

UNIVERSITY OF OXFORD
PUBLIC INTERNATIONAL LAW
RECOGNITION

A. Outline:

- I. Introduction
- II. Recognition as a general concept in international law
- III. Meanings of ‘recognition’ and its variants
 1. Meanings of recognition
 - a. Indication of willingness to enter into official relations
 - b. Manifestation of an opinion on legal status
 - c. Relationship between the two meanings
 2. Meanings of the variants
 - a. *De facto, de jure*, diplomatic recognition
 - b. *De facto, de jure* government distinguished
- IV. Recognition of States and governments distinguished
 1. Recognition of States
 - a. The theories on the recognition of States
 - (1) Constitutive theory
 - (2) Declaratory theory
 - (3) The theory of the ‘duty to recognize’
 - (4) Criticism of the theories on recognition
 - b. Recognition in the Context of Divided Nations
 2. Recognition of Governments
 - a. Doctrines on recognition of *de facto* governments
 - (1) Tobar doctrine (1907)
 - (2) Wilson doctrine (1913)
 - (3) Estrada doctrine (1930)
 - (4) Betancourt doctrine (1959)
 - b. The new British policy of not recognizing governments
 - (1) The old British policy
 - (2) The 1980 statement
 - (3) Reasons for the change in policy
 - (4) Can the recognition of governments be abolished?
 - c. The recognition policy of other States
 - (1) States formally recognizing governments
 - (2) States in generally not formally recognizing governments
 - (3) States formally recognizing States not governments
- V. Modes of recognition
 1. Express and implied recognition
 - a. Diplomatic relations
 - b. Consular relations

- c. Treaty relations
- d. Trade relations
- 2. Premature recognition
- 3. Conditional recognition
- VI. Legal effects of recognition
 - 1. Proceedings before national and international courts
 - a. Probative function of recognition
 - (1) International courts
 - (2) National courts
 - (i) Anglo-American approach
 - (ii) Continental European approach
 - b. Questions before national courts touching on recognition
 - (1) Judicial cognizance of legal acts
 - (2) Access to courts (locus standi)
 - (3) Privileges and immunities
 - (4) Access to State property abroad
 - (5) Legal Status of individuals
 - (6) Interpretation of the terms 'State' and 'Government' in statutes, treaties and contracts
 - (7) Statute of limitations
 - c. Unrecognized States and governments before British courts
 - (1) The traditional common law rule
 - (2) Means to mitigate the negative effects of the traditional rule
 - (i) Retroactivity of recognition
 - (ii) Interpretation of clauses in contracts
 - (iii) The subordinate body concept
 - (iv) The Foreign Corporations Act 1991
 - (v) The obiter dictum of Lord Denning in *Hesperides Hotels*
 - (3) The present legal situation
 - d. Unrecognized States and Governments before international courts
 - (1) Court access
 - (i) International Court of Justice
 - (ii) European Court of Justice
 - (iii) European Court of Human Rights
 - (2) Judicial cognizance of legal acts
 - (i) International Court of Justice
 - (ii) European Court of Human Rights
 - 2. Treaty-making capacity
 - a. Bilateral treaties
 - b. Multilateral treaties
 - (1) Closed treaties
 - (2) Open treaties
 - (3) Treaties under the auspices of the United Nations
 - (i) The 'all States formula'
 - (ii) The 'Vienna formula'
 - 3. Bilateral relations
 - a. Diplomatic relations

- b. Consular relations
 - (1) Consular representations in the territory or the unrecognized State or government
 - (2) Consular representation in the non-recognizing State
 - c. Means to circumvent the consequences of non-recognition
 - (1) Borrowed diplomatic status
 - (2) Quasi-diplomatic/consular missions
 - d. Official contacts with unrecognized States and governments
 - (1) Extradition and expulsion
 - (2) Deportation
 - (3) Police co-operation
 - (4) Acceptance of passports
 - (5) Peacekeeping operations
 - 4. Membership and representation in international organizations
 - a. Collective recognition through admission to membership of the United Nations
 - b. Acceptance of credentials and the recognition of governments
- VII. Collective non-recognition of *de facto* States
- 1. Not recognizing and non-recognition distinguished
 - 2. The Stimson doctrine (1932)
 - 3. Non-recognition as a sanction
 - a. The shortcomings of the declaratory theory
 - (1) Confirmation of the objective legal situation
 - (2) Non-existence of a State
 - (i) The criteria for statehood are not met
 - (ii) The State's creation is void as a result of an internationally wrongful act
 - (iii) The declaration of independence is declared invalid
 - b. A new negatory theory
 - (1) Withholding the legal status of a State
 - (2) The legal status of States in international law
 - (i) Rights inherent in statehood
 - (ii) Optional relations
 - (3) Justification of the withholding of the legal status of State
 - (i) Call not to recognize by the United Nations
 - (ii) Collective countermeasure against a serious violation of international law affecting the international community as a whole

