

RECOGNITION OF STATES AND GOVERNMENTS

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The problems involved in the subject of recognition in international law are important ones, even though they lack the dramatic appeal of such topics as war and peace, outer space, and ocean space. Since states are the basic units in the international legal system, recognition plays a vital role in the determination of the qualified actors in the system. Similarly, what government represents a state is a significant matter. Moreover, the exercise of jurisdiction by alleged states and governments may depend for its effectiveness on recognition. The subject is not an easy one to explain or understand. There is a vast amount of state practice that is far from consistent, a clash of doctrinal explanation, and a bewildering variety of terminology.

Recognition involves the question of what attitude states will take with regard to a variety of factual situations and the legal consequences that flow from formal recognition of these situations, as well as from the nonrecognition of such situations. Major areas concern the existence of states, governments, war, neutrality, belligerency, and the effect of nonrecognition of illegal

claims to territory. The primary focus of this lecture will be on the problems arising out of recognition and nonrecognition of states and governments.

The requisites for statehood in international law have been formulated in various ways, but there is substantial agreement that there must be an independent government exercising effective authority within a relatively well-defined area. The major doctrinal controversy has been whether a new entity with these characteristics becomes a state only through recognition by the existing states in the world community, or whether the attainment of the requisite factual characteristics by a new entity makes it a state prior to any recognition by existing states? In the books, the controversy is referred to as one between the constitutive and declaratory theories of recognition.

The traditional constitutive theory has been that new entities do not become states until they are recognized; i.e., that only recognition constitutes the state, and that each existing state is under no duty to recognize a new entity that has attained the requisite factual characteristics. In the absence of any

procedures for collective recognition of a new entity, this meant that an entity might be recognized by some states but not by others. A further theoretical consequence was that the new entity, if unrecognized, was not a subject of international law and therefore allegedly had no rights or obligations under international law.

The late Professor Lauterpacht made an important modification in constitutive theory by arguing that existing states were under a duty to recognize a new entity that met the requisite factual characteristics. His book on recognition elaborates his argument and purports to find support for it in state practice. His argument, if accepted in practice, would do much to obviate the possibilities of an entity being recognized by some states and not by others. It would introduce order into a vital aspect of international relations. It would also, if similarly accepted, decrease the practical importance of an entity theoretically not subject to rights and duties under international law.

Under the declaratory theory, an entity which attains the requisite factual characteristics thereby commences its existence as a state under international law without the need of recognition by existing states and is accordingly from that point forward a subject of international law with all the rights and duties of a state. Recognition, under this theory, serves only to declare what already existed and to indicate a willingness on the part of the recognizing state to accord the recognized state the privileges of a state. This is normally accompanied by the opening of diplomatic relations between the two states. Under this theory the recognizing state is also under no duty to recognize the new entity, but, since, under that theory, the entity is already a state, the conceptual and practical difficulties posed by the constitutive theory do not arise.

Another way of stating the same

problem is to ask whether recognition is governed by legal rules or is dominated by political considerations. Lauterpacht's constitutive theory favors the former while the declaratory view favors the latter. Most modern Anglo-American writers disagree with Lauterpacht. And, in my opinion, state practice, as a principal creator of international law, lends more support to the declaratory and political views. This is not to say that states totally ignore legal considerations or that in many instances states do not reach the same results regardless of theories.

Although the foregoing discussion related to the recognition of states, the same controversy exists with respect to recognition of governments of existing states. The United States both in theory and practice adheres to the declaratory view, as was vigorously demonstrated by Ambassador Austin in the United Nations in defending the immediate recognition of the provisional government of Israel as the *de facto* authority of the new state. On the other hand, the United Kingdom, in an official statement by the Foreign Secretary in 1951, defined their recognition policy in constitutive terms. Although their recognition of the Communist Chinese Government could be considered as consistent with that theory, their relations with some other Communist regimes is impossible to square with that theory. An example is their continued nonrecognition of East Germany.

