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RECOGNITION OF STATES IN INTERNATIONAL LAW

- The recognition of a state under international law is a **declaration of intent by one state to acknowledge another power as a "state"** within the meaning of international law. Recognition constitutes a **unilateral declaration of intent**.
- It is entirely at the **discretion of any state** to decide to recognize another as a subject of international law.
- Development of recognition criteria reflected the prevalent state practice of recognition of new states. **When recognizing new states, the recognizing states guide themselves with their own criteria for recognition.** Despite attempts to codify criteria as well as the institution of recognition in international law, **there is no single international law act which lists the universal criteria for recognition.** Recognition to the new entity is still extended at discretion of a recognizing state and **there is no provision in international law that could force the state to recognize the new one.**

Along with lack of codification of recognition criteria, **there is a lack of any international authority tasked with determining whether an entity claiming to be a state in fact is a state.** It is for each state to make such determination **based on its own assessment and its own political will** whether the new entity should be admitted to the community of nations. De-recognition, non-recognition and recognition thus becomes a **political act**, and perceptions of national self-interests play a determining role.

- **Express and Implied Recognition**

Recognition is essentially a matter of intention. It is founded upon the will and intention of a State. It may be express or implied. **Express recognition indicates the acknowledgment of the recognized State by a formal declaration.**

- In the practice of States, this formal declaration may happen by either a **formal announcement of recognition**, a personal message from the head of a State or the minister of foreign affairs, a diplomatic note, or a treaty of recognition.
- Recognition **needs not to be express**. It may be implied in certain circumstances. There are circumstances in which it may be possible to declare that in acting in a certain manner. **This position, for example, was maintained by Arab States with regard to Israel.**
- **Implied recognition is recognition of a State or a government through actions other than official declarations or actions intended to grant recognition. The required actions for implied recognition must be unequivocal, leaving no doubt of the intention of the State performing them to recognize the State or government and to deal with it as such.**

- The issue of recognition of new states **turned into a bone of contention between the world powers in 2008**, when firstly the western nations recognized **Kosovo** after its unilateral declaration of independence and then in August 2008, Russian Federation officially recognized **Abkhazia and South Ossetia** as independent states In 2008. Most countries recognize them as part of Georgia.
- **International recognition of Kosovo**, since its [declaration of independence](#) from [Serbia](#) enacted on 17 February 2008, has been mixed, and **international governments are divided on the issue.**
- **The government of Serbia does not recognize it as a sovereign state** for kosovo and has since gained diplomatic recognition as a sovereign state by **102 member states of the United Nations.**
- These acts of recognition eroded one of the fundamental principles of international law - territorial integrity and brought systemic change to the Westphalian order.

- **International Court of Justice:** Advisory opinion on Kosovo's declaration of independence

On 27 March 2008 Serbian Foreign Minister Vuk Jeremić said Serbia would request the International Court of Justice to review the legality of Kosovo's declaration of independence. *UN General Assembly backs Serbia's initiative on Kosovo.*

On 8 October 2008 the UN General Assembly adopted Serbia's resolution requesting the International Court of Justice to assess the legality of Kosovo's declaration of independence. The United Nations General Assembly adopted this proposal on 8 October 2008 with 77 votes in favor, 6 votes against and 74 abstentions.

The court delivered its opinion on 22 July 2010; by a vote of 10 to 4, it declared that **the adoption of the declaration of independence of 17 February 2008 did not violate general international law because international law contains no 'prohibition on declarations of independence'**, nor did the adoption of the declaration of independence violate UN Security Council Resolution 1244, since this did not describe Kosovo's final status, nor had the Security Council reserved for itself the decision on final status.

- The Republic of Abkhazia, is a partially recognized state in the South Caucasus, recognized by most countries as part of Georgia, which views the region as an autonomous republic.
- The polity is recognized as a state by **Russia, Venezuela, Nicaragua, Nauru, and Syria**. While Georgia lacks control over Abkhazia, the Georgian government and most United Nations member states consider Abkhazia legally part of Georgia.



Theories of Recognition

1. Consecutive Theory

- According to this theory, for a State to be considered as an international person, its recognition by the existing states as a sovereign required. This theory is of the view that only after recognition a State gets the status of an International Person and becomes a subject to International Law.
- So, even if an entity possesses all the characteristics of a state, it does not get the status of an international person unless recognized by the existing States.
- This theory does not mean that a State does not exist unless recognized, but according to this theory, a state only gets the exclusive rights and obligations and becomes a subject to International Law after its recognition by other existing States.

