

A study of the concept of de facto and de jure recognition of government in public international law

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Abstract

This research paper studies the recognition of governments (de facto and de jure) in international law. In International Law, the term *recognition* refers to the formal acknowledgment by one state that another state exists as a separate and independent government. A state has no status among nations until it is recognized by other states. Recognition is much more a question of policy than of law. This policy consist in the protection of states own interest.

There are different categories of recognition. There is recognition of a new state and that of government. Recognition of state is different from recognition of government. The question of recognition of government normally arises only with regard to recognized States. When a State recognizes a new “government,” it usually acknowledges a person or group of persons as competent to act as the organ of the State and to represent it in its international relations.

A government can be recognised as a two type: either De jure recognition or a de facto recognition. Now, recognition de jure means, the state or government recognised formally fulfils the requirement laid down by international law for effective participation in the international community. On the other hand, recognition de facto means that in the opinion of the recognised state, provisionally and temporarily and with all due reservation for the future the government recognized fulfils the requirements in fact De jure recognition is stronger, while de facto recognition is more tentative and more connected with effective control of the recognised state over its territory.

Keywords: de jure, de facto, recognition of a government, international obligation

Introduction

International law distinguish the existence of state from there recognition. A state come into existence when community involved acquire the basic characteristic associated with the concept of state ^[1]: a defined territory, an operating and effective government, and independent from the outside control. International community of sovereign states faces the problem of recognition of a state when old state disappear or unite with some other state to form a new state, or disintegrate and split into several new states, or former colonial or vassal territories may by process of emancipation themselves attain statehood. The problem of recognition of a government arises even in the case of existing states as revolution occurs or military conquest are effected, and the status of new government become a matter of concern to other state, which formally had relation with the displaced government ^[2].

What is the meaning of Recognition?

As per Black’s Law Dictionary Recognition means:

“Official action by a country acknowledging, expressly or by implication, de jure or de facto, the existence of a government or a country, or a situation such as a change of territorial sovereignty.”^[3]

The institute of international law has defined recognition as the free act by which one or more states acknowledge the existence on a definite territory of a human society which is politically organized, independent of any other existing state, and capable of observing the obligation of international law. In International Law, the term recognition refers to the formal

acknowledgment by one state that another state exists as a separate and independent government. A state has no status among nations until it is recognized by other states. International recognition is the acknowledgment or avowal by an international legal person ^[4] that certain legal consequences flow from the existence of some object or from the occurrence of some event. Recognition may be extended to international transactions such as treaties and annexations of territory as well as to governments ^[5].

There are different categories of recognition. There is recognition of a new state and that of government. Recognition of state is not the same as recognition of its government although they often go together in the case of new states. Within existing states, government come and goes and normally the changes raise no question of recognition. Whenever there is change in government through a constitutional process, separate recognition is not required. But if the change in government through unconstitutional process like for instance, military co-operation, then recognition of other state is required. We can understand the recognition of governments in the following terms:

“Recognition of an entity as the government of a state implies not only that this government is deemed to have satisfied the required conditions [of governance] but also that the recognizing state will deal with the government as the governing authority of the state and accept the usual legal consequences of such status.” ^[6]

States takes into account various factors to give recognition to government:

1) Effective control 2) Obedience of mass of population 3) Stability of permanence and 4) Respect for international obligation.

Recognition de jure and de facto

Recognition *de jure* means that according to the recognizing state, the state or government recognized formally fulfils the requirement laid down by international law for effective participation in the international community^[7]. Recognition *de facto* means that in the opinion of the recognizing state, provisionally and temporarily and with all due reservation for the future, the state or government recognized fulfils the above requirement in fact^[8].

De facto recognition of the government takes place when, in view of the recognizing state, the authority, although actually independent and wielding effective power in territory under its control, has not acquired sufficient stability or does not as yet offer prospects of complying with other requirement of recognition such as willingness or ability to fulfill international obligation^[9].

In case of *de facto*, by fact you are claiming right over certain area. But in case of *de jure* by law the new government has emerged and also ready to obey international obligation. Both *de facto* and *de jure* recognized government can co-exist at the same time.

Tobar doctrine and Estrada doctrine

The state does not provide any recognition to Government who come into existence after applying force. Tobar doctrine was propounded by the Foreign Minister Tobar of Ecuador in which they bound themselves not to grant recognition to any Government coming into existence by revolutionary means 'so long as the freely elected representatives of the people have not constitutionally recognized the country', i.e., until such a government has been recognized by its own people in a constitutional manner. Estrada doctrine propounded on the name Estrada Foreign Minister of Mexico, in 1930, according to which duty of states to continue diplomatic relations with the states without regard to revolutionary change in a country. Sometimes Estrada doctrine is known as "doctrine of effectiveness". But no doctrine was laid down in International Law, consideration of stability and capacity to control over the people of territory should be taken into account while granting recognition. Political considerations which usually dominate in such occasions should not be given much weightage as if a new regime is not recognized, international peace is likely to be affected.

Consequences and Legal effect of recognition of New Government

Recognition confers on the recognized state of government a status under both international and municipal law. Generally recognition of government enables the recognizing state to conduct the complete range of international relation with the new government, and signifies its acceptance that the new government represent the state concerned in its international relation and that its acts may be regarded as binding the state in international law. The most important consequence arises from the recognition of a new government are these: (i) it acquires the capacity to enter into diplomatic relation with other recognized states and makes treaties with them. (ii) the former treaties, pact signed by the former government

become fully operative to the new recognized government^[10]. Even though the new government is not recognized for a time being they are not released from its treaties obligation. (iii) It gets right of suing in the municipal courts of the recognizing state and become entitled to claim possession of the property situated within the jurisdiction of the recognizing state which formerly belonged to preceding government. (iv) The recognized state also becomes entitled to claim sovereign immunity from being impleaded in the municipal courts of the recognizing state. (vii) The recognized government also become entitled to receive the property which is situated in the jurisdiction of recognizing state, which formally belonged to the preceding government at the time of suppression^[11].

