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MEMORANDUM FOR THE HONORABLE ABRAHAM D. SOFAER  
Legal Adviser  
Department of State

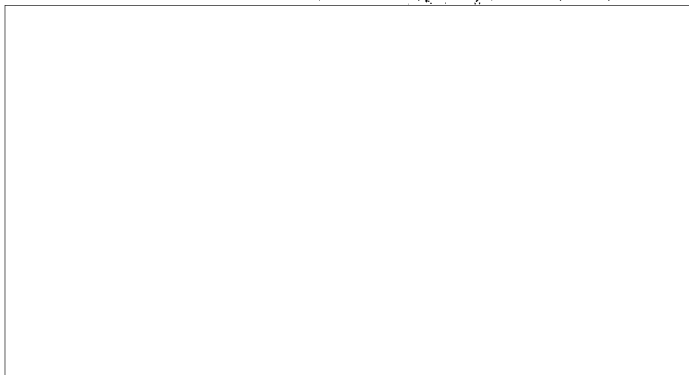
RUSSELL BRUEMMER  
General Counsel  
Central Intelligence Agency

FROM: NICHOLAS ROSTOW *R*  
Special Assistant to the President  
and Legal Adviser

SUBJECT: Recognition of Foreign Governments

Attached for your information is an excerpt from an AEI study  
of the U.S. practice with respect to recognition.

Attachment  
As stated



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# **RECOGNIZING FOREIGN GOVERNMENTS THE PRACTICE OF THE UNITED STATES**

**L. THOMAS GALLOWAY**  
**WITH A FOREWORD BY R. R. BAHTER**



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made possible by a communication in 1969 requesting all United States recognition practice of their host state by me. I updated this material in 1975 on the basis of these foreign states whether recognized since the Department of State

U.S. recognition practice for the various views on desirable U.S. policy, and the position of the Department of State,

of the Harvard Law School has my interest in a topic that has proven fascinating. John Norton Moore, my professor at the Harvard School of Law, who introduced me to international law and who succeeded Professor Charles L. Breyer at the Department of State,

for most of the typing of the many pages. She worked long and hard and made many valuable suggestions. She did this as my secretary for the law firm at which she is now, and has my deep gratitude and respect. I also wish to thank the lawyers within the Legal Adviser's Office, and of Dr. Ronald Landau, a senior advisor in the Office of the department. In the past I have done extensive work on United States relations with Latin America. I have drawn upon my previous study, and I acknowledge my debt to Professor Wadlow, associate dean, College of Arts and Sciences, Nebraska, and Professor Charles L. Breyer, for permission to use their

errors can usually be found in a study of this nature. I have been as careful as possible, and various members of the Department of State and without, have given me their time, their suggestions, and their criticisms. What remain are my own, for which

L. THOMAS GALLOWAY  
Washington, D.C.

## INTRODUCTION

The recognition of foreign governments is an often-practiced but little understood area of foreign policy. Although the practice of recognizing governments that come to power through extraconstitutional means is over two centuries old and literally thousands of new governments have been recognized, much remains unclear about both the practical and the theoretical side of recognition.

Foreign policy decision makers have utilized recognition in myriad ways, depending on the political circumstances of the time and their perception of the national interest involved in a change of government. Thus, for example, the United States has used recognition as a political tool to support antimonarchical governments (under George Washington), to advance economic imperialism (under Theodore Roosevelt), to promote constitutional government (under Woodrow Wilson), and to halt the spread of communism (under Dwight Eisenhower). The practice of other states is similarly diverse.

While the use of the recognition instrument in order to achieve political objectives may be justifiable, the instrument is often employed without the development of an adequate analytical framework to explain it. Consequently, there has been vacillation in policy and confusion over such matters as when the question of recognition arises, under what conditions (if any) it should be granted, and what it means once granted. The confusion is reflected in policy statements issued by foreign ministries and the State Department, in press accounts, and in the reaction of the man on the street. Often the question whether to recognize a new government creates strong emotion among average citizens, as it did in the case of the Maoist government in the People's Republic of China.