- However, although states do make reference to the presence or absence of the factual characteristics of statehood when granting or refusing recognition, in the last resort their decision will normally be based on **political expediency** – there is no real evidence that states themselves feel that there is a legal duty to recognize when the other requirements of statehood have been satisfied.
- The question has recently arisen with respect to the territory of former Yugoslavia. **In June 1991 Slovenia and Croatia declared their independence. The European Union and its member states did not recognize the two states immediately.** In December 1991 Foreign Ministers of EU member states adopted **‘Guidelines on the recognition of new states in Eastern Europe and in the Soviet Union.**

Declaration on the 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union' (16 December 1991)

- This provided that recognition would be accorded to those new states which agreed **to respect five conditions**. The five conditions included matters such as respect for human rights, guarantees for minorities, respect for the inviolability of frontiers, acceptance of commitments to regional security and stability and to settle by agreement all questions concerning state succession.
- Slovenia, Croatia and Bosnia agreed to the conditions and were formally accorded recognition in early 1992. It is clear that the conditions set down by the European Union exceeded the normal requirements of statehood. The implication would therefore seem to be that the EU viewed recognition as a political measure which was not required by any international obligation. It remains to be seen whether European practice will continue to use these conditions in all decisions on the recognition of new states or whether the application of the conditions will be restricted to the particular situation in the Eastern Europe.

2. Declarative Theory of Recognition

- **The Declaratory View of Recognition:** The declaratory doctrine of recognition can be stated in simple terms. A State exists as a subject of international law-as a subject of international rights and duties-as soon as it "exists" as a fact, that is, as soon as it fulfills the conditions of statehood as laid down in international law.
- Before the recognition of the State, a new State has the right to defend its integrity and independence under International Law.
- An early example of the declaratory theory is to be found in **two provisions of the Montevideo Convention 1933:**
- The political existence of the state is independent of recognition by other states. Even before recognition the state has the right to defend its integrity and independence ... and to organize itself as it sees fit. The exercise of these rights has no other limitation than the exercise of the rights of other states according to international law – **Article 3.**
- The recognition of a state merely signifies that the state which recognizes it accepts the personality of the other, with all the rights and duties determined by international law – **Article 6.**

- All of the above quotes show that basically it is not important whether a state fulfils statehood criteria or not, **political interests** and **political bargaining** play far more important role. **Recognition is solely a matter between the state recognizing and the entity being recognized.**

MODES OF RECOGNITION

- There are two modes of recognition of State:-

1. *De facto* Recognition

- It is a temporary and provisional recognition **which can be withdrawn**. Later on when they are satisfied that the recognized state is capable of fulfilling International obligations.
- According to Georg W., “When a state wants to delay the **de jure** recognition of any state, it may, in first stage grant **de facto** recognition.” The reason for granting *de facto* recognition is that it is doubted that the state recognized may be stable or it may be able and willing to fulfil its obligations under International Law.
- The state having *de facto* recognition are not eligible for being a member of the United Nations. e.g., Israel and Taiwan among others.

- ***DE JURE* RECOGNITION**

- ***De jure*** recognition is granted when in the opinion of recognizing State, the recognized State or its Government **possesses all the essential requirements of statehood** and it is capable of being a member of the International Community. Recognition ***de jure*** results from an **expressed declaration or from a positive act indicating clearly the intention to grant this recognition such as the establishment of diplomatic relations.**
- According to Phillips Marshall Brown, “***De jure*** recognition is **final** and once **given cannot be withdrawn**, said intention should be declared expressly and the willingness is expressed to establish political relations.”

Difference between *De Facto* and *De Jure* Recognition

<i>De Facto</i> Recognition	<i>De jure</i> Recognition
De Facto recognition is temporary and provisional recognition.	De Jure recognition is a permanent and legal recognition.
<i>De Facto</i> recognition is the primary step to grant <i>De Jure</i> recognition.	<i>De Jure</i> recognition can directly be granted without <i>De Facto</i> recognition.
<i>De Facto</i> recognition can easily be revoked	<i>De Jure</i> recognition can never be revoked
The States having <i>De Facto</i> recognition cannot enjoy diplomatic immunities	The States having <i>De Jure</i> recognition can enjoy diplomatic immunities.
The States having <i>De Facto</i> recognition have only few rights and obligations against other States.	The States having <i>De Jure</i> recognition have absolute rights and obligations against other States.
<i>De Facto</i> recognition is granted to a State when it fulfills the essential conditions of State.	<i>De Jure</i> recognition is granted to a State when all the essentials are fulfilled along with the permanent control of that essentials.



THANK YOU