It is apparently paradoxical that, while there is no agreement with respect to the legal character of recognition, there is a substantial consensus that premature recognition is a violation of international law. For example, a state that recognizes a new entity that does not have the requisite characteristics has injured the existing state out of which the new entity claims to have formed a state. By way of analogy, in our Civil War the United States claimed that Great Britain's Proclamation of Neu-

trality, which consequentially recognized the belligerency of the Confederate States, was premature. In view of the prior United States Proclamation of a Blockade, our argument was clearly unsound. However, it should be noted that Great Britain never recognized the Confederacy as a state or government but only as a belligerent.

This reference to belligerency as an intermediate status short of recognition as a state or government leads conveniently to a discussion of the use of the terms *de facto* and *de jure* in connection with recognition. The terms are used in different contexts and are not given a consistent meaning. Sometimes, *de facto* is used to indicate that the recognition being extended is tentative. It is not the recognition that is *de facto*: the other state or government is being treated as a *de facto* entity. The term is also used to describe policies of recognition. An example is the extending of recognition to any regime that is in effective control of the state regardless of other considerations. Although the question is debatable, it is believed useful in practice to be able to deal with recognition in stages and permit the intermediate step of recognizing a regime as *de facto* prior to a possible further recognition as a regime *de jure*.

The problem of recognition of states obviously occurs less frequently than the question of recognition of governments. Although occasionally a new state has emerged from a territory not previously organized as a state, the more typical issue arises out of an attempt by a rebel group to secede from a parent state, either in part of its existing territory, or in what was formerly, for example, a colonial territory. In this context it is easy to understand why premature recognition was an offense.

As previously indicated, the generally accepted test of statehood is that of an independent government exercising effective authority within a relatively defined area. Implicit in these require-

ments, or possibly an additional criterion, is that it reasonably appears that these requirements will continue to be satisfied. The practice of the United States until recent times has been fairly consistent in the application of this test to new entities seeking statehood. It is perhaps best illustrated in the course of our recognition of the new states in Latin America in the early 19th century. The United Kingdom has, until recent times, also followed essentially the same policy. Since World War II our action with respect to the government of Communist China, and the alleged states and governments of East Germany, North Korea, and North Vietnam has been based on different considerations. As Kaplan and Katzenbach point out, recognition, or rather nonrecognition, in relation to the opposing bloc, is primarily a political weapon. In the absence of an overall settlement, these other alleged governments and states seem reasonably permanent, yet we will continue to withhold recognition. Although, after World War I, the question of recognition of the Soviet Government was not, technically, a matter of recognition of a state, their drastic break with the past made it a similar question in policy terms.

Since World War II, and particularly in recent years, our practice with respect to the recognition of new states in Afro-Asia has also been based on different criteria. Here, the rapid ending of colonialism and the planned preparation of new states for independence, either under the auspices of the United Nations or by the parent powers such as England and France, has led to almost instantaneous recognition or even recognition prior to official independence. As Kaplan and Katzenbach point out, competition with the Soviet Union was certainly a factor. Moreover, frequently no real consideration was given to the prospects of permanency of the new states, nor to the essential effectiveness of their regimes.

The recognition of governments raises significantly different issues. The state, already recognized, continues to exist as a state and the question is whether a particular regime is the government of that state. In the normal and routine cases of changes of government, no question or need of recognition arises. It is in cases of revolutionary change where there are at least two competing claimants that the issue becomes acute. While there might be said to be a presumption in favor of the established government, once there ensues a genuine civil war, the outcome of which is doubtful, then the attitude of other states towards the claimants becomes important. It is for this situation that the rules with respect to recognition of governments are designed.

As previously noted, during the civil struggle the rights and obligations of the state continue. The issue is which competing claimant represents that state for the purpose of continuity. In the case of new governments, the minimum international law requirement for recognition is that the regime is in effective control of the territory and population of the state, or, more controversially, controls a substantial part of the population and territory, and it is reasonably clear it will succeed in displacing the previous government. The latter alternative obviously raises delicate questions of judgment, and the possibilities of premature recognition are apparent. A state that recognizes a new regime on this minimum basis of effectiveness may be said to follow a *de facto* policy of recognition. The United States, however, does not accept this as the sole test and in theory requires, in addition, that the rebel regime give assurances that it will honor the obligations of the state under international law and applicable international agreements. In more modern times, particularly in the case of the Spanish Civil War, a practice was developed, especially by the United King-

dom, of abandoning an either/or approach and treating a revolutionary regime as the effective regime in part of the territory of a state. This is what the United Kingdom did with respect to the Franco forces prior to the conclusion of that civil war.