B. Basic Reading:

(a) Treaties and Other Documents [available in Blackstone's International Law Documents]

- 1945 Charter of the United Nations, Arts. 4, 10-14, 25, 39-41, 93
- 1945 Statute of the International Court of Justice, Arts. 34, 35
- 1961 Vienna Convention on Diplomatic Relations, Arts. 1-9

- 1969 Vienna Convention on the Law of Treaties, Arts. 2, 53, 64
- 1970 Declarations on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, Principle 1
- 1972 European Convention on State Immunity, Preamble
- 1978 State Immunity Act, sect. 21
- 1994 Agreement Establishing the World Trade Organization, Art. XII
- 2001 ILC Articles on Responsibility of States for Internationally Wrongful Acts, Arts. 40, 41

(b) Cases

(1) International Court of Justice

Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion of 21 June 1971: ICJ Rep. 1971, 16; 49 ILR 2; ILM 10 (1971), 677

(2) Arbitral Tribunals

Tinoco Arbitration [Aguilar-Amory and Royal Bank of Canada Claims] (Great Britain v. Costa Rica), 18 October 1923: RIAA I, 368; AJIL 18 (1924), 147-174; BYBIL 6 (1925), 199-204; AD 2 (1923-1924), 34

Opinion No. 1 [Disintegration of the SFRY], Conference on Yugoslavia, Arbitration Commission, 29 November 1991: 92 ILR 162; ILM 31 (1992), 1494; EJIL 3 (1992), 182

(3) European Court of Human Rights

Loizidou v. Turkey (Preliminary Objections), Application No. 15318/89, Judgment of 23 March 1995: ECHR, Ser. A, No. 310, 1; 103 ILR 622

(4) European Court of Justice

R. v. Minister of Agriculture, Fisheries and Food, ex parte S.P. Anastasiou (Pissouri) Ltd. and Others, Case C-432/92, Judgment of 5 July 1994: [1994] ECR I-3087; 100 ILR 257

(5) British Courts

Republic of Somalia v. Woodhouse Drake & Carey (Suisse) SA, High Court, Queen's Bench Division, 13 March 1992: [1993] QB 54; [1992] 3 WLR 744; [1993] 1 All ER 371; 75 ILR 675

Sierra Leone Telecommunications Co. Ltd. v. Barclays Bank plc, High Court, Queen's Bench Division, 6 February 1998: [1998] 2 All ER 821

Kuwait Airways Corporation v. Iraq Airways Co., Court of Appeal, 10 November 2000: [2001] 1 All ER (Comm) 557; [2001] 3 WLR 1117; [2001] 1 Lloyd's Rep 161 [especially paras. 249-388]

(c) Literature

(i) General Textbooks

The following general textbooks contain suitable chapters on Recognition:

Brownlie, Ian, *Principles of Public International Law* (6th edn., Oxford: Oxford University Press, 2003), 85-101

Evans, Malcolm D. (ed.), *International Law* (Oxford: Oxford University Press, 2003), 205-267

Jennings, Robert/Watts, Arthur (eds.), *Oppenheim's International Law* (9th edn., Harlow: Longman, 1992), 126-203

Shaw, Malcolm N., *International Law* (Cambridge: Cambridge University Press, 2003), 367-408

(ii) Cases and Materials

Dixon, M./McCorquodale, R., *Cases and Materials on International Law* (4th edn., Oxford: Oxford University Press, 2003), 154-174

Harris, D.J., *Cases and Materials on International Law* (5th edn., London: Sweet & Maxwell, 1998), 144-189

C. Specialist Monographs and Articles:

Crawford, James, *The Creation of States in International Law* (Oxford: Clarendon Press, 1979)

Dugard, John, *Recognition and the United Nations* (Cambridge: Cambridge University Press, 1987)

Lauterpacht, Hersch, *Recognition in International Law* (Cambridge: Cambridge University Press, 1947)

Peterson, Martha J., Recognition of Governments Should Not Be Abolished, *American Journal of International Law* 77 (1983), 31-50

Talmon Stefan, Recognition of Governments: An Analysis of the New British Policy and Practice, *British Year Book of International Law* 63 (1992), 231-297

Talmon Stefan, *Recognition of Governments in International Law* (Oxford: Clarendon Press, 1998)

Warbrick, Colin, Unrecognized States and Liability for Income Tax, *ICLQ* 45 (1996), 954-960