

Question - 07

What is Recognition? Discuss Dejure and Defacto recognition. Also explain the constitutive and declaratory theories of recognition. Discuss the disabilities of unrecognized states.

Answer:

1. Introduction:

Recognition of a state is a process by which existing states accept the statehood of a new state on diplomatic fronts and agree with their participation in international community. Recognition is divided into implicit, ^{and} explicit or express recognition. There are two modes of recognition the 'De Jure' and 'De Facto' recognition. Alongwith this, two contrasting theories on the status of recognition also exist. Which, either call recognition is decl-

ratory act or constitutive process. However, those states which are not recognized have certain disabilities. Thus, a recognized state is a state in real sense in global system.

Concise it!

Q. Defining Recognition:

Recognition is a key element of international law. It is the process by which an entity is recognized as state by other states. And, a new state will enjoy its rights and obligations after recognition.

• Oppenheim's Definition of State Recognition:

"In recognizing a state as member of international community, the existing states declare that in their opinion the new state

and fulfills the conditions of statehood as required by international law."

• View of Philip C Jessup about recognition:

"Recognition is a political diplomatic function."

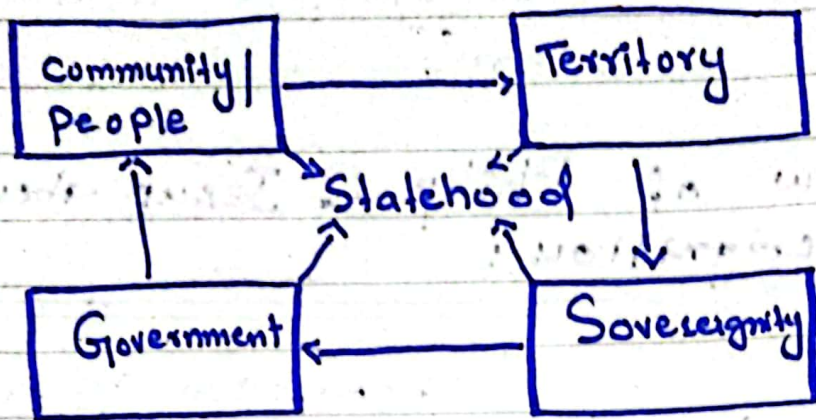
• Definition of recognition according to the Institute of International Law:

"It is... 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 state and capable of observing obligations of international law..."

3. Conditions of Statehood:

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According to **Kelsen** the conditions of statehood are:



4. Types of Recognition:

Recognition is a unilateral act. States recognize other states either ^{by} formal announcement or and implied intention. On the basis of these acts recognition is divided into following types.

(a) Express Recognition:

A state through express recognition may convey its decision of recognition to the newly entity or government by a formal announcement. This announcement may

take the form of public statement or notification or diplomatic note.

For example: Japan recognized Korea via article 12 of peace treaty on 8 September 1951.

(b) Implied / Implicit recognition:

Recognition can be inferred from parties involved. The act must be such as clearly indicated that recognition was intended. States, however, does not declare formal statement. Article 7 of Montevideo convention 1933 grants the right of implied recognition.

(c) State recognition via bilateral act:

A state $\xrightarrow{\text{Recognition}}$ B state

Example:

Iran recognized Pakistan

(d) Mutual recognition:

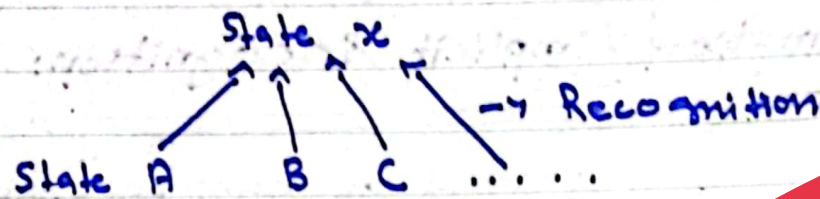
A state $\xrightarrow{\text{Recognition}}$ B state

Example:

Federal and Democratic Germany recognized each other in 1972.

(e)

Multilateral act:



Example:

UNGA resolution 181 recognized Israel

5.

Theories of recognition:

Jurists of international law held different opinions regarding the nature of recognition. The theories of recognition are:

(i)

Constitutive Theory:

"It is through recognition only that state is & becomes international person"

(COPPENHEIM)

This theory advocates that a new ^{entity} state can not be a state ipso facto (automatically).

(ii) Declaratory Theory:

According to this view Statehood of the new government exists prior to and independent of recognition. Recognition is mere a formal acknowledgment.

Add points here! "A state may exist without being recognized and if it does exist 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" (Brierly).

6. Modes of Recognition:

"Recognition may be of two kinds. De Facto and De Jure recognition"
(Tandou and Kapoor.)

(a)

Recognition De Facto:

De facto recognition is given when the new state seems to be unstable and might fail to uphold the essential attributes of statehood. Also under this recognition diplomatic relations may not be established. Moreover, De facto recognition can be withdrawn at any times and it is not sufficient for UN membership.

"De facto recognition is that the recognizing state wants to establish its relations with the recognized state without establishing diplomatic relations" (Judge Lauterpacht)

(b)

De Jure Recognition:

It is a permanent mode of recognition and cannot be withdrawn. Exchange of diplomatic relations take place in this recognition and is essential for UN membership.

"Recognition De Jure results from an expressed declaration or from a positive act indicating clearly the intention to grant his recognition ^{establishment of} such as diplomatic relations" (Oppenheim).

7. Disabilities of an unrecognized State

As recognized state enjoy certain freedoms and privileges. In a same way unrecognized state has certain consequences. That are.

Absence of diplomatic relations: An unrecognized state is not entitled to enter into diplomatic relations with the non-recognizing states.

Deprivation from immunity: The diplomatic representatives of non recognized state do not possess immunity from legal procedures in foreign states.

Inability of non-recognized state to

P.T.D

Litigate in foreign courts: In USSR

vs criteria case - the New York court observed that non recognized state cannot sue in the courts of non recognizing states.

- Vulnerability to conflicts: Non recognized states does not contain any defense alliance. Therefore, they more vulnerable to territorial disputes.

- Limited access to international markets: Non recognized states often struggle to trade freely or attract foreign investment.

8. Examples of non-recognized states:

- Taiwan → limited recognition

- Northern Cyprus → only recognized by Turkey

- Kosovo → Not universally recognized.

9. Conclusion:

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Good!

You have got potential
Add references from
books as well

Recognition is a unilateral act by which states accept another state's sovereignty. States then recognize the entity by De Facto or De Jure recognition. The theorists diverge on the point that whether it is constitutive or declaratory act. Sometimes a single state recognize other as bilateral act or both the entities recognize each other as mutual recognition. A rare case occurs when a multilateral body recognizes a state. States which are not recognize face diplomatic isolation and cannot compete developed nations. Therefore, recognition is like an identity card for a citizen, which grants all due rights to the holder.

Concise the conclusion