States, Governments, and Collective Recognition

Jure Vidmar

Table of Contents

I Introduction

II Recognition of States: Always Declaratory Always Political?
A Declaratory Recognition
B The Constitutive Effects of Collective Recognition
C The Duty to Withhold Recognition
D Recognition of States and Taiwan

III Recognition of Governments
A Non-Explicit Recognition of Governments
B Collective Denial of Legitimacy to the Taliban Government in Afghanistan
C Libya: Collective Action through the Security Council and a Deviation from “Estrada”
D Recognition of Governments and its Implications for Taiwan

IV Conclusion

I Introduction

The act of recognition in international law is a complicated relationship between law and politics; “a political act that has legal consequences.”¹ Contemporary debate has been predominantly dealing with the act of recognition of states, the legal effects of which remain controversial, while the act of recognition of governments has become virtually obsolete. With regard to states, it seems to be generally-accepted that recognition is declaratory

* Leverhulme Early Career Fellow in the Faculty of Law and Research Fellow of St John’s College, University of Oxford; Extraordinary Lecturer, Centre for Human Rights, Faculty of Law, University of Pretoria; Visiting Fellow, Harvard Law School. The author’s research is supported by the Early Career Fellowship of the Leverhulme Trust.

and, as such, not required for the existence of a state. With regard to governments, international practice is said to have accepted the Estrada doctrine whereby recognition of new foreign governments is not granted explicitly. But some recent international practice negates these theoretical axioms.

The wide international acceptance of Kosovo’s unilateral declaration of independence may well have had constitutive effects. In the context of recognition of governments, we have witnessed clear collective departures from the Estrada doctrine in the example of Libya. What significance does this have for the concept of recognition in contemporary international law? What are the legal effects of recognition of states and governments where the international community acts collectively? Ultimately, what significance does the recent practice of recognition have for the legal status of Taiwan?

This paper considers recent international practice on recognition of states and governments and identifies the avenues of granting recognition collectively. In so doing, it determines the legal relevance and irrelevance of international recognition and draws the conceptual difference between the concepts of collective recognition of states and governments in contested territorial situations.

II Recognition of States: Always Declaratory Always Political?

A Declaratory Recognition

Writers on recognition have traditionally distinguished between the constitutive and declaratory theories. In the constitutive view, recognition is “a necessary act before the recognized entity can enjoy an international

2 See, e.g., David Harris, Cases and Materials on International Law 131 (2010).

3 This doctrine is named after the Mexican minister of foreign affairs Genaro Estrada who, in 1930, made a proclamation on behalf of Mexico that its government in the future shall issue “no declaration in the sense of grants of recognition, since [Mexico] considers that such a course is an insulting practice and one which, in addition to the facts that it offends sovereignty of other nations, implies that judgment of some sort may be passed upon the internal affairs of those nations by other governments, inasmuch as the latter assume, in effect, an attitude of criticism when they decide, favourably or unfavourably, as to the legal qualifications of foreign regimes.” Estrada Doctrine (1930), reprinted in Brad Roth, Governmental Illegitimacy in International Law 137–38 (1999).


5 See infra note 138.