

RECOGNITION OF CHANGES OF GOVERNMENT

Recognition is the act of a state, itself a member of the family of nations, by which it admits the existence of another government as an international person, either for all purposes or only for certain purposes of government. It is essentially the recognition of a fact. Nothing is created. The government to be recognized exists independently of any act of another state. The recognition, however, gives a status under the law of nations and assures it of treatment by the foreign states as an international person to the extent to which the recognition goes. As it is a recognition of a fact, the sympathies and prejudices of the foreign nation should not affect the question.¹ There seems to be no absolute duty to recognize.² Each state acts according to its own policy. If the requisite facts exist, ordinarily recognition will follow as a matter of course.

A change of government implies a prior government and this note does not deal with the recognition of new states in territories where none existed before. The change may leave the former government still in existence, but no longer with authority over the particular territory where the change occurs, or it may destroy it entirely. In the first case it may be due to a rebellion of a part of the people, or it may be through conquest or cession. In the second case it may be through the regular constitutional means, or it may be by a revolution. The former government may also be merged with some other.

If territory is lost through rebellion, there are three degrees of recognition; first, of belligerency; second, as a *de facto* government; third, of independence. Recognition of belligerency is an admission that there is an insurgent movement carrying on war. The effect is to constitute the rebellious people an international person, so far as the laws of war are concerned, in their dealings with the recognizing state. When to make such a recognition is a matter for each state to determine. Ordinarily, however, when the necessary elements exist, recognition will follow. These elements are: the existence of a *de facto* government, ruling over a more or less definite territory, obeyed by the people of that territory, and capable of assuming the obliga-

¹ See Moore Int. Law Dig. 43, on the recognition of the various governments of France and the refusal to prematurely recognize the South American Republics, Moore 1. 49, 50.

² Maxey, Vol. 4, Ch. 1.

tions imposed by the laws of war. Secondly, there must exist an actual war, conducted according to international law, by military forces on both sides, employing the means and methods of warfare. Thirdly, the state recognizing belligerency must be so involved in the results of the struggle that it is necessary for the preservation of its interests that the respective status of the three parties be defined. For instance, if the insurgent territory is not contiguous to the foreign state and there are no commercial relations between them, this necessity would not exist and recognition would be a gratuitous interference. Pomeroy dissents from the view that there must be any interests of the foreign state involved, claiming that recognition is an obligation imposed by the laws of neutrality. He is, however, unsupported by authority or precedents. Maxey includes among the requisite facts an assertion of independence. This is not discussed by other authorities. While such an assertion usually accompanies a rebellion of the magnitude contemplated, there seems to be on principle, no necessity for it. The recognition is of a fact—the fact of a war. This might exist between portions of a state neither of which seek independence of each other, and might give rise to the same necessity of a foreign state's treating them as belligerents. If the law at the time of the American Revolution had been the same as it is today the American Colonies would have been recognized as belligerents before the Declaration of Independence. If the above elements are not in existence, recognition would be premature and the parent state would have just cause for offense.³

Recognition as a *de facto* state is more than recognition of belligerency, but less than that of independence. It treats the insurgents as the actual governing body over a certain territory, but is informal and does not concede them a place as a member of the family of nations. It is justified when the insurgent government is actually ruling the land, as in the case of belligerency, and there is a need that there be some one with whom the foreign nation may treat. It is chiefly a recognition of the government in regard to matters of commerce, its merchant flag is respected, and matters regarding commerce are transacted with it, but informally. There must be a probability that the hostilities will continue, and a fair likelihood of insurgent

³ Dana's note in Wheaton, p. 24, n. 15; Oppenheim, Sec. 74; Maxey, part 4, Ch. 1; Lawrence, 4th ed., Sec. 141; Moore, *Int. Law Dig.* Sec. 59. Grant, *Annual Message*, Dec. 6, 1869; and *Special Message*, June 13, 1870, in Moore, Sec. 17; Pomeroy, Sec. 224. *Prize Cases*, 2 Black, 635; Moore, Sec. 59.

success, but certainty is not necessary. The recognition may be as of as much as the needs of the foreign state may require, but can be of no more and must not be of facts which are not actually existing.⁴

The third and highest form of recognition accorded the insurgent members of a state is that of independence. It admits them to be a complete international person, a member of the family of nations, and independent of the sovereignty of any state. It also is a recognition of a fact; the state must be actually independent. It is to be given "when independence is established as a fact, so as to leave the chance of the opposite party to recover their dominion utterly desperate."⁵ There must be an organized government, able and willing to assume the obligations and duties of a state ruling over a definite area, acknowledged by the people, though absolute internal tranquility is not required. Hostilities between it and the parent state must have virtually ceased. If there is still a reasonable chance that the latter may ultimately subdue the rebellious people, the recognition would be premature. It is not necessary, however, that the parent government should itself have recognized the insurgents, or that all efforts on its part have been abandoned. There must be a moral certainty that they will be fruitless. The recognition may be conditional.⁶

