

Read the question carefully and answer exactly what is asked, avoiding irrelevant political opinions or unnecessary background.

Date: _____

Day: _____

Begin your answer with a clear and accurate introduction, defining key terms where required.

Organize your answer properly: introduction, main discussion, and a brief logical conclusion.

Demonstrate conceptual clarity and use correct International Law terminology (e.g., custom, treaty, jus cogens, opinio juris).

Support your arguments with relevant case laws (e.g., Lotus Case, Nicaragua Case, North Sea Continental Shelf) wherever applicable.

Refer to treaties and conventions such as the UN Charter, Vienna Convention, or Geneva Conventions when relevant.

Strengthen answers by mentioning jurists like Oppenheim, Brownlie, or Shaw where appropriate.

Focus on legal reasoning and analysis rather than mere definitions or rote memorization.

Apply the law to facts or situations instead of writing purely descriptive answers.

Present balanced views and mention exceptions or counter-arguments where relevant.

→ Naturalist theory was the basis of Positivist theory. Naturalist school of thought was only focused on rationality of humans. But meanings of justice, general interest of society, welfare etc. are vary from person to person. The criticism on naturalist theory became the basis of positivist theory.

→ Positive law theory work on the part which was neglected by naturalist school of thought. They focused on consent of the people. Law enacted by appropriate authority is binding. It means those rules only be followed or binding that are accepted by the states. It focuses on mutual acceptance of states or people. The rule accepted by most is the law.

→ It also lacked some points that needed to be address. And for that reason a third school of thought prevails that is an amalgamation of previously discussed theories. That consent and reasoning both are required for enacted any rule or law. Elements of International Law: Internationalism. The subjection of

all states to the law.

2. *Pacta Sunt Servanda* (Binding force of promises): Treaty or promises must be kept in good faith.
3. Recognition of identity and of states and individuals.

→ The amalgamation of these theories is the basis of international law. Each theory contributed in development of international law.

There is a saying:

"A theory cannot be completely correct and can't be completely wrong".

It means some points are valid and some are not. The incorrect one give rise to the new concepts and process of development ~~can~~ carried on. International law is still in development phase. New developments raise new issues and for solution, new laws are needed. This is how theories played role in development of international law and the process is still in progress.

Q#3: Recognition:

According to Oppenheim:

In recognizing a state as a member of international community

the existing state declare that in their opinion that new state fulfills the condition of statehood.

Montevideo Convention of 1933

Article I declares the element of statehood and a state ~~should~~ must fulfill these elements:

1. Government
2. A permanent population
3. Definite Boundary
4. Capacity to enter in relation with other states

This is the basic requirement for the state to exist but the question arises here that only possessing the elements of the statehood can a state exist? For this reason we have two theories of recognition in international law that argues about the legal requirement for recognition.

→ Recognition by other states plays a pivotal role in the legal existence of the state.

Related to recognition we have two theories:

- 1) Constitutive Theory
- 2) Declarative Theory

1) Constitutive Theory

This theory states that a new state only gains legal existence

when it is formally recognized by other established states; without recognition it remains merely a factual entity, not a legal subject with legal rights and duties. When a state recognizes other some legal effect (rights and duties) ensure to arise out of it that is said to be constitutive in nature.

Whereas, on the other hand, Declarative theory, argues that state gets right and duties under international law when it passes the attributes of statehood and recognition is not a condition precedent for getting rights and duties. In fact, recognition is mere declaration. According to the opponent of the theory recognition depends upon discussion and will of state.

Soviets are of view that birth of state is the matter of domestic law not international law.

→ The prevailing idea of recognizing a state is constitutive theory. The recognition of established states is required in order to exist legally. For instance, Palestine is largely recognised by many states. So legal rights and

and duties are there. But a debate between constitutive and declarative type of recognition is still there.

CONSEQUENCES OF RECOGNITION

The consequences of recognition includes

1. Trade
2. Treaties
3. Diplomatic Relation
4. Sovereign Immunity
5. Can sue each other
6. Property Rights
7. Participation in Global community

1. Trade

When a state is recognised by other established state or when it gets the position of legal entity, it can trade with any one by consent of the other.

2. Treaties

Treaties are the intra obligation between states. States themselves enact any law or obligation related to any matter and is binding on both in relation to law of treaties.

3. Diplomatic Relation

After getting recognition a state is free to make diplomatic

relations with other states. It enables state to grow diplomatically in international community.

4. Sovereign Immunity.

After recognition a state is sovereign in its decisions and matters. No one can interfere or intervene in its matter unless it's not an international subject. If any one interfere it will be deal under international law.

5. Can Sue each other.

Recognition enables state to make / have relation with other states.

But if something wrong happens related to diplomatic right, treaty rights or any matter both states are free to sue each other legally.

6. Property Rights.

A state can possess property abroad when it gets the recognition.

7. Participation in Global community.

Recognition give right of participation to the state to has legal right to raise voice or give suggestion in international matters or subjects but still there are some limitations also.

Q#4: Article 1 of 1933 Montevideo Convention on Rights and Duties of states lays down criteria for state hood:

1. Government
2. Permanent population
3. Defined territory
4. Capacity to hold relation with others.

While this criteria has attained strong position in international customary law but in modern international law its position is debated, by the particularly in the light of self-determination, recognition and international legitimacy.

→ Classical Criteria:

1. Permanent Population: A state must possess a permanent population living in its territory.
2. Territory: A state must have a definite territory. Absolute certainty of border not required by reasonably identifiable territory required.
3. Government: An effective government is required ruling the defined territory and population.
4. Capacity to enter in Relations: This criteria reflects sovereignty and independence of the state.

→ If we relate this classical criteria with modern context of international law:

* First, permanent population, this criteria is still valid in international ^{modern} context of statehood.

* Second, defined territory, this point is also valid in modern context but with some exception that an absolute certainty is not required but a reasonably identifiable border is essential. For instance, Israel and Pakistan has identifiable borders with border conflicts.

* Third, Government, this point is somehow invalid in some context. For instance, Somalia still has state right and duties with prolonged governmental collapse.

* Fourthly, Capacity to hold relation is still valid but it is now more related to the concept of recognition.

Limitation of Article 1:

* Role of recognition:

Article 1 reflects declaratory theory of statehood, ignoring recognition. But in modern context statehood reflects a blend of declaratory and constitutive theories.

For instance, Kosovo fulfills Montevideo criteria but lacks universal recognition.

★ Legitimacy and compliance with International law:

Modern International law increasingly emphasizes

Prohibition of ~~sta~~ acquisition of territory by force.

• Respect for human rights and democratic leadership.

But entities created by unlawful means such as Northern Cyprus face non-recognition despite meeting Montevideo criteria.

★ Right of Self-determination:

Montevideo Criteria predates UN Charter and decolonization.

At the time of Montevideo

Criteria colonial empires dominated

International relations and concept

of self-determination had not

crystallized into legal right. But

now right of self-determination

become a core legal principle that

does not align with Montevideo

Criteria.

Article 1 of Montevideo Convention

continues to provide useful baselines

for identifying states but it

must be supplemented by post-1945

developments in International law.