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International law

Test #1

Q No: 1

Article 1 of Montevideo convention remains a litmus test for statehood in modern era. Critically analyze conflict b/w constitutive theory and declaratory theory of recognition with contemporary relevance.

1. Introduction:

In the contemporary era, article 1 of Montevideo convention remains a litmus test for statehood and recognitions. Any state with well-defined territory, specific population, a dignified government and that has capability to go in international relations with others testifies the recognition of statehood as per article 1 of Montevideo

convention. Whereas in the light of contemporary relevance declaratory theory wins over constitutive theory in most of the cases e.g. recognition case of USA and China. However, the debate arises in case of Palestine with regard to these theories.

2. Montevideo convention: a litmus test for statehood and recognition;

The article (1) of Montevideo convention says that a state must contain four factors in order to be recognized as a state internationally,

(i) A defined territory

(ii) A nation

(iii) A dignified government

(iv) Ability of state to form international relations with other states.

These four factors of article (1) of Montevideo convention gives a litmus test for the recognition of states. If any

state fails to abide by any one factor of this article, it fails to obtain an international recognition. That is why even in contemporary era, article (9) of Montevideo convention remains a litmus test for statehood and recognition.

3. Types of recognition;

As per Estrada doctrine (Estrada, a Mexican president) there are two types of recognition in international law for statehood:

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

4. De facto recognition:

In international law jargons de facto recognition means permanent status of statehood recognized by international actors. If a state is given a status of de facto recognition no other state can revise or rectify its status.

5. De jure recognition;

In the jargons of international law, de jure recognition means a temporary status of recognition that is flexible enough to be revised and retified. If during the time period of de jure recognition state violates any requirement of article (1) of montevideo convention, international law holds the right to drop the status of its recognition.

6. Contrasting theories of recognition;

There are two theories of recognition in international that oftenly contradict eachother. They are:

- (i) Constitutive theory
- (ii) Decleratory theory

7. Recognition over decleration-constitutive theory;

The followers of constitutive theory believes that international

recognition is above and important over declaration of state. The theory argues that no matter if states declares itself as a state or not, it cannot obtain the status of statehood unless international law or international actors give it a status of de jure or de facto recognition. The supremacy of consent international actors is above state's self declaration of statehood.

7.1) Contemporary relevance of constitutive theory;

In modern world constitutive theory is relatable in case of Palestine. Palestine declares itself as a state but as it does not hold the status of de facto or de jure recognition by veto power, it refrains from the status of official statehood, even though it fulfills all the requirement as per article (1) of Montevideo convention.

8- Declaration over consent: debate of declaratory theory;

The followers of declaratory theory debites that consent of international actors does not matter if state fulfills the requirement of article (1) of Montevideo convention and declares itself a state. Declaratory theory says that any state can independently declare itself a statehood whether veto power gives him a status of de facto recognition or not.

8.1 Contemporary relevance of declaratory theory;

In contemporary times, declaratory theory remains relatable in case of US-China and Pak-Israel.

(a) USA-China;

China declared himself an independent state in 1949 but US recognized China as a state in

1971. But during the mean time China was a recognized state enjoying the status of statehood. This shows success of declaratory theory in modern world.

(b) Pak-Israel:

Pakistan does not recognize Israel as a state but Israel is still enjoying the status of statehood in international relations.

Thus, in contemporary relevance declaratory theory outshine the traditional constitutional theory.

9. Conclusion:

In a nutshell, indeed article (1) of Montevideo convention still behaves as a litmus test for the status of statehood and recognition for all states. Although the area of influence of constitutive theory and declaratory theory remains debate but declaratory theory seems to be outshining constitutive theory with respect to contemporary relevance.