granting of recognition to a new State is not a ‘constitutive’ but a ‘declaratory’ act.

The act of recognition is merely a formal acknowledgement of the established situation of fact. It therefore means that a State may exist without being recognised by other States, even if it is not formally recognised by other States, if has to be treated by them as a State. No State has a right to withhold recognition when it has been earned.

The evidentiary (declaratory) theory is supported by two rules:-

- i. If a question arises in the new State as to the date on which the State has come into existence, ***the date when the requirements of statehood were in fact first fulfilled is the only material date.***
- ii. The rule that recognition of a new State has **retroactive** effect, dating back to its actual inception as an independent State.

Recognition of Governments

The question of recognition of a government arises when the change in government in an existing State is by illegal or revolutionary, or unconstitutional means.

Criteria for Recognition of Illegal Changes in Governments.

Doctrine of Effective Control

It means whether or not the new government:-

- i) Enjoyed reasonable prospect of permanence
- ii) has obedience (respect) of the mass of the population
- iii) Effective control of much of the greater part of the territory

Tinoco Arbitration [G.Britain v. Costa Rica]

In January, 1917, the Government of Alfredo Gonzales, President of Costa Rica was overthrown by Federico Tinoco. Tinoco established a new Constitution in

June 1917. His government continued till August 1919. Tinoco fled the country as his government fell in September. Provisional government was formed by Barquero. Barquero restored the old Constitution and elections were held. In 1922, a Law of nullities was passed which invalidated all contracts between executive power and private persons made with or without approval of legislative process between January, 1919, and September, 1919, during the tenure of Tinoco government.

The contracts made by the Tinoco administration with British nationals were repudiated by the Barquero regime. Chief Justice Taft referred to the problems of recognition or non-recognition with regard to Tinoco administration. It was held that since the administration was in effective control of the country, it was a valid government irrespective whether UK had granted recognition.