

## UNIT III

### Subjects of International Law

#### Recognition : Nature, Forms, Theories and Effects

### Subjects of International Law

#### Introduction

Subjects of International Law can be described as those persons or entities who possess international personality. Throughout the 19th century, only States qualified as subjects of international law. After, the Second World War, more and more new actors emerged in the international legal arena such as the intergovernmental organizations created by States, Non-Governmental Organizations (NGOs) created by individuals, multinationals and even natural persons (i.e. individuals). These can now be considered as having to a large or sometimes limited extent the capacity to become international persons.

According to **Dixon** a subject of international law is an individual, body or entity recognized or accepted as being capable of possessing and exercising rights and duties under international law.

An entity is a subject of international law if it has “international legal personality”. In other words, subjects must have rights, powers and duties under international law and they should be able to exercise those rights, powers and duties. The rights, powers and duties of different subjects change according to their status and functions. For example, an individual has the right of freedom from torture under international law and States have a duty under international law not to torture individuals or to send them to a country where there is a likelihood of that person being tortured. Legal personality also includes the capacity to enforce one’s own rights and to compel other subjects to perform their duties under international law. Remember that all subjects of international law do not have the same rights, duties and capacities. For an example, a diplomat has immunity before foreign courts because he is an agent of the sending State.

**Theories Regarding Subjects of International Law:** Following are the three theories prevalent in regard to the subjects of international law:

- a) **Realist Theory**: Some jurists have expressed the view that only states are the subjects of international law. In their view, international law regulates the conduct of States and only States alone are the subjects of international law. This view has been subjected to severe criticism by jurists. According to the view expressed by Oppenheim, States are primarily, but not exclusively, the subjects of international

law. To the extent that bodies other than states directly possess some rights, powers and duties in international law they can be regarded as subjects of international law, possessing international personality. Further, "International law is no longer if ever was concerned solely with states. Many of its rules are directly concerned with regulating the position and activities of individuals, and many more indirectly affect them." Thus, it is wrong to say that individual is not the subject of international law. It is now generally recognised that besides States, public international organisations, individuals and certain other non-State entities are also the subjects of international law. Many of the rules of international law are directly concerned with regulating the position and activities of the individual and many more directly affect them. Thus it is wrong to say that individuals are not the subjects of international law.

- b) **Fictional Theory:** There are certain jurists who have expressed the view that in the ultimate analysis of international law it will be evident that only individuals are the subjects of international law. Professor Kelson is the chief exponent of this theory. By Kelson, Individual alone is the subject of international law. The duties and rights of States are only the duties and rights of the men who compose them. Many modern treaties do bestow rights or impose duties upon individuals. Kelson's view appear to be logically sound. But so far as the practice of the States is concerned it is seen that the primary concern of the international law is with the rights and duties of the States. From time to time certain treaties have been entered into which have conferred certain rights upon individuals. Although the statute of the ICJ adheres to the traditional view that only states can be parties to international proceedings, a number of other international instruments have recognised the procedural capacity of the individual. There are number of examples wherein international law applies on individual not only mediately but also directly.
- c) **Functional Theory:** This view not only combines the first and second view but goes a step ahead to include international organisations and certain other non-state entities as subjects of international law. This view appears to be more practical and is better than the other two views. The reason in support of this view are as under:
- (i) In present times, several treaties have conferred upon individual certain rights and duties, for example International Covenant on human rights.
  - (ii) Geneva Convention on Prisoners of War 1949, has conferred certain rights upon the Prisoners of law.
  - (iii) The Genocide Convention 1948, has imposed certain duties upon the individuals.
  - (iv) It is now agreed that International organisations are also the subjects of international law. United Nation is an international person under international law and it is held by International Court of Justice that United Nation is a subject of international law and capable of possessing rights and duties and it has capacity to maintain its right by bringing International things.
  - (v) The law making treaties in respect of international criminal law, have imposed certain obligations upon the individuals, for example narcotic drugs convention, 1961.

Thus the states are not only the subjects of international law. There is no doubt that states are still the main subject of international law and most of the part of international law concerns with the conducts and relationship of state with each other, but in view of the developing and changing character of the International Law, International organisations and some non-state entities and individuals are also the subjects of international law. It is apparent from the above discussion that the position of subjects of international law has greatly changed with the passage of time.

