

## Quadrant II - Transcript

**Paper Code: PIN0301**

**Module Name: Recognition of States, recognition of governments**

**Module No: 10**

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Welcome students. I am Assistant Professor from VM so good College of Law, Miramar. In this module we will be discussing about the recognition of States and recognition of governments. More particularly, we will be discussing about recognition of state, the theories relating to recognition and recognition of government. At the end of this module, the students will comprehend the theories relating to recognition and distinguish between recognition of States and recognition of government.

What is the general meaning of recognition? Recognition means acknowledgement of an existing situation or fact. Now if you look at the international community there are emergence of new states and there are changes in the existing states. New states come into existence in today's times by disintegration for e.g. Czechoslovakia, but this divided into two countries. USSR got disintegrated or there could be merger of two or more states or there could be secessionist movements on National Liberation movements like Crimea seceded from Ukraine or Kosovo, which seceded from Serbia. So when this happens the question of recognition arises. Recognition as a subject is difficult at this stage of development of international law because of two reasons. One is recognition is a question of policy, than of law and when you say it's a question of policy, the States grant recognition on the basis of their political interests. They are guided by conditions of necessity. It could be trade relations. It could be strategic decisions and this is the basis on which states

grant recognition to States or to the government of a state. Second reason is there are different types of recognition.

Recognition of insurgency, Recognition of belligerency, Recognition of National Liberation movements, Recognition of territorial changes and the difference between de facto and de jure recognition. How is recognition accorded? Recognition is accorded either by express mode or implied mode. Express recognition could mean a diplomatic note being issued a press release. A personal message of congratulations to the head of the new state or head of the new government or a bilateral treaty or a resolution being passed by the Parliament. These are express modes of granting recognition. Some of the States have done away with this practice of granting recognition. Express or implied mode of recognition is inferred from the relations between the recognizing state and the recognized state or government. Unequivocally, ultimately what is required is the intention to grant recognition.

What is the meaning of recognition of states? The Institution, Institute of International Law has said that it's a 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. If this happens, then the states manifest their consent in accepting that new state as a member of the international community. Recognition of states is granted on the criteria of statehood. Statehood is the important criteria which is looked at now. This was laid down in the Montevideo Convention of 1933. Article 1 of this convention said that a state as a person of international law should possess the following qualifications. Firstly, a permanent population. Secondly a definite territory. Third, a government and 4th capacity to enter into international

relations. It is the second point that is definiteness of territory which the which the Palestine is lacking, and that is that is, eluded it from becoming a full fledged State and a member of the United Nations.

There are two theories of recognition, Constitutive theory and Declaratory theory. Let us move on to constitutive theory. The chief exponents are Hegel and Anzilotti, Oppenheim and others.

The Constitutive theory says that a State is and becomes an international person, that is, it enters the family of nations through recognition only and exclusively. That is only when it is recognized by an established date. This means that it is the act of recognition alone which creates statehood, or which grants authority to a new government and this means that recognition is an indispensable requisite. Holland says that 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. This means that again, recognition is essential. Apart from qualification of Statehood. Now this theory is criticized by many on two grounds. It causes difficulties when few states have granted recognition and few states have not granted recognition. Secondly, non-recognition is not an evidence of fulfillment of the qualifications of statehood. For e.g. China was a state, even the United States had not granted recognition to it. It had fulfilled the criteria of statehood long back. Bangladesh was not granted recognition by Pakistan, China, Albania and some other countries.

Now moving to the Declaratory theory, Chief exponents are Hall. Wagner Brierly Fisher, Pit Cobbett. The theory states that a State enters into the family of nations as of right. When it has acquired the essential attributes of

statehood, so it means that statehood or authority of a new government exists prior to an independently of recognition. So it is the act of recognition is only a formal acknowledgement of existing situation of fact. According to the proponents of this theory, you are only declaring that What is already known. Now the Pit Cobbett says so long as the political community possesses the requisite Statehood, formal recognition would not appear to be a condition precedent to the acquisition of rights and obligation. Once a state fulfills the criteria of statehood, there is no need for grant of recognition as an additional qualification for acquisition of rights and obligations under International law. Brierly says the granting of recognition to a new state is not a conservative but a declaratory act. So every state exists independently of recognition and no state has a right to withhold recognition once it has fulfilled the criteria of statehood or criteria for recognition of the government of a state.

Now this theory is based on 2 rules. One is the date the material date. If there's a question which arises with regard to the material date, the only material date is the date when the criteria of statehood were fulfilled. That is the only material data. Secondly, the rule that recognition of a new state has retroactive effect. That is, it dates back to the inception of that state. So these are the two rules which support the declaratory theory. Coming to recognition of governments. When there is a change in government in an existing state ordinarily through constitutional means like elections after five years. There is no need for recognition of government. Recognition of government arises only when the change in the government is by illegal means, unconstitutional means or revolutionary means, or there is a military coup. That is, the time existing states will wait and see and accordingly decide whether to grant recognition or share relations with the government.

Now, the criteria for granting recognition to the government. One of the criteria was doctrine of effective control. Whether that government enjoys reasonable prospect of permanence and stability. Secondly, there is obedience or respect of mass of the population of the government the people accept that government and Thirdly, there is effective control over the territory. This is the doctrine of effective control.

Now, this doctrine was for the first time applied in the case between Great Britain versus Costa Rica, Costa Rica, Central American Country. Now in this case, what happened is there was some political developments in Costa Rica where the government of Alfredo Gonzalez in January 1917 was overthrown by Federico Tinoco and Federico Tinoco ruled the country from January 1917 to 1919. During his tenure, he changed the Constitution and he made new laws as well. Now in August 1919, fearing a takeover Barquero, he fled the country. And one Mr. Barquero formed the government in September 1919. He formed the government. He restored the old constitution which existed before the Tinoco's regime and also made new laws. Like the Law of Nullities in 1922, which invalidated all the legislative and executive acts which are made by Tinoco's administration, because of this, several of the British Nationals suffered, and therefore there arose a dispute between Great Britain and Costa Rica. Great Briain on behalf of its own Nationals raised the issue. The matter was referred to arbitrator. The arbitrator had to decide the question of recognition or non- recognition of Tinoco administration and came to conclusion that since Tinoco. Administration had effective control over the territory then effect must be given to the acts of his government and therefore the court applied this doctrine and validated all the acts of tinoco's administration.

Here are some references.

Thank you very much.