

Recognition of governments in International Law

I. Introduction

Regardless of the government in office at any given time, it is possible to find changes of a supervening form that affect the State's international status.

When a revolutionary change in the power structure takes place within a state, the so-called "recognition of governments" arises. This recognition is an important principle in international law, as it guarantees third states that their rights and obligations will be fulfilled and respected by the new government.

II. Recognition of Governments

International practice has echoed some cases in which the principle of state continuity has been circumvented as a consequence of profound revolutionary changes, as was the case with the October 1917 socialist revolution in Russia. Indeed, the Soviet "new state" denounced "all international obligations contracted by the tsarist state which were contrary to the interests of the working class". The same path was

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followed from 1948 onwards by the People's Republic of China, but in both cases the principle of continuity in statehood eventually prevailed despite certain incidences.

Changes in government affect the international status of the state, since it remains the same regardless of which government is in office at the time. In this context, third States are free to pronounce themselves on the following terms:

- Recognising the *de facto* government, which implies maintaining relations with the newly installed regime or;
- Not recognising the *de facto* government. This would mean a rupture in these relations.

III. Legitimacy theories of government recognition

Although the recognition of governments is a discretionary decision of the State, in international practice, various attempts have been made to subject this process to predetermined criteria or guidelines. Thus, theories based on legitimacy criteria have been proposed, such as:

- The *Tobar* theory of 1913;
- The *Wilson* theory of 1931

Both advocated the "non-recognition" of *de facto* governments that do not enjoy popular support. A *contrario sensu*, other theories emerged, such as the

"effectiveness" theory, which granted recognition to any de facto government that guaranteed effective control over a territory.

An original doctrine, which has sometimes been applied by Spain, is the so-called "*Estrada doctrine*", formulated by Mexico's Secretary of Foreign Affairs, Genaro Estrada. This doctrine considers the recognition of governments to be "an insulting practice, offensive to the sovereignty of other states, which implies a judgement on the internal affairs of another country", and therefore, instead of making any declaration of recognition or non-recognition, it advocated "the maintenance or withdrawal of diplomatic agents, as deemed appropriate". While the procedure is somewhat original, it is an implicit recognition or non-recognition of governments, articulated through the maintenance or withdrawal of diplomatic representatives.



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