In earlier times various other additional conditions for recognition were advanced. During the monarchical era some attempts to insist on legitimacy of succession were made, but proved ineffectual. It is patent why this was so. It is the revolutionary change that raises the problem, and revolution is invariably illegal under the law of the state in question. But revolution is not illegal under international law. The international law system is not organized to police the internal relations of its members. In the *Tinoco Arbitration*, Chief Justice Taft, as sole arbitrator, made this point explicitly. He also held in that case that, from the standpoint of an international tribunal, the test of effectiveness determines which government has capacity to bind the state.

Another reason occasionally invoked for denying recognition is objection to the inhumane methods employed by the rebel faction as distinguished from their illegitimate origin. Instances are Great Britain's attitude toward the French Revolution, and the attitude of the United States and others toward the initial seizure of power by the Soviets. But this, too, does not prove to be effective in an international system without power to deal with outrageous conduct by well-established regimes, to say nothing of revolutionary regimes. Only an effective world government will be able to exercise such a power, and present prospects for such a development are not encouraging.

Reference has already been made to the United States additional condition for recognition, namely, that the regime in question indicates its willingness to fulfill its obligations under international law and applicable international agree-

ments. This policy was not originally followed. Jefferson stated in connection with the French Revolution that our policy was to recognize any government "which is formed by the will of the nation, substantially declared." Some have asserted that, except for the Wilsonian interlude to be mentioned later, this policy has been consistently followed. Lauterpacht refers to it as, in essence, a requirement of the consent of the governed in order to demonstrate that the regime will be effective with prospects of permanency. He further asserts that both the United States and the United Kingdom pursued this policy with fair consistency until the end of the first World War. Obviously, the test is far from precise and was variously interpreted in practice. In some instances it called for free elections, while in others popular consent was inferred on the basis of very inconclusive evidence indeed.

President Wilson added to the principle, especially in connection with Latin America, the further test of constitutionality under the law of the state in question. Moreover, the United States, although not a party, supported the Central-American Treaties of 1907 and 1923 in relation to the parties thereto. These treaties embodied a constitutional test and additional restrictions. Subsequently, in the Hoover administration, the constitutional test was abandoned, and we purported to revert to the Jeffersonian policy.

It can be said that, following World War I, the requirement of popular consent was gradually abandoned by both the United States and the United Kingdom in the face of the rise of dictatorial governments exercising effective power. This necessarily brief survey of varying attitudes of the United States should not suggest that any one test has necessarily been consistently applied in any period. This is certainly true at the present time. We would appear to have several policies. In Latin America we

have developed a practice of informal consultation with the other members of the Organization of American States with respect to the recognition of *de facto* governments in that area. While the consultation is collective, the individual member state retains the power of ultimate decision. In the Resolution of the OAS embodying this procedure, it is interesting to note that stress is laid on free elections and willingness to honor international obligations as the principal criteria to be taken into account. On the other hand, in relation to the Communist bloc or blocs, our policy with respect to recognition of governments, just as in the case of new Communist states, has been governed by political considerations in the context of the "cold war."

Before proceeding to nonrecognition, it might be useful to refer briefly to the modes, or methods, of recognition. The state or government seeking recognition obviously wants to interpret most favorably to itself any ambiguous statement or action of other governments that might imply recognition. On the other hand, the state contemplating recognition wishes to control the process. Since it is, more typically, smaller or weaker states, or the governments thereof, that are seeking recognition, it is the major nations that have insisted that recognition is a matter of intention and that any ambiguous act which might imply recognition may be negated by a disclaimer of intention to recognize.

