

Personality, Statehood and Recognition

Recognition in International Law

Lecture Plan

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 - Constitutive Theory
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Recognition in International Law - Definition

- Recognition is one of the most difficult topics in international law; it is a confusing mixture of politics, international law and municipal law.
 - Recognition: the discretionary function exercised unilaterally by the government of a State officially acknowledging the existence of another state, government or belligerent community and expressing readiness to accept legal consequences of such acknowledgment.
 - Recognition is an act of political will, usually expressing the desire to establish relations with recognised state, government or belligerent community.
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Recognition in International Law - Theories

There are basically two theories as to the nature and legal consequences of recognition: declaratory theory and constitutive theory.

- Declaratory Theory:
 - Declaratory theory maintains that recognition is merely an acceptance by states of an already existing factual situation.
 - A new state acquires capacity in international law if it fulfills the four essential elements of statehood and not by virtue of the consent of other states.
 - The existence of a state or government is a question of pure fact, and recognition is merely acknowledgment of the facts.
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Recognition in International Law - Theories

- Constitutive Theory:
 - Constitutive theory adopts the opposite approach and maintains that it is the act of recognition by other states that creates a new state (or other international legal person) and endows it with legal personality.
 - According to the constitutive theory a state, or government, does not exist for the purposes of international law until it is recognised.
 - Constitutive theory was advanced by Anzilotti and Kelsen.
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Recognition in International Law – Recognition of States

- When a new state comes into existence, other states are confronted with a dilemma whether to recognise or not to recognise the new state.
 - The prevailing view today is that recognition of states is declaratory and does not create a state.
 - Recognition of a new state acknowledges that the entity fulfils the criteria of statehood.
 - Recognition means a willingness to deal with the new state as a member of the international community.
 - No state is obliged to recognise other states.
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Recognition in International Law – Recognition of Governments

- A state cannot exist unless it has a government.
 - In principle, state's international rights and obligations are not affected by constitutional change of government.
 - In case a new government comes to power by unconstitutional means, e.g. civil war or coup d'état, it is essential to know whether the new administration can be treated as 'government' or not.
 - Recognition of governments is the formal, or informal, acknowledgment by the recognising state that the new regime/administration constitutes an effective government and will be treated as such.
 - A state may refuse to recognise new regime/administration which comes into power in an existing state by violent means.
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Recognition in International Law – Forms of Recognition

- A state may express its recognition of another state, government or belligerent community in various ways. Unilateral declarations, letters of heads of state, bilateral or multilateral treaties can serve as evidence of recognition.
 - *De jure* and *de facto* recognition.
 - Explicit and implied recognition
 - Individual and collective recognition.
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Non-Recognition in International Law

- Non-recognition is used by some states as a tool of foreign policy denoting approval or disapproval of an entity or its government.
 - Non-recognition as a state by other states does not imply that a *de facto* regime is entirely outside the realm of international law. Many rules are applicable in spite of non-recognition e.g the prohibition of the use of force.
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