**a) State:** State is the primary subject in International Law. The requirements to be considered as a subject of international law are the capacity to have rights and duties under international law. Some writers also argue that a State must be fully independent and be recognized as a State by other States. The international legal system is a horizontal system dominated by States which are, in principle, considered sovereign and equal. International law is predominately made and implemented by States. Only States can have sovereignty over territory. Only States can become members of the United Nations and other international organizations. Only States have access to the International Court of Justice. According to Montevideo Convention the state as a subject of international law should possess the following qualifications:

- (i) Permanent population
- (ii) Defined territory
- (iii) Government
- (iv) Capacity to enter into relations with other States

**PERMANENT POPULATION:** A permanent population is another necessary requirement for statehood. There are no criteria relating to the size of the population: Andorra with its 68,000 inhabitants is as much a State as India, which now has currently well over one billion inhabitants. Neither does international law set any requirements about the nature of the population: the population may largely consist of nomads (such as in Somalia), it may be ethnically (relatively) homogeneous (such as in Iceland) or very diverse (such as in the former Soviet Union), it may be very poor (such as in Sierra Leone, where in 2000 nearly 70 percent of the population lived below the poverty line) or it may be very rich (as in many Western States). It should also be noted that the requirement of a permanent population does not relate to the nationality of a population: it merely requires that States have a permanent population. According to **Brownlie** it connotes a stable community with a physical basis.

**DEFINED TERRITORY:** The development of the State is closely linked to the ability to exercise effective control over a defined territory. However, the existence of border disputes is not an obstacle to attaining statehood in international law. There is no rule stating that the boundaries of a State should be undisputed or unambiguously established. Israel for example, was admitted to the United Nations on 11 May 1949, despite its ongoing territorial disputes with the Arab States. According to **O'Keefe** there is no limit to size. Undefined boundaries will not matter as long as the core territory is defined. With regard to the size of the territory it can be stated that no specific requirements exist: the international community of States

consists of both micro-States, such as Liechtenstein and San Marino and very large States such as Canada or Russia.

**GOVERNMENT:** The third requirement for statehood, is the existence of a government capable of exercising independent and effective authority over the population and the territory. The importance that is attached to the criteria of independence and effectiveness is understandable considering the predominantly decentralized nature of international law. Since international law lacks a central executive body, with the power to enforce compliance with international obligations, compliance with international obligations must often be guaranteed by the States themselves. A State must therefore be able to effectively and independently exercise its authority within its borders. According to **Brownlie** the existence of effective government, with centralised administrative and legislative organs, is the best evidence of a stable political community.

**CAPACITY TO ENTER INTO RELATIONS WITH THE OTHER STATES:** It can be said that the capacity to enter into full range of international relations can be a valuable measure, but capacity or competence in this sense depends in part on the power of the government, without which a State cannot carry out its international obligations. The ability of the government to independently carry out its obligations and accept responsibility for them in turn greatly depends on the previously discussed requirements of effective government and independence. Moreover, a State cannot enter into relations with other States if it is not recognized. Consequently, it cannot be recognized as a State. According to **Shaw** the concern is the lack of competence to enter into legal relations, and the essence of such a capacity is independence.

**An overview of Rights and Duties:** Being the most prominent among the different subjects of international law, a State is by definition endowed with the capability of bearing rights and duties under international law. With regard to the development of written legal instruments dealing with fundamental rights and duties of States, several significant results were achieved during the 20th century. The Montevideo Convention of 1933 constituted one of the first examples of insertion of ‘rights and duties’ of States in a multilateral legally binding instrument. The Charter of the Organization of American States (‘OAS Charter’), adopted in 1948, contained a full Chapter devoted to ‘Fundamental Rights and Duties of States’. In 1949, as a part of the report covering the work of its first session, the International Law Commission, submitted to the General Assembly the text of a ‘Draft Declaration on Rights and Duties of States’. It comprised 14 articles detailing four rights (independence, jurisdiction, equality, and self-defence) and ten duties, to peacefully settle disputes with other States, to refrain from resorting to war as an instrument of national policy, to refrain from giving assistance to any State action in violation of the duty not to resort to war, to carry out international obligations in good faith, and to conduct relations with other States in accordance with international law and with the principle that sovereignty of each State is subject to the supremacy of international law.

