Basically, there are two theories as to the nature, functions and effects of recognition, the constitutive theory and the declaratory theory. [3] The constitutive theory considers that the act of recognition by other States creates a new State and grants it the international legal personality. [4] This implies that the new State is established as an international person by virtue of the will and consent of already existing States. In case of a new government, it is the recognition that grants it the status at the international level.

The Constitutive theory is opposed by the declarationy theory. According to the declaratory theory, recognition has no legal effects; state-hood or the status of a new government exists as such prior to and independently of recognition. [3] The existence of a State or a new-government is a question of pure fact. The act of recognition is merely a formul acknowledgement of established facts. When an entity satisfies the requirements of a State objectively, it is a State with all international rights and duties, and other States must treat it as such.

Historically, the constitutive theory has its ments. [6] During the Nineteenth Century, international Law was regarded as applying mainly between States with Europe an civilization. Other countries were admitted as States to this community only if they were recognized by those member States. Even today, recognition can sometimes have a constitutive effect, although State practice is not always consistent. When the establishment of a new State or government is in violation of international Law, this State or government is often reparded as having no legal existence until it is recognized.

However, the prevailing viewhoday is that recognition is declaratory and does not create a State [2] This view was laid down in the Montevideo Convention on the Rights and Duties of States of 1983. Article 3 of this Convention provides that "The political existence of the state is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence".

Actually, the two theories are of little assistance in explaining recognition or determining the status of non-recognition entities in practice. [3] In addition, the practical differences between these two theories are not significant. Under the declaratory theory, the declaran 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 follows a middle position between these two theories.

#### Types and Forms of Recognition

There are several distinct categories of recognition. There are recognition of a new State, recognition of a new government and recognition of betige rency. In addition there are different entities to be recognized. Recognition itself may take different forms. Recognition may be dejure or de facto. Recognition may be express or implied. It may be conditional.

(A) Recognition of a State and of a Government (%)

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Kathryn R. Kent

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