Certain formal acts clearly constitute recognition, such as an exchange or reception of ambassadors, or the conclusion of a bilateral treaty. Appointment and reception of consuls, on the other hand, does not result in recognition although the request for and issuance of an *exequatur* probably does. In the case of multilateral treaties, it is, however, generally agreed that participating as a party thereto along with an unrecognized state or government does not

constitute recognition. The same view prevails with respect to participating in international conferences with unrecognized regimes. Although there was some original difference of opinion with respect to membership in the League of Nations, especially when the allegedly recognizing state voted for admission, it came to be accepted, and is accepted in the United Nations, that admission to membership does not imply recognition on the part of other members that the entity in question is being recognized, apart from membership, as a state or government. The practical reasons for these last few conclusions are obvious. Any other view would paralyze the processes and institutions involved.

The caution of recognizing states, however, even in these areas, is illustrated by a recent example. The Nuclear Test-Ban Treaty provided that the United States, the United Kingdom, and the Soviet Union should each be a depositary and it was clearly understood that East Germany's deposit of its declaration of accession to the Treaty with the Soviet Union would have no effect on its continued nonrecognition by the other depositaries. The United States contention that East Germany would nonetheless be bound by their accession to the Treaty is more controversial.

If we accept intention as the decisive test, many informal relations with unrecognized regimes are possible, such as negotiations, temporary military agreements, and continuance of trade. Our various dealings with the Chinese Communist Government are a recent demonstration of this practice, and there are many other similar cases. This possibility of maintaining informal relations with unrecognized regimes makes more palatable and practical the policy of nonrecognition of states and governments which meet the criteria for those statuses. Despite a theoretical legal void, there is an expedient accommodation to the problem.

Turning to the phenomenon of nonrecognition of states and governments, what are the legal consequences in international and domestic law? Many of the important consequences are in domestic law, so that here we shall be considering "foreign relations law" as well as international law, strictly speaking. Accepting the declaratory theory as in accordance with the practice of states, we have states and governments which meet the criteria for recognition but are not recognized. What are the respective rights and duties between the existing entities and such unrecognized entities?

Referring to our previous discussion of informal relations, we see that some relations may and do take place between them. Speaking generally, the unrecognized entity, be it state or government, which has met the requisite criteria, has the rights of a state in international law, although it can be prevented from exercising them if the rights can only be exercised by a state, and the nonrecognizing state refuses to treat the purported exercise as the action of the government of the other alleged state. The same rationale controls with respect to the obligations of such an entity. The questions mainly arise with respect to unrecognized governments rather than states. It is clear that the nonrecognition of a particular government does not deprive the state of its rights or relieve it of its duties under international law under the conditions stated. This is a consequence of the continuity of states.

The previous statements dealt with established rights and obligations. But an unrecognized regime meeting the necessary criteria can also create new rights and obligations with respect to a state that has not recognized it. In the *Tinoco Arbitration* previously mentioned, the effective government in Costa Rica (the Tinoco Government) was held to have bound that state in relation to Great Britain which has not

recognized that government. As Chief Justice Taft pointed out in his opinion, the use of nonrecognition as a political weapon drastically reduces its value as evidence of the nonexistence of an effective regime.

Parenthetically, it should be mentioned that a recognized regime, even though no longer in control of some or all of its former territory, continues with its rights and obligations and may create new rights and obligations with nationals of another state still recognizing it, with respect to areas outside of the rebel regime's control. Thus, the public assets of a state with such a recognized regime, the assets being located within a state recognizing it, will be awarded by the courts of that recognizing state to the recognized government. This was the treatment accorded by the courts of the recognizing states to the assets, within those recognizing states, of the governments-in-exile during World War II. Furthermore, if a state has one regime which is being recognized as *de jure* and another as *de facto* at the same time by a recognizing state, the courts of that state will award the public funds to the *de jure* regime. Two British decisions concerned with the recognition of Ethiopian claims in England turned on this distinction, which demonstrates that, for domestic law at least, whether recognition is *de facto* or *de jure* makes a significant difference. The first decision held that the Emperor, as the ruler *de jure*, was entitled to collect a debt which had accrued before the recognition of the King of Italy as the ruler *de facto*. When England subsequently recognized the King of Italy as the ruler *de jure*, in the same case on appeal, it was held that the King was then entitled to collect the debt.