**FUNDAMENTAL RIGHTS:**

- (i) **Right of Independence:** The notion of independence was scrutinized as early as 1931 in the context of the advisory opinion dealing with the customs system established at that time between Germany and Austria. The view was taken by the Permanent Court of International Justice that an entity that cannot fulfil the test of legal independence shall not be considered as having an international legal status altogether. Article 1 of the Draft Declaration lays down that every State has the right to independence and hence to exercise freely, without dictation by any other State, all its legal powers, including the choice of its own form of government. Several international judicial decisions have tackled the issue of independence. These include, for example, the PCIJ's judgment in the Lotus Case.
- (ii) **Right of Sovereignty:** Sovereignty is closely related to independence. As a matter of fact, the two concepts have sometimes been interpreted as different sides of the same attribute. As an attribute of the State, sovereignty is generally thought to require the presence of a community, consisting of a territory and a population governed by an organized political authority. According to long-standing international law practice, 'sovereignty in the relations between States signifies independence' and 'independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State'. Among the implications of the right to sovereignty, is therefore the corresponding prohibition to intervene in matters within the domestic jurisdiction of other States. Article 2 of the Draft Declaration lays down that every State has the right to exercise jurisdiction over its territory and over all persons and things therein, subject to the immunities recognized by international law.
- (iii) **Right to Equality:** According to the right to equality (or equal treatment), all States occupy the same position within the international community, have the same legal capacity, and bear equal rights and duties regardless of their size or power. The right has been enshrined, inter alia, in the Friendly Relations Declaration, the 1963 OAU Charter and the 2000 Constitutive Act of the Organization of African Unity. Article 5 of the Draft Declaration lays down that every State has the right to equality in law with every other State.
- (iv) **Right to Self-Preservation:** There is widespread consent that the right of every State to self-preservation and the corresponding duty not to prejudice the preservation of other States is to be included among the 'basic' or 'fundamental' rights. Such a right, according to early commentators, developed as a right to preserve, maintain, and protect a State's independence, sovereignty, and equality. It is for this reason that some authors regard it as a mere corollary of the preceding rights. Others, on the contrary, see it as the only truly fundamental right of States. The existence of a 'fundamental right to survival' has been confirmed by the ICJ in a recent advisory opinion relating to the legality of the threat or use of nuclear weapons, which recognized the fundamental right of every State to survival as a basis for admitting its right to resort to self-defence. Article 12 of the Draft Declaration lays down that every State has the right of individual or collective self-defence against armed attack.

Over the years, several other rights, and corresponding duties, have been considered of a 'fundamental' nature in addition to the ones referred to above. These include, for example, the right to come into existence, the right to mutual commerce, the right to establish relationship with other States, the right to peaceful coexistence, and the right to security.

**PRINCIPAL DUTIES:** Article 3 of the Draft Declaration lays down that every State has the duty to refrain from intervention in the internal or external affairs of any other State.

Article 4 - Every State has the duty to refrain from fomenting civil strife in the territory of another State, and to prevent the organization within its territory of activities calculated to foment such civil strife.

Article 6 - Every State has the duty to treat all persons under its jurisdiction with respect for human rights and fundamental freedoms, without distinction as to race, sex, language, or religion.

Article 7 - Every State has the duty to ensure that conditions prevailing in its territory do not menace international peace and order.

Article 8 - Every State has the duty to settle its disputes with other States by peaceful means in such a manner that international peace and security, and justice, are not endangered.

Article 9 - Every State has the duty to refrain from resorting to war as an instrument of national policy, and to refrain from the threat or use of force against the territorial integrity or political independence of another State, or in any other manner inconsistent with international law and order.

Article 10 - Every State has the duty to refrain from giving assistance to any State which is acting in violation of article 9, or against which the United Nations is taking preventive or enforcement action.