Legal status of de jure and de facto recognized government

In case of domestic matter both *de jure* and *de facto* government share the same status. The legal status of both the government is same.

In the *Anantzazu Mendi case*:

"In the Spain two type of government co-exist at the same time, both de jure and de facto government. The question arises in the case that who would get the title of ship found outside the territory of Spain. Court held that since the ship was registered under territory falling under de facto government so the de facto government gets the title over the ship."

In case of external relation there is difference in legal status between both the *de jure* and *de facto* government.

- i. De facto government cannot get property lying in other country, even though they have recognized.
- ii. They cannot sue for breach of international obligation.
- iii. They cannot succeed over the property of other state.

De facto status is temporary statuses which preface to *de jure* government.

Doctrine of Non Recognition

Doctrine of non-recognition is also known as Stimson doctrine of non-recognition, means not grant recognition to new entities or some factual position which are the result of any illegal action such as using force^[12]. The Stimson Doctrine is a policy of the United States federal government, enunciated in a note of January 7, 1932, to Japan and China, of non-recognition of international territorial changes that were executed by force. The doctrine was an application of the principle of *ex injuria jus non oritur*^[13] that means legal rights cannot obtain from an illegal situation. The doctrine imposed a duty of non-recognition of all territorial acquisition brought about in breach of international law.

Stimson declared the policy of United States in the following word:

"The United States cannot admit the legality of de facto in any situation nor does it intend to recognize any treaty or agreement between those government, which may impair the treaty right of the United States^[14]... and that it does not intend to recognize any situation, treaty or agreement which may brought about by means contrary to the covenants and obligation of the treaty of Paris"

The international community of sovereign state also accept the concept of Stimson doctrine of non-recognition and clearly stated that they did not recognize the state or government if the territorial changes or treaties that have result from the threat or use of force against the territorial integrity of political independence of any state, or in any manner inconsistent with the purpose of united nation.

We can say that the scope of Stimson doctrine is widened or broadened by the various practice of state. Contemporary international law imposes upon the international community of sovereign state a duty of non-recognition of all illegal territorial acquisition and unlawful treaties.

Policy of India in cases of Recognition

India's policy of recognition is influenced by political consideration. India's recognition policy had been influenced by extra-legal consideration, i.e. security, economic and political consideration^[15]. The fact remain that India's recognition policy is not consistent. It is not always governed by legal consideration. In fact, India's policy of recognition falls in line with the recognition policies of other states and is influenced by economic, strategic and political consideration. However, as a matter of general policy, India has attached primacy to *de facto*ism and has generally recognized the supremacy of *de facto* regime. Furthermore, India has always supported national liberation movement and helped a region in obtaining its political freedom and establishing democratic values in the country in question. Another striking feature of India's recognition policy is that it has adopted the broader version of Stimson doctrine and, as a matter of policy, has denounced illegal territorial acquisition and unlawful governments.

Conclusion

It is to be concluded that International law is constituted by States and it is an organ like government. It is generally concerned with the activities and the transactions of States and Government. For the proper functioning of the state and the government, recognition is one of the most important criteria which have to fulfill by both of them. Today recognition is a popular subject of international law. Recognition of an entity doesn't mean only that the entity has met the required qualifications, but also that the recognising State will enter into relations with the recognised State and let that State enjoy usual legal consequences of recognition such as privileges and immunities within the domestic legal order. Recognition of State and Recognition of Government seems to be the similar concept but recognition of a government is different from recognition of a State. *De facto* and *de jure* are two important modes of acquiring recognition. *De facto* recognition is step toward *de jure* recognition. After completing the research on the concept of *de jure* and *de facto* recognition researcher has found that the distinction between *de facto* and *de jure* recognition is one of the most confused cases of recognition. The words *de jure* and *de facto* implies the government not the act of recognition. It is the subject of the legal status of the government.

Reference

1. C Warbrick. 'States and Recognition in International Law' in Malcolm. D. Evans (ed.), International Law, 2nd ed., OUP, chapter 2006; 7:218.

2. JG Stake. Introduction of International Law, 125
3. Black's Law Dictionary, 9th Edition.
4. That is, a government or international organization such as the League of Nations or the United Nations.
5. It is often stated that those objects or events which are recognized are of two types, standard objects including governments and states and secondary objects including treaties, acquisitions of territory, etc.
6. See M Shaw. International Law (Cambridge University Press 2008, 455
7. JG Starke. Supra note 9, 137.
8. Ibid
9. L Oppenheim. International Law – A Treaties, 1:135.
10. British note to Russian soviet Government: Tonybee, survey 1924, 491.
11. Parliamentary Debates (commons), 173(878):1312.
12. SK Verma. "An Introduction to Public International Law", PHI Learning, 2004, 110.
13. MN Shaw. International Law, 6th ed., Cambridge University Press, Cambridge 2008, 2.
14. Cit. in R. Langer, Seizure of Territory (1945) 58. On the Stimson doctrine see also Meng, 'Stimson Doctrine'
15. in VR. Bernhardt (ed.), EPIL (1982), Vol. IV 690; and Turns, 'The Stimson Doctrine of Non-Recognition: its
16. Historical Genesis and Influence on Contemporary International Law', 2 Chinese Journal of International Law 2003, 105.
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20. James Crawford, Public International Law, 8th Edition, Oxford University Press.