



The recognition of states and governments under international law

I. The recognition of states

1. Definition

The recognition of a state under international law is a declaration of intent by one state to acknowledge another power as a "state" within the meaning of international law. Recognition constitutes a unilateral declaration of intent. It is entirely at the discretion of any state to decide to recognize another as a subject of international law.

2. Preconditions

The recognition of a state presupposes that it really exhibits the characteristics of a state within the meaning of international law. According to the prevailing three-element doctrine, this requires state territory, a state people and state power (i.e. a government that is effective and independent both externally and internally, as an expression of state sovereignty). Only the actual circumstances are relevant to the assessment of statehood (the "effectiveness principle").

In addition to the three elements mentioned, a state or an international organization can also set further conditions for recognition – for example compliance with the UN Charter or the observance of human rights.

If a state is recognized before all the preconditions for recognition are met (premature recognition), this is contrary to international law and legally ineffective. A state that prematurely recognizes another is in breach of the prohibition of interference in the internal affairs of a state (Art. 2 no. 4 of the Charter of the United Nations).

3. Forms of recognition

Recognition can be explicit or implicit (tacit). In state practice there is generally an explicit declaration of recognition, perhaps addressed to the government of the new state.

A distinction is also drawn between *de jure* and *de facto* recognition. If a state is accorded *de jure* recognition, that means all the preconditions under international law for final and complete recognition have been fulfilled. *De facto* recognition has a comparatively less binding effect, because the legal relationship – though effectively in existence – is only provisional. Provisional *de facto* recognition for political reasons can of course be converted to *de jure* recognition once all the required legal preconditions have been fulfilled.



4. Meaning

The main circumstances in which the recognition of a state is important in the practice of international law are when the existence of a (new) state is legally doubtful, for example if an existing state is destroyed or dismembered, or in the event of the secession of part of its territory.

The recognition of states became less important once decolonization had been completed, but this was reversed in the 1990s – when numerous new states came into being on the territory of the former Soviet Union and the former Socialist Federal Republic of Yugoslavia. There are at present 192 states that are deemed to be recognized under international law.

5. Legal effects

According to present-day state practice, recognition has only a declaratory character, not constitutive (i.e. fundamental or determining). The state comes into existence as soon as it has fulfilled the objective preconditions, especially the three elements of statehood referred to above. Recognition also constitutes a declaration by a state that in its opinion the country it has recognized must be regarded as a "state" within the meaning of international law, and hence also as a subject of international law.

In legal theory the question of whether it is not in fact the act of recognition that actually creates statehood – whether recognition has a constitutive effect, in other words – remains under discussion. In practice, however, the existence of a state is not dependent on whether it has been recognized as such. The sole determining factor is whether or not the elements of statehood under international law (state people, state territory, state power) are actually present in the specific case. Realistically, however, an entity cannot function as a state unless at least a certain number of states recognize it as such. The Turkish Republic of Cyprus, for example, which is only recognized as a state by Turkey, lacks statehood.

In recent state practice recognition has often been made contingent on the fulfilment of certain conditions, for example compliance with the UN Charter or observance of the rule of law, democracy and human rights. From the viewpoint of international law, however, these are not criteria for recognition but conditions of a political nature, formulated in relation to the establishment of diplomatic relations.

6. Swiss practice

The main features of Swiss recognition practice are the principles of universality (the principle that wherever possible, Switzerland maintains diplomatic relations with all states) and of effectiveness (the requirement that the state to be recognized must have undoubted sovereignty). Switzerland consistently bases its practice on the three-element doctrine (see section 1.b above). For the sake of the certainty of international law, Switzerland as a general principle refrains from setting additional conditions for recognition. It reserves the right, however, in the process of deciding whether to recognize a state, to take other factors into account, viz. the attitude of the international community of states or of a group of states with particular relevance for Switzerland.



II. The recognition of governments

1. General

When a state recognizes a government, it acknowledges a group of persons as competent to act as an organ of the state in question and to represent it in terms of international law. The only precondition for the recognition of a government under international law is its effective exercise of sovereign power (first and foremost, control of a substantial part of the territory and of the apparatus of administration). Special cases arise where a legitimate government loses all or part of its power over the state and even flees abroad, becoming a government in exile.

In practice the former government sometimes continues to be recognized as the legitimate government (the *de jure* government), even if it has lost effective control of the state – at least temporarily – and this control is being exercised on the ground by a new, different government (the *de facto* government). If a state maintains normal diplomatic relations with a new government, this is merely a declaration that the new government is effective, not that it is legitimate. One doctrine holds that a government that has come to power by coup d'état or revolution should not be recognized or regarded as legitimate until it has received democratic confirmation (by referendum, for example).

2. Swiss practice

Switzerland's consistent practice since the end of the Second World War has been only to recognize states, not governments. If a country undergoes a change of government, Switzerland declines any explicit recognition of the new administration – restricting itself to the uninterrupted continuation of relations with the country concerned, and hence with the new government. Switzerland thus follows a practice based primarily on the principle of effectiveness.