Article 11 - Every State has the duty to refrain from recognizing any territorial acquisition by another State acting in violation of article 9.

Article 13 - Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty.

Article 14 - Every State has the duty to conduct its relations with other States in accordance with international law and with the principle that the sovereignty of each State is subject to the supremacy of international law.

**b) International organizations:** Apart from state, international organisation is a subject of IL since they are the organization of states which are assigned with specific function. International Organizations are established by States through international agreements and their powers are limited to those conferred on them in their constituent document. International organizations have a limited degree of international personality, especially vis-à-vis member States. They can enter into international agreements and their representatives

have certain privileges and immunities. The constituent document may also provide that member States are legally bound to comply with decisions on particular matters. International personality of the United Nations is affirmed in Article 104 of UN Charter – the organization shall enjoy in the territory of each of its member such legal capacity as may be necessary for the exercise of its function and the fulfilment of its purposes. The most important evidence for the determination of the international personality of the UN is the advisory opinion in the Reparation's case September 1948. The powers of the United Nations are set out in the United Nations Charter of 1945. The main political organ is the General Assembly and its authority on most matters (such as human rights and economic and social issues) is limited to discussing issues and making recommendations. The Security Council has the authority to make decisions that are binding on all member States when it is performing its primary responsibility of maintaining international peace and security. The main UN judicial organ is International Court of Justice, which has the power to make binding decisions on questions of international law that have been referred to it by States or give advisory opinions to the U.N.

**c) Individuals:** Before the twentieth century, the view was that individual was merely an object and not subject of IL. However, since the world war I, the community of nations has become increasingly aware of the need to safeguard individual's right under the IL. Thus, many scholars provided the thesis that individual should also be regarded as subject of IL. An analysis of the evolution of international law until present shows a progressive trend to widen the list of its subjects. Originally, in the ideas of the so called "founding fathers" of the international law, Francisco de Vitoria, Francisco Suarez, Hugo Grotius, the existence of a universal community of individuals was sustained and the individual was identified as a reference point of rights and duties. Individuals have criminal law obligations under the laws of armed conflict. Individuals are now seen as having not only criminal law obligations but also rights under international law. If we do not want the development of international law to stagnate we should perhaps admit the progressive idea that individuals have, in addition to these rights and criminal law obligations, certain international civil law obligations. There are norms which establish direct responsibility of an individual.

### **RECOGNITION : NATURE, FORMS, THEORIES, AND EFFECTS**

**RECOGNITION:** The identity and number of states belonging to the international community are by no means fixed and invariable. The march of history produces many changes. Old states disappear or unite with other states to form a new state, or disintegrate and split into several new states, or former colonial or vassal territories may be process of emancipation themselves attain statehood. Then, also, even in the case of existing states, revolutions occur or military conquests are effected, and the status of the new governments becomes a matter of concern to other states, which formerly had relations with the displaced governments, raising the question of whether or not to engage in formal or informal relations with the new regimes, either by recognition of new government is not followed, solely by some kind of intercourse. These transformations raise problems for the international community, of which one is the matter of recognition of the new state or new government or other change of status involved. At some time or other, this issue of recognition has to be

faced by certain states, particularly if diplomatic intercourse must necessarily be maintained with the states or governments to be recognised.

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. Recognition also constitutes a declaration by a state that in its opinion the country it has recognized must be regarded as a "state" within the meaning of international law, and hence also as a subject of international law.

**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. The mode by which recognition is accomplished is of no special significance. It is essential, however, that the act constituting recognition must give a clear indication of the intention either to deal with the new State as such, or to accept the new government as the effective government of the State and to maintain relation with it, or to recognize in case of insurgents that they are entitled to belligerent rights. 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, one State does by implication recognize another State or government. However, because of this possibility, States may make an express declaration to the effect that a particular action involving another State is by no means to be regarded as inferring any recognition. 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 practical purpose of recognition, namely, the initiation of formal relations with the recognising state, must also always be borne in mind. Once granted, recognition in sense estops or precludes the recognising state from contesting the qualifications for recognition of the state or government recognised.

