

# RECOGNITION

Recognition is acknowledging political entity of another State. It could be Express or Implied, Conditional or pre-mature.

According to **Article 1 of the *Montevideo Convention on the Rights and Duties of States, 1933*** and **Oppenheim**, the entity of a state can be created if it possesses the following characteristics:

1. Permanent Population
2. Definite Territory
3. Government
4. Capacity to enter into relations with other States (Sovereignty)

Change of Regime of State can happen in 2 ways-

- Normal Course.
- Coup d' eat' (revolt, revolution etc.)

## Recognition of Belligerency:

Belligerency exists when a portion of the State's territory and population is under the de facto control of the people who are fighting against the government to establish a separate State or to overthrow the existing government. A civil war may turn into a real war if the rebels are in possession of a substantial part of territory.

Insurgency is a lower form of belligerency, when the rebels don't have a good enough portion of the state under their control

**Effects of Recognition:** Recognition enables the State-

1. To sue in the courts of recognizing States.
2. To get sovereign immunity for itself from recognizing state.
3. To enter into diplomatic and treaty relationship with recognizing state.
4. To get retroactive effect for its past legislative and executive acts from recognizing state
5. To be entitled to the succession and possession of property situated in recognizing state.



## Theories of Recognition.

### Constitutive/Constructive Theory (Hegel, Anzilotti, Oppenheim)

An entity becomes state when *other State Recognise it*, not when it possesses essential attributes of Statehood. This doesn't mean that State doesn't exist unless recognised, but in this theory, State gets the exclusive rights and obligations and becomes a subject to International Law after its recognition by other existing States.

### Declaratory/Evidentiary Theory (Hall, Wagner, Brierly, Fisher)

State Exists prior to and independent of Recognition. Recognition is just a formal acknowledgment. The theory has been given in Article 3 of the Montevideo Convention where it recognizes the existence of a new state does not depend upon the mind of the existing state's consent.

### Modified Constitutive Theory (Kelson)

Natural Statehood exists in a state as soon as it attains essential elements of statehood, but Juridical Statehood only exists in a State after recognition by other States.

## Doctrines of Recognition

### **TOBAR DOCTRINE** (*No Recognition for Unconstitutional Governments*).

Named after Carlos Tobar, Foreign Relations Minister of Ecuador, the doctrine states that recognition of government should only be granted if its administration came to power by legitimate democratic means.

### **ESTRADA DOCTRINE** (*Recognize Existence of Government not Legitimacy*).

Named after Mexican Secretary of Foreign Affairs, Genaro Estrada, the doctrine states that; "Recognition of government should be based on its de facto existence rather than on its legitimacy." This policy based on the principles of non-intervention and self-determination of all nations does not allow the states to assess the legitimacy of governments of other each-others.

**BETANCOURT DOCTRINE (No Recognition for Military Rules).**

This doctrine which inter alia became the cause of isolation of Venezuela denied the; "Diplomatic recognition of any regime that came to power by military force."

**STIMSON DOCTRINE.**

Named after American Secretary of State, Stimson, this doctrine pledged, "Not to recognize international territorial changes brought about by the aggression." The doctrine was application of a principle, 'ex injuria jus non oritur' means 'illegal act cannot create law'.

**De-Facto & De-Jure Recognition**

In law and government, de facto describes practices that exist in reality, even though they are not officially recognized by laws, de jure describes practices that are legally recognised.

<b>DE FACTO Recognition</b>	<b>DE JURE Recognition</b>
Provisional and Temporary.	Formal and Definitive.
Lesser Degree of Recognition.	Fullest kind of Recognition.
Dependant on conditions, can be Withdrawn.	Final, cannot be Withdrawn (Article 6, Montevideo convention, 1933)
Given to State which formed through Revolt.	Given to State which formed by peaceful and constitutional means.
Full Diplomatic Relations cannot be established, full immunities to Diplomats may not granted.	Full Diplomatic relations can be established, Full Immunities granted to Diplomats.
Cannot make claim in the recognizing states property.	Can make such claim.

### Luther v. Sagor (1921)

1917 - Luther (Citizen of UK) had business of timber in Russia, Russia nationalised all timber factories. Luther left Russia.

1920 - Sagor made an agreement with Russian nationalized business company for supply of timber, but when the timber reached UK, Luther claimed that it was his timber and UK never recognised the Government of Russia and Russia took over his factory illegally, so UK court cant validate Russian law.

During this whole time Russia was given de Facto Recognition.

- Court held that Once a government is recognized, its acts will be granted as valid, even those prior to its recognition, known as retrospective effect and about the point of whether it would make a difference if the recognition is de facto or de jure, court held that there is no distinction between de-facto and de-jure recognition for the purpose of giving effect to the international acts of the recognised authority

### Bank of Ethiopia v. National Bank of Egypt and Liquori (1937)

Addis Ababa(capital of Ethiopia) was captured in the italo-Ethiopian war.

Decree passed by Italy to dissolve Bank of Ethiopia.

Decree challenged by Bank of Ethiopia.

Court said the Italian government has been recognised as the de facto government of the area. So, effect to the decree must be given.

### The Arantzazu Mendi case (1939)

**Facts:** During the Spanish Civil War, the UK recognized de jure the Republican government of Spain, but also recognized de facto the rebel government (the Nationalists). Both governments sued in British courts to control the Spanish-flagged vessel Arantzazu Mendi, when arrived in a British port.

**Issue:** Whether the republican government shall have the right to possess the ship.

**Held:** A de facto government has control over state assets within the territory it controls. A de jure government has control even over state assets abroad.

**Bank of China v Wells Fargo (1952)**

In 1949, the communists were victorious in the revolt of China. Before this, China was controlled by the KMT which was a US friendly govt. This government was saving some money in the Wells Fargo bank in California. By 1948, it had \$800,000. When the communist government came to power, they realized that this money was available in the Wells Fargo bank and wanted the bank to send them the money. Wells Fargo refused.

The court of California decided that the money should go to the KMT government in Taiwan. (This judgement is based more on politics rather than principles)

**Civil Air Transport Inc. v. Central Air Transport Corp (1953)**

Communist Revolt in China, Communist government took territories under control. Granted de facto recognition. While Government of People's Republic of China still had de jure recognition. 40 airplanes were sold by the nationalist government to a US company. (Central Air Transport Corp.)

Communist Party of China was given de jure recognition later. Now because the recognition is retroactive in nature, the deal could be cancelled because subsequent recognition de jure of a new government as the result of successful insurrection can in certain cases annul a sale of goods by the previous government. This is to validate acts of the new de jure government and not to invalidate the acts of the previous de jure government.