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Recognition of states under international law II

Doctrine of Non-recognition of States

- Non-recognition is the procedure and legal obligation not to extend diplomatic recognition to annexations or *de facto* states created through violation of international law. It is a counterpart to the rejection of right of conquest in modern international law and the *jus cogens* norm of prohibition on the acquisition of territory through force.
- The principle achieved particular significance as a result of the Japanese invasion of Manchuria in 1931. The US Secretary of State, Stimson, declared that the illegal invasion would not be recognized as it was contrary to the Kellogg-Briand Pact which outlawed the use of war as an instrument of national policy. Thereafter the doctrine of not recognizing any situation, treaty or agreement brought about by non-legal means was often referred to as the **Stimson Doctrine 1932**.

- This implication was contained in what became known as the Stimson Doctrine, enunciated in January 1932 by U.S. Secretary of State Henry L. Stimson and **subsequently affirmed by the assembly of the League of Nations** and by several conferences of the American republics.
- **The Draft Declaration on Rights and Duties of States**, formulated in 1949 by the International Law Commission of the UN, **contained (in Article XI)** the rule that states are obligated not to recognize territorial acquisitions achieved by aggressive war.
- Although conquest has been outlawed, states sometimes **ignore this principle in practice**. In 1975, for example, Indonesia invaded and annexed the former Portuguese colony of **East Timor**, and in **1977 the Somalia government invaded and attempted to annex Ethiopia particularly Ogedenia Region**. In the latter case, the response of the Soviet Union and Cuba, which endorsed military force to remove Somalia's troops from Ethiopia, reinforced the unacceptability of conquest. In general, conquest is not as significant an issue in international politics as it once was, **because territorial expansion is no longer a common ambition among states**.

- It is a doctrine that has also been reinforced by the principle that legal rights cannot derive from an illegal situation *ex injuria jus non oritur* which is a principle of international law. The phrase implies that "**illegal acts do not create law**".
- *Advisory Opinion on Namibia, I.C.J., Advisory Opinion, 1971, I.C.J. Rep 16.*
- Under a claim of right to annex the Namibian territory and under the claim that Namibia's nationals desired South Africa's rule, South Africa began the occupation of Namibia. South Africa was subject to a U.N. Mandate prohibiting Member States from taking physical control of other territories because it was a Member State of the United Nations.
- **The Resolution 2145 (XXI) terminating the Mandate of South Africa** was adopted by the U.N and the Security Council adopted Resolution 276 (1970) which declared the continuous presence of South Africa in Namibia as illegal and called upon other Member States to act accordingly. An advisory opinion was however demanded from the International Court of Justice.
- In its Advisory Opinion of 21 June 1971, **the Court found that the continued presence of South Africa in Namibia was illegal and that South Africa was under an obligation to withdraw its administration immediately.**

Recognition of governments

- Although the practice of states is far from establishing the existence of a legal duty to recognize an entity which has established the factual characteristics of statehood, with regard to governments the position is even more difficult. The problem of recognition of governments will arise when a new regime has taken power:
 - Unconstitutionally;
 - By violent means; or
 - With foreign help,
- In a state whose previous and legitimate government was recognized by other states. Recognition in such circumstances may appear an endorsement of the new regime, and the recognizing state may not wish to offer such endorsement or approval. Alternatively, it may be impractical not to acknowledge a factual situation, in which case the recognizing state may wish to indicate that recognition is inevitable once a given set of facts arise.

Collective Recognition Under International Law

- It is an act of recognition through the international decision. Membership in the United Nations is one of the criteria for gaining recognition in a collective form.
- The idea has been discussed particularly since the foundation of the League of Nations and was re-emphasized with the establishment of the United Nations. However, *it rapidly became clear that member states reserved the right to extend recognition to their own executive authorities and did not wish to delegate it to any international institution*. The most that could be said is that membership of the United Nations constitutes powerful evidence of statehood. But that, of course, is not binding upon other member states who are free to refuse to recognize any other member state or government of the UN.

The Unilateral Declaration of Independence

- A unilateral declaration of independence (UDI) is a formal process leading to the establishment of a new state by a subnational entity which declares itself independent and sovereign without a formal agreement with the state which it is seceding from.

Palestine and the criteria of statehood

- The greater part of this debate has arisen from the request of Palestine for a change from its observer status to full membership of certain of the specialized agencies (so far, the WHO and UNESCO), since the constituent instruments of these organizations make admission to full membership contingent on 'statehood'. This discussion has not at the time of writing been conclusive, compromise resolutions being adopted in both organizations which effectively shelved the admission for an indeterminate period.
- However, certain conclusions regarding statehood may be drawn from this stage of the debate. Not surprisingly, the representative from Israel considered that 'the declaration from **Algiers proclaims a so-called independent Palestinian state**, with no territory, no borders and with Jerusalem, my home town and the capital of Israel, as its declared capital. That declaration has no meaning in reality.'
- **Other states such as Canada, Australia, the United States, and Norway also declared that, in their view, the proclaimed Palestinian state did not conform with the criteria of international law for the recognition of statehood.**

• **Legal Effects of such recognition**

When a state acquires recognition, it gains certain rights, obligations and immunities such as.

In this section some of the legal results that flow from the recognition or non-recognition of an entity, both in the international sphere and within the municipal law of particular states, will be noted. Although recognition may legitimately be regarded as a political tool, it is one that nevertheless entails important consequences in the legal field.

1. It acquires the capacity to enter into diplomatic relations with other states.
2. It acquires the capacity to enter into treaties with other states.
3. The state is able to enjoy the rights and privileges of international statehood.
4. With the recognition of state comes the right to sue and to be sued.
5. The state can become a member of the United Nations organization.

Conclusion

- The recognition of the state is an essential procedure so that it can enjoy all the privileges of statehood community under international law. There is a controversy between Consecutive Theory and Declaratory theory of Recognition by different jurists, but we can conclude that the theory followed for recognition is in between the consecutive and declaratory theory.
- The recognition being either de facto or de jure, it provides rights, privileges and obligations. When a state gets its de facto recognition, the rights, privileges and obligations are less but when it is recognized de jure, it gets absolute rights, liabilities and privileges. The recognition of the state is too much politically influences on the International platform.
- There have been many instances where the powerful states create obstructions in recognition of a newly formed state. It can even be withdrawal when the recognizing state feels that the new state is not fulfilling the prerequisites for being a sovereign state. The recognition can be done either by express form or implied form and its mode, i.e., de facto and de jure recognition varies from case to case basis.

