

Question # 03

Answer # 03

1) Introduction

Article - 1 of the 1933 Montevideo Convention on the rights and duties of states is a comprehensive statement which has defined criteria of statehood. This article, not complete, has also been indirectly put in the UN charter: article 2(7). It has also established the state's sovereignty and domestic jurisdiction. However, in the modern context of international law, it faces challenges as the increasing globalization, according to Malcolm Shaw, has blurred the sovereignty of states. The increasing interdependence for finance, military weapons or any moral support has undermined the absolute sovereignty developed by the Westphalian system, and later Montevideo convention of 1933.

2) Explaining Article 01 and defining all criteria on modern Grounds

Article - 01 of the Montevideo convention has underlined following

criteria:

- (a) A state must have defined territory
- (b) Permanent Population
- (c) Sovereign Government
- (d) Capacity to enter into relations with other states

a) State having defined territory and modern context of international law

In modern international law, this clause of article 1 of the Montevideo convention is still relevant. A state must have defined territory in order to fulfill the statehood criteria.

Case Study: Kurd population in Iraq has occupied some territory of Iraq; however, their territory is not permanent because it still belongs to Iraq. Hence, it is still an accurate clause in modern international law.

b) Permanent Population

Moreover, states also should have permanent population in order to achieve international personality.

A state cannot be called a state if it does not have a permanent population.

c) Sovereign government

According to the said article of the said convention, a entity to possess personality of state, it must possess the sovereign government. A sovereign government is the domestic administration which formulates laws, levy taxes and enforce laws. It must be sovereign. It should possess absolute sovereignty and national sovereignty. Absolute sovereignty means no other state shall interfere in the domestic jurisdiction of the state. National sovereignty means the government is free from any domestic pressure and works with the will of people.

d) Capacity to enter into Relations

If means state shall possess the capacity to enter into relations with other states without any foreign pressure. It also invokes the sovereignty of states which calls on states not to intervene in other state's affairs. However, in modern international law it has been affected.

3) Globalization and increasing interdependence

Malcom Shaw and various other writers have raised concerns for the sovereignty of states in the wake of increasing globalization. However, this article is still accurate in the current era. It is still used to define the personality of states.

Case in Point: States disintegrating from United Kingdom are an example of this states that disintegrate are defined according to the article - 1 of the Montevideo Convention.

4) Article 2/7 of the UN Charter and accuracy of Article - 1 of Montevideo Convention in International law

Article 1 of the Montevideo has been translated in UN- charter also in 2/7 which prohibits other states from interfering in domestic affairs of the other states. It means this remains crucial part of international law while

the criteria of statehood.

5) Article - 1 and modern international Law

Twenty first century has seen several events which are completely new for the world.

For instance, the increasing social interaction between the states and increasing interaction has made these states so interdependent.

6) Conclusion

In a nutshell, the article - 1 of the Montevideo convention has underlined an accurate criteria for the statehood.

It is still accurate in the modern international law.

Despite receiving blows by globalization it has yet kept its appearance intact.

Question # 07

Answer # 07

01) Introduction

Recognition is an act of recognizing that a particular state has achieved the criteria of article 1 of the Montevideo convention of criteria of being an international legal person. Recognition is divided in three types: Express recognition, implied recognition and conditional recognition. These three vary from one another slightly. Recognition can be defined through Constitutive and Declaratory theory of recognition. Lastly, the state recognition is the recognition that a state has achieved the personality according to Article - 1 of the UN. However, government recognition is the recognition to change in the leadership of the state.

02) Detailed account of Recognition

According to Kelson, recognition is an act of granting recognition that a state has achieved the personality of international person.

2.1) Modes of Recognition

- i) De-jure recognition
- ii) De-facto recognition

i) Dejure Recognition

De-jure recognition is called as a legal recognition formally granted to a state. If, once given, cannot be revoked.

States that receive dejure recognition enjoy certain benefits like immunities granted by international law, can sign treaties and invoke principles of international law - in the relations.

ii) De-facto Recognition

De-facto recognition is called as a recognition in fact informally granted to a state. If can be revoked.

States that receive de-facto recognition does not enjoy recognition benefits that are enjoyed by de-facto recognition.

2.2) Theories of Recognition

i) Constitutive Theory

ii) Declaratory Theory

i) Constitutive Theory

If considers a state as subject of international law if it is recognized as a sovereign state.

If means recognition is important to be the subject of international law. A state cannot enjoy benefits of law unless it has been recognized by recognized subjects of international law.

ii) Declaratory Theory

This theory says that the recognition is affirmation of statehood when the legal criteria has already been fulfilled.

However, article - 03 of the Montevideo convention states that state, once acquired the criteria of article - 1 of the said convention, is independent of recognition of the other states.

3) Types of Recognition

- i) Express Recognition
- ii) Implied Recognition
- iii) Conditional Recognition

i) Express Recognition

Express recognition is a type of recognition in which a legal person or legal entity (state) formally recognizes a state. It can be through verbal or written source. It means state formally expresses that the state has achieved the criteria to be the legal entity on international arena has been fulfilled.

ii) Implied Recognition

Implied recognition is a type of recognition in which a legal person or legal entity (state) informally imply from its actions that it has recognized a particular state. It can be done through a trade agreement or any other recognized interaction that imply the recognition of the state. It means state informally expresses that the criteria to be legal entity on international

arena has been fulfilled.

iii) Conditional Recognition

Conditional recognition is a type of recognition in which a legal person or legal entity (state) conditionally recognizes a state. This recognition can be revoked if it does not fulfill the said conditions mentioned by the state.

If means state in this kind of recognition conditionally recognizes a states.

4) State Recognition

State recognition is known as the recognition of new entity on international arena. It infers that a state has achieved the criteria of state mentioned in article-01 of the Montevideo Convention.

5) Government Recognition

Government recognition is a kind of recognition where other states formally or informally infer that they recognize a new government or setup in the country. If is again divided

into recognition of insurgency
and recognition of belligerency.

6) Conclusion

In a nutshell, Recognition is an act of granting a states recognition that state has fulfilled the criteria of international person. Recognition can be given through *de jure* or *de facto*. It is of three types: Conditional, express and implied. Government recognition differ from the state recognition.