We have been discussing the rules relating to unrecognized regimes meeting the relevant criteria. What of the rights and obligations of unrecognized revolutionary regimes that do not meet the tests for an effective government

either at the time of acting or subsequently? Such regimes do not have any general capacity to create rights and obligations in relation to another state, but international law does recognize a limited capacity to validate acts performed in a territory within its control and relating to routine governmental administration rather than in support of its own quest for control of the state it purports to represent. An international arbitral decision to this effect held that the sale by such a regime of a postal money order was binding on the state and its successor recognized government.

Finally, what is the effect of subsequent recognition of a state or government that had previously met the requisite criteria? Recognition releases the restrictions that had previously existed as to rights and obligations that had required acknowledgment thereof by the recognizing state. The further question of whether recognition is retroactive with respect to acts performed before recognition but after meeting the requisite criteria is not governed by international law. This follows from acceptance of the theory that there is no duty to recognize even when the requisite criteria exist. However, retroactivity is significant in the internal law of the recognizing state, and the scope of the principle will be developed in the subsequent discussion of the domestic legal consequences of recognition and nonrecognition.

Withdrawal of recognition is another matter which should be briefly canvassed. In theory, if a state or a government fails to maintain the requisite criteria, then withdrawal of recognition is appropriate. In practice, withdrawal normally occurs when a new state replaces the previously recognized state, or a new government is recognized in place of the preceding one. The presumption as to the existing authority applies here. Until a new state or government meets the requisite criteria,

withdrawal of previous recognition would be inappropriate. Some authorities add, however, that withdrawal is appropriate if the initial recognition was tentative--i.e., *de facto*--and the requisite criteria have not materialized. The Restatement of Foreign Relations Law states that no instance of withdrawal of recognition has been found except in the situations above mentioned.

In theory, withdrawal should not be based on disapproval of a recognized regime, but only on failure to maintain the requisite criteria. In fact, states disapproving of a previously recognized regime do not withdraw recognition but sever diplomatic relations. For example, Great Britain recognized the Soviet Union *de facto* and subsequently *de jure* and a few years later severed diplomatic relations. Here, there is a legal curiosity. Severance of diplomatic relations does not present many of the problems thought to arise out of nonrecognition. In the *Sabbatino* case, the U.S. Supreme Court squarely held that the Castro Cuban Government, as a government that the United States had recognized, could sue in the courts of the United States, despite the severance of diplomatic relations prior to the litigation, even though the established rule is that an unrecognized government can not so sue.

As previously mentioned, some of the most significant legal consequences arising out of nonrecognition are governed by domestic or national law as distinguished from international law. In earlier reference to the recognizing state, it was assumed that, for international purposes, it was the executive branch of the government of that state that made the decision. In the domestic sense, the recognizing organ is a political branch of the government. The judicial branch is not involved. This does not mean that the executive's action is not subject to legal restraints. On the other hand, the judiciary has a significant role to play on the domestic scene, as

distinguished from the international arena. The main problem for the domestic judiciary is what status should be granted to and what effect should be given to actions of an entity not recognized by their executive. The complex and extensive domestic law on this subject can only be summarized, and the discussion will be confined to the domestic law of the United States and the United Kingdom. In what follows it is assumed that the unrecognized entity has, in fact, met the requisite international criteria.

In the United Kingdom, as well as in the United States, an unrecognized government does not have access to the courts as a plaintiff. On the further question of whether an unrecognized government is entitled to immunity as a defendant, some decisions in the United States have granted immunity, contrary to the British view. Our holdings can be explained on the ground that the state, as such, is entitled to claim immunity. A different result would be reached if there were also a recognized government in existence, which could waive the immunity on behalf of the state.

Most of the interesting questions involve the issue of what effect the courts should give to legislation and other action of an unrecognized government. The British decisions have drawn quite rigidly the logical deduction that no effect should be given in their courts to action of a regime unrecognized by the British Government. Thus, if the claimants in the *Tinoco* case had brought suit in a British court rather than in an international tribunal, the acts of the effective government in Costa Rica would not have been "recognized." Even Lauterpacht, who defends the British position, concedes that it is workable only so long as the executive branch accords recognition under his theory that there is a legal duty to recognize entities meeting the requisite criteria. The 14 years of nonrecognition of the Soviet Government by the United

States tested this theory to the breaking point, and courts in the United States took a more flexible approach.