There are two principal theories as to the nature, function and effect of recognition:

- (i) **Constitutive Theory:** According to this theory, it is the act of recognition alone which creates statehood or which clothes a new government with any authority or status in the international sphere. Anzilloti, Oppenheim, etc. are the chief exponents of constitutive theory. According to Oppenheim a state is, and becomes, an international person, through, recognition only and exclusively.
- (ii) **Declaratory Theory:** According to this theory, statehood or the authority of a new government exists as such prior to and independently of recognition. The act of



recognition is merely a formal acknowledgment of an established situation of fact. The chief exponents of this theory are Brierly, Fisher etc. Brierly has remarked, the granting or recognition to a new State is not a 'Constitutive' but a 'Declaratory' act. A state may exist without being recognized and if it exists in fact, then whether or not, it has been formally recognized by other States it has a right to be treated by them as a State.

Actually, the two theories are of little assistance in explaining recognition or determining the status of non-recognized entities in practice. In addition, the practical differences between these two theories are not significant. Under the declaratory theory, the decision whether an entity satisfies the criteria of statehood is left to other States, and the granting formal recognition to another State, which is a unilateral act, is left to the political discretion of States. On the other hand, the significance of the constitutive theory has diminished because of the obligation imposed on States to treat an entity that satisfies the criteria of statehood as a state. Moreover, the States practice regarding recognition shows that States follow a middle position between these two theories.

In practice, however, the existence of a state is not dependent on whether it has been recognized as such. The sole determining factor is whether or not the elements of statehood under international law (state people, state territory, state power) are actually present in the specific case. Realistically, however, an entity cannot function as a state unless at least a certain number of states recognize it as such. In recent state practice recognition has often been made contingent on the fulfilment of certain conditions, for example compliance with the UN Charter or observance of the rule of law, democracy and human rights. From the viewpoint of international law, however, these are not criteria for recognition but conditions of a political nature, formulated in relation to the establishment of diplomatic relations. It has been urged that states are subject to a duty under international law to recognise a new state or a new government fulfilling the legal requirements of statehood or of governmental capacity. There is no general acceptance of the existence of the duty or the right mentioned.

### **TYPES OF RECOGNITION**

Recognition is of two types, De facto and de jure recognition. The practice of States shows that in first stage the State generally give de facto recognition. Later on when they are satisfied that the recognised state is capable of fulfilling International obligations, they confer de jure recognition on it, that is why sometimes it is said that de facto recognition of state is a step towards de jure recognition.

**DE FACTO RECOGNITION:** When an existing State considers that the new State has not acquired sufficient stability, it may grant recognition to the latter provisionally which is termed as de facto recognition. According to **Prof.G.Schwarzenberger**, "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. De facto recognition means that the state recognized possesses the essential elements of

statehood and is fit to be a subject of International Law. According to **Prof.L.Oppenheim**, “The de facto recognition of a State or government takes place when the said State is free state and enjoys control over a certain fixed land but she is not enjoying the stability at a deserved level and lacking the competence to bear the responsibility of International Law.” In view of the **Judge Phillips C Jessup**, “De facto recognition is a term which has been used without precision when properly used to mean the recognition of the de facto character of a government; it is objectionable and indeed could be identical with the practice suggested of extended recognition without resuming diplomatic relations.” The de facto recognition is conditional and provisional. If the state to which De Facto recognition is being given is not able to fulfil all conditions of recognition then that recognition is withdrawn.

**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.”

### **DISTINCTION BETWEEN DE FACTO AND DE JURE RECOGNITION**

Whatever the basis for the distinction between de jure and de facto recognition, the effects of the two types are mostly the same. Nevertheless, there are certain important differences between these two types, which are:

1. Only the de jure recognized State or government can claim to receive property locally situated in the territory of the recognizing State.
2. Only the de jure recognized State or government can represent the old State for the purposes of State succession or with regard of espousing any claim of its national for injury done by the recognizing State in breach of International Law.
3. The representatives of the de facto recognized state or government may not be entitled to full diplomatic immunities and privileges.