If the change of government over a certain piece of territory is effective by cession or by a treaty of peace, there is really nothing to recognize formally. The ceding government itself authorizes the change and foreign states will take the facts as they are. In the case of conquest, without a formal treaty, the case is a little different. If an entire state is seized, leaving no government to treat with, no formal recognition is necessary.⁷ If there is a state beaten, but still claiming lands in the firm possession of its enemy, it is said to be analogous to case of a rebellion. If the conquering state intends to keep the territory and the fighting is hopeless and practically over, a third state may recognize the sovereignty of the conqueror.⁸

Where the former government is overthrown by ordinary and constitutional means, as in the case of the succession of a new mon-

⁴ Pomeroy, 236; Dana's Wheaton, p. 41, n. 16; Maxey, part 3, Ch. 1.

⁵ Adams, Sec. of State, to Munroe, Pres., Aug. 24, 1816. Moore, 1, 30.

⁶ Pomeroy, 241; Phillimore 11, 19, 20; Dana's Wheaton, p. 42, note; Oppenheim 74; Jackson, Texas Message, Dec. 21, 1836; Hall, 9th Ed., 90-93; Moore, Sec. 27.

⁷ As in the Prussian conquest of Hanover.

⁸ Pomeroy, 219-222.

arch or the election of a new administration, the status of the nation is unchanged and there is no need of any recognition.⁹

If one nation merges itself with another, as Texas with the United States, or two or more join together as in the case of the German Empire, recognition follows as a matter of course.¹⁰

The questions arising from a revolutionary attempt to supplant the former government are very similar to those arising from an attempt of a part of the people to establish their independence. Belligerency may be recognized, and a *de facto* government exercising whatever authority is exercised over a certain territory may be treated with informally, though recognition in its most complete sense is denied. Recognition as the true government in its full sense is accorded on much the same facts as that of independence. It must be actually in power and performing the functions of government. There must be a definite area and at least a large majority of the people must acquiesce. Resistance by the former government cannot be more than desultory and must be without any reasonable likelihood of success. The character of the ruler, the source and the motives of the movement, and the means used in obtaining success are not ordinarily noticed by the foreign state. Precedents may be found for withholding recognition where the policy of the foreign state demands it, as England's refusal to recognize Napoleon.¹¹

Recognition may be made in several ways. A formal declaration is often resorted to. It may be implied. Belligerency is recognized, among other ways, by a proclamation of neutrality; a *de facto* state; by informal correspondence. Independence is recognized by a treaty with the new states, the receiving or sending of diplomatic agents, etc.

The political and legislative branches of government possess the powers of recognition. The judiciary will treat it as a political question and follow the course of action taken by the other departments of government.

The most interesting recent case of this character was the refusal of the United States to recognize Huerta. Huerta's government seems clearly to have been an actual one. That of Madero had no longer any personal existence. The new one was in possession of the greater

⁹ Pomeroy, 248.

¹⁰ Moore, Sec. 27.

¹¹ Moore, Sec. 43ff (Course of the United States in regard to France, Spain, South American Republics, etc.); Pomeroy, 248; Wharton's Digest, Sec. 70ff.

part of the country, and while there were various rebellions, it had a comparatively firm hold on its power at the time that the European nations gave it recognition. The previous course of the United States had been to disregard the character and the means used in obtaining power, so the objection that there was strong likelihood that Madero was murdered seems out of line with precedent. While there had been no popular election, this was also the case apparently in many of the South and Central American governments, and was held no bar to their recognition. The large part of the Mexican people acquiesced in the Huerta government, even if they did not altogether approve of it. The refusal, however, is not properly a breach of law, as there is no legal obligation. The cases where it has been refused, however, as in the case of Maximilian in Mexico, and England's refusal to recognize Napoleon, were governed by a larger principle of public policy than any objection to a particular ruler. The case seems out of accord with the previous courses taken by the United States in this regard.

There seems to have been little reason for having recognized Carranza that would not have been equally applicable to the case of Huerta. Certainly there was no other government than that of Huerta, though its authority was somewhat shaky, in part of the territory, its claim to rule was a government in fact, and as such might have been recognized.

SEWARD MCKITTRICK.