In a series of decisions in the New York Court of Appeals, under the principal aegis of Judge Cardozo, the view was developed that effect would not be given to the acts of the unrecognized Soviet regime unless not to do so would violate equity and justice. This has been called the "negative public policy" rule and is far from an exact juridical concept. Inspiration for it came from U.S. Supreme Court decisions with respect to the legal consequences of various acts that were performed within the Confederacy during the Civil War.

A recent New York decision in the *Mercury Business Machines* case is a good illustration of an even more flexible approach. An East German corporation, wholly owned and controlled by the unrecognized East German Government, sold typewriters to a New York corporation, an importer, which failed to honor the trade acceptance that it had given in payment upon receipt of the typewriters. An American citizen and resident of New York, who was an assignee for value of the East German corporation, sued the importer. The court held that he could recover on this private transaction even though the East German Government was not recognized by the United States. The sale and import of the typewriters was not forbidden by United States law. Under the circumstances, the court saw no policy objection to enforcement of the obligation. A different issue would arise out of a transaction originating in Communist China; trade with which is legally prohibited. A recent decision of the House of Lords in the *Zeiss* case, involving the effect of action taken by an East German entity in East Germany, is also of interest. That court held that the Soviet Union was the government recognized *de jure* in that territory by the British government, and that the action taken by the East German regime was in

accordance with authority properly delegated by the Soviet Union, thereby avoiding the application of the traditionally rigid British view which would have given no effect to the action of an unrecognized regime.

The Restatement of Foreign Relations Law in Section 113 defines the scope of the United States exception to nonrecognition of the actions of an unrecognized regime as being confined to matters of an essentially private nature within the effective control of the unrecognized entity, or transfer of property localized at the time of transfer in the territory of the unrecognized entity and belonging then to a national thereof. This is a U.S. conflicts rule and not a rule of international law. In their commentary, they point out, as does the text of Section 42, that the so-called "act of state" doctrine does not apply in the case of an unrecognized regime. Briefly stated, the act of state doctrine, another U.S. conflicts rule, provides that a U.S. court will not examine the validity of an act of a foreign state within its territory by which that state has exercised its jurisdiction to give effect to its public interests. In cases of foreign expropriation in violation of international law, this doctrine has been modified by congressional action in the context of the Castro expropriations of American property. By definition and practice, the act of state doctrine also does not usually apply to the extraterritorial effect of such acts, even if the regime is recognized. Thus, a foreign decree purporting to expropriate property within the United States would be treated as a nullity in our courts.

The previous discussion related to the effects given in U.S. courts to acts of an unrecognized entity meeting the necessary criteria. If recognition is subsequently granted, courts in the United States will then treat the acts of such a regime prior to recognition as if they had been the acts of a recognized entity. Consequently, the act of state doctrine

will then apply. This retroactive effect serves to validate previously unrecognized acts, mainly within the entity in question, as well as to validate the newly recognized regime's title to public funds in the recognizing state, as previously discussed. This doctrine of retroactivity does not extend, however, to the invalidation of prior transactions entered into by the then recognized government or obligations of private parties created by that government. The U.S. Supreme Court, in the *Guaranty Trust Bank* case, enforced this limitation on retroactivity by holding that the Soviet Government, suing after it had been recognized, was barred by the running of the New York statute of limitations prior to its recognition, since the then recognized Kerensky government could have sued the bank and failed to do so. The *Guaranty Trust Bank* was entitled to rely on the action or nonaction of the regime then recognized by the U.S. Government.

Only brief mention can be made of another important use of nonrecognition outside the area of states and governments as such. This is the doctrine of nonrecognition of illegal action, such as an illegal conquest of territory. When states act legally, there is normally no need to notify other states of the action taken or to receive their recognition of the legality of the action. However, when a state acts illegally, can but need not declare that they will not recognize the illegal claim. Secretary of State Stimson invoked this doctrine with respect to Japanese action in Manchukuo, and the League of Nations passed a Resolution taking the same position. Of course, in the imperfectly organized world, frequently nothing effective is or can be done to reverse the illegal action. Nonrecognition is thus a weak sanction, serving to register moral and legal disapproval, and, legally, it serves to prevent the illegal actor from converting his illegal claim into a legal

one through the passage of time without protest. This is a general principle equally applicable to any illegal claim although it is most prominently mentioned in connection with illegal conquest of territory. For example, the United States and other states protested the 200-mile territorial water claims of Chile, Ecuador, and Peru.