Whatever the type of recognition, once given may in certain circumstances be withdrawn. Actually, this is more easily done with regard to de facto recognition than to de jure recognition, because of the nature of the former one, which is temporary. De facto recognition is intended to be a preliminary acceptance of political realities and may be withdrawn in accordance with a change in political conditions. When a de facto government loses its effective control over the country, the reason for recognition disappears and it may be withdrawn. De jure recognition, on the other hand, because it is intended to be generally a definitive act, it is more difficult to be withdrawn. Because recognition is essentially a political act, no matter how circumscribed or conditioned by the law, a State has a discretionary power to determine whether a particular situation justifies a withdrawal of recognition and to take such action if it serves its national interests.

In **Luther v. Sagor**, 1921 “It was held that there is no distinction between de facto and de jure recognition for the purpose of giving effect to the internal acts of the recognized authority.”

**Bank of Ethiopia v. National Bank of Egypt and Liquori**, 1937, The court held that in view of the fact that the British government granted recognition to the Italian Government as being the de facto government of the area of Abyssinia which was under Italian control, effect must be given to an Italian decree in Abyssinia dissolving the plaintiff bank appointing liquidator.”

**Legal effects of recognition:** The legal effects of recognition differ depending on the forum. While in international and continental European courts recognition has only probative value, in English and American courts an official statement of recognition or non-recognition by the forum government is conclusive evidence as to the legal status of a foreign authority or entity. The question of recognition may determine access to the courts (*locus standi*), privileges and immunities, the legal status of individuals, the right to recover State property in the forum, and the judicial cognizance of foreign legal acts. The traditional (English) common law rule of “non-recognition, non-cognizance,” according to which a State or government that is not recognized as such does not exist in the eyes of the law, has been mitigated by the courts, *inter alia*, by giving retroactive effect to recognition, treating an unrecognized authority as the “subordinate body” of a recognized State, and by giving effect to the laws and legal acts that regulate the day-to-day affairs of the people in an unrecognized State or government.

Although recognition is essentially a political act, it is one that entails important legal consequences. Recognition involves legal effects both in the international level and in the domestic level. If an entity is recognized as a State, it will be entitled to rights and subjected to duties that would not be relevant otherwise, and it will enjoy privileges and immunities of a foreign State before the national courts of other States, which would not be allowed to other entities.

**International effects of recognition:** Apart of all the theoretical arguments involving the constitutive and declaratory theories, it is accepted that recognition of a State or government is a legal acknowledgement of factual situations. Recognition entails the recognized State the enjoyment of rights and the subjecting to duties prescribed in International Law for States.

Recognition of a State by another State does not lead to any obligation to establish diplomatic relations or any other specific links between them. Nor does the termination of diplomatic relations automatically lead to withdrawal of recognition. These remain a matter of political discretion.

It should not be assumed that non-recognition of a State or government would deprive that entity rights and duties under International law. It is well established in International Law that the political existence of a State is independent of recognition by other States, and thus an unrecognized State must be deemed subject to the rules of International Law. Unrecognized State is entitled to enjoy certain rights and be subject to many duties. It has the rights to defend its integrity and independence, to provide for its conservation and prosperity and consequently to organize itself as it sees fit. The exercise of these rights by unrecognized

State has no other limitation than the exercise of the rights of other States according to International Law. Moreover, unrecognized State is subject to most of the rules of International Law, such as those related to the law of wars, and is bound by its agreements. Non-recognition, with its consequent absence of diplomatic relations, may affect the unrecognized State in asserting its rights against recognizing States, or before their national courts. However, non-recognition will not affect the existence of such rights, nor its duties, under International Law.

**Internal Effects of Recognition:** Recognition entails the recognized State the rights to enjoy privileges and immunities of a foreign State before the national courts, which would not be allowed to other entities. However, because recognition is essentially a political act reserved to the executive branch of government, the judiciary branch must accept the discretion of the executive branch and give effect to its decisions. The national courts can only accept and enforce the legal consequences that flow from the act of recognition. They can accept the rights of a foreign government to sue, to be granted immunities or to claim other rights of a governmental nature. They can give effect to the legislative and executive acts of the recognized State. In the case of non-recognition, national courts will not accept such rights. In this context, recognition is constitutive, because the act of recognition itself creates the legal effects within the domestic jurisdiction of a State.