Practice over two centuries has not established whether recogni-

ment is not always clear, and problems may arise in determining whether a particular change of government raises the question of recognition.

Unlawful changes of government occur in a variety of ways. In perhaps the most extreme case, a revolution may occur in which the social, economic, and political institutions of a state are radically altered. In such a case, there can be no doubt that the change violates the existing domestic law of the state.

Far more common is the military coup d'état. In the classic case, the military, dissatisfied for one reason or another with the existing government, may take power, killing, imprisoning, or exiling the head of government and members of the cabinet or ruling body. The overt seizure of power is often followed by the formation of a military junta to rule the country until elections are held, or for an indefinite period. As with the case of revolution, when the military seizes power overtly by taking to the streets, there can be little question but that the change of government violates the domestic law of the state, and therefore raises a question of recognition of the new government.

In other cases, it may not be so clear that a change of government is extraconstitutional. For example, the military may bring pressure and cause the resignation of the existing government without an overt show of force. The military may then assume power, commonly with the legislature's approval, which the legislature may or may not have the constitutional authority to bestow.

A similarly questionable change of government occurs when the president is replaced by the vice-president instead of a military junta, but the change is brought about by duress. Here the form of domestic law may be preserved but not the substance. The vice-president who assumes power may be merely a figurehead. In such situations the problems for an outside state in determining whether the question of recognition is raised are patent.

In other cases, it may not even be clear that a change of government has occurred, at least in a formal sense. For example, the military may in fact assume power but leave the head of state and perhaps the head of government in office as figureheads. In such cases outside states are confronted with a difficult choice—whether to accept the action at face value and conclude that no question of recognition arises because no formal change of government has occurred, or to look behind the form and run the risk that their judgments will be attacked as intervention in the domestic affairs of a sovereign state.

Political forces govern the practice of most states when confronted with such situations. For example, in responding to military coups in Latin America in recent years, the United States fairly consistently

has refused to make a close inquiry into changes of government, fearing charges of intervention and wishing to maintain relations with as little disturbance as possible.

Neither the United States nor other states has developed guidelines to determine just when the question of recognition is raised. Indeed, this is probably impossible given the differences in the domestic laws of the various states and the great variance in factual circumstances. The decision, therefore, is basically ad hoc with the political interests of the recognizing state outweighing the technical violation of the other state's domestic law.

States may avoid the recognition question entirely simply by deciding that a change has been in accordance with domestic law. This normally occurs when an outside state wishes merely to continue relations with the new government or to maintain a low profile for political reasons.

#### Criteria for the Grant of Recognition

The decision to recognize a foreign government that comes to power through extraconstitutional means usually involves an interesting and often subtle interplay between the principles of international law and international politics. The interplay is no less interesting merely because political forces often overshadow legal principles.

Some scholars have argued that the decision to recognize a new government is a wholly legal decision.<sup>6</sup> Most policy makers have taken the opposite view, contending that the decision to recognize is political and within the discretion of the recognizing state.<sup>7</sup> In practice, the majority of states blend both law and politics into their decision.

The three major approaches to recognition that have developed in the past two centuries reflect this interplay, and each has its own set of criteria for determining whether to grant recognition. The three are: (1) the traditional approach, (2) the Estrada Doctrine, and (3) the Tobar or Betancourt Doctrine.

**Traditional Approach.** Under the traditional approach, a state considering recognition first seeks to determine:

- (1) whether the government is in de facto control of the territory and in possession of the machinery of the state;

<sup>6</sup> Lauterpacht, *Recognition in International Law*, pp. 87-97.

<sup>7</sup> Senate, Committee on Foreign Relations, *Hearings on S. Res. 205*, pp. 8-17.

- (2) whether the government has the consent of the people, without substantial resistance to its administration, that is, whether there is public acquiescence in the authority of the government; and
- (3) whether the new government has indicated its willingness to comply with its obligations under treaties and international law.<sup>8</sup>

The first criterion is fundamental and by no means limited to the traditional approach. States seldom recognize a new government, at least openly, that is not in effective control of the territory and the machinery of the state.<sup>9</sup> Such action would constitute "premature recognition" and would be considered intervention in the domestic affairs of the state.<sup>10</sup> While the principle is uncontroverted, in practice, when the political interests of the recognizing state favor the new government, the question of effective control may be finessed. The recognition of the Yemen government by the United States in 1962, and the grant of recognition by Hitler and Mussolini to the Franco regime in Spain before Franco had gained control, are examples of such premature recognition.

The second criterion—the consent of the people—is more controversial. In most instances such consent is assumed from popular acquiescence in the assumption of power by the new government. A State Department official, testifying before the Senate Foreign Relations Committee in 1969, explained the United States practice this way:

CHAIRMAN. With the consent or the acquiescence, which do you mean, or do you mean both?

MR. ALDRICH. Well, I think this is something that can mean different things to different people. We have had this ambiguity since Jefferson referred to "the will of the nation substantially declared."

CHAIRMAN. If it is so ambiguous and difficult, is it really a significant consideration then?

MR. ALDRICH. I think it has been in some cases.

CHAIRMAN. But is it under your present policy?

MR. ALDRICH. I think our present policy is more concerned with the acquiescence rather than the declaration of the will of the people. I think that what we have done in recent years

shows a far greater concern with deciding whether the particular government involved has effective control and is not sitting on top of an imminent revolution, but does in fact govern with the acquiescence of the people. We have not generally concerned ourselves with asking, would the people, if given a free plebiscite, endorse that change of government.

CHAIRMAN. In other words, the present policy which, as you say, is established policy, does not require that they be a fully developed democracy in which the people have elected their government?

MR. ALDRICH. I would say that the present policy would like to see that happen but that there are a number of cases in recent years in which we have not insisted on that before recognizing a new government or engaging in diplomatic relations.<sup>11</sup>

The present approach of most states is to interpret the criterion "consent of the people" to mean acquiescence of the people to the new government.

Policy makers have found that in many coups d'etat the concept of actual consent is meaningless. As one State Department official stated:

Most coups occur in less developed countries which have predominantly illiterate and politically dormant populations. The coup is usually quick, bloodless, and effective. Moreover, such changes in government usually occur in one-party states, and take the form of one elite replacing another elite, political or military. In such circumstances the popular will remains largely irrelevant. In the absence of a popular revolution or a clear division of allegiance within the country, the consent or acquiescence of the population must as a practical matter be taken for granted.<sup>12</sup>

The third criterion under the traditional approach, the willingness to fulfill international obligations, finds its origins in United States practice in the last half of the nineteenth century when the Department of State used the standard to extract guarantees for U.S. investments in unstable Caribbean and Latin American states.<sup>13</sup> Today it is largely a *pro forma* requirement; new regimes that seize power usually announce as a matter of course that they will honor all international obligations.

<sup>8</sup> Whiteman, *Digest of International Law*, vol. 2, pp. 72-73.

<sup>9</sup> Green Hackworth, *Digest of International Law*, vol. 1 (Washington, D.C.: Department of State, 1962), pp. 174-192.

<sup>10</sup> Lauterpacht, *Recognition in International Law*, p. 94.

<sup>11</sup> Senate, Committee on Foreign Relations, *Hearings on S. Res. 205*, p. 10.

<sup>12</sup> U.S. Department of State, Office of the Legal Adviser, Memorandum, June 1, 1971.

<sup>13</sup> Lauterpacht, *Recognition in International Law*, pp. 109-114.

Once the three basic criteria under the traditional approach are met, the outside state normally must make a political judgment whether recognition would be in its best interest. In making this political decision, it usually will consider

the existence or non-existence of evidence of foreign intervention in the establishment of the new regime; the political orientation of the government and its leaders; evidence of intention to observe democratic principles, particularly the holding of elections; the attitude of the new government toward private investment and economic improvement. Importantly, also, the interest of peoples, as distinguished from governments, is of concern. These, and other criteria, depending upon the international situation at the time, have been considered, with varying weight.<sup>14</sup>

One might fairly characterize the traditional approach to recognition as flexible and pragmatic