Up to this point we have discussed recognition in terms of the recognizing state as a decisionmaker in the decentralized international community. This was an accurate picture until the present era. We now reach the question whether the most universal international organization, the United Nations, should follow the same standards with respect to recognition as individual states have previously followed. In the past some writers have argued that collective recognition by an international body would overcome the disadvantages of the national political element in the traditional process.

Whatever its theoretical advantages, it is clear that in practice recognition for purposes of membership and representation is divorced from whether a particular member state recognizes another member or its government outside the United Nations. The struggle over admitting the Communist Chinese Government to official participation in the United Nations produced a memorandum in 1950 by the Secretary General in which he stated that they were separate questions. He pointed out that traditional recognition practice was unilateral and discretionary, and that states have refused to accept a collective recognition procedure as a substitute for their own discretion. In the United Nations, however, decisions on membership and representation are collective. He therefore argued that, for United Nations purposes, the test should be which government was the one in the position to carry out the obligations of membership most effectively, rather than which government was recognized

by the members outside the United Nations. In his opinion, acceptance of his argument would have led to the seating of the Communist Chinese Government. However, his view was rejected by a majority of the members and that government has not yet been successful in achieving representation in the United Nations. The Nationalist Chinese Government continues to represent the *state* of China, an original member.

What is the position of the divided states so far as membership in the United Nations is concerned? In January of 1957 the Soviet Union proposed that both Vietnams and both Koreas should be admitted, arguing that they were all states. The General Assembly rejected the proposal. The subsequent motion to elect South Vietnam and South Korea as members was vetoed by the Soviet Union in the Security Council. In 1966 East Germany applied for membership in the United Nations and, in its application suggested West Germany should be simultaneously elected. West Germany opposed the proposal, arguing that East Germany was not a state and that "it" violated human rights. No action was taken. The divided "states," therefore, continue to be excluded from membership in the United Nations.

What is the status of these four areas outside the United Nations? Here, of course, the basic division with respect to recognition is along bloc lines, as Kaplan and Katzenbach emphasize. A recent inquiry to the State Department on this question produced a reply in terms of diplomatic or lesser relations with a regime rather than in terms of recognition. As of June 1968, 64 nations were said to have diplomatic relations with Nationalist China as compared with 45 nations having diplomatic relations with Communist China, and 19 nations which did not have diplomatic relations with either government. The reply estimated that in January 1968 about 77 nations have diplomatic rela-

tions with South Korea and that 25 nations have diplomatic relations with North Korea. With respect to Vietnam, the response spoke in terms of representation *in* Saigon or *in* Hanoi, which is not very helpful for our recognition question. On this basis, as of January 1967 about 30 nations are represented in Saigon and, as of an unspecified date, about 22 nations in Hanoi. This information on representation should be compared with a statement by Professor Moore of Virginia in a recent article in which he wrote that 60 nations have recognized South Vietnam and that 24 nations have recognized North Vietnam. Although he cites no specific source for these statistics, they appear to be more relevant and accurate for the purposes of our inquiry. Finally, the State Department reply states that West Germany has diplomatic relations with at least 70 countries and consular relations with 16 more, with 13 of which there may be also diplomatic relations. East Germany is reported as having full diplomatic relations with 16 countries and lesser relations with 18 other countries. No date is given for these German statistics.

This report on the status of the rival Chinese Governments and of the divided "states" both within and outside the United Nations concludes this necessarily broad survey of the legal aspects of recognition of states and governments in international law and, to some extent, in the internal law of states, especially in the "foreign relations" law of the United States. The scope of the lecture did not permit examination of every facet of the subject, nor exhaustive treatment of any particular segment that was included. It is hoped that this introductory analysis of many of the significant problems in this complex area will stimulate the student to formulate his own conclusions and will provide an adequate foundation for his further exploration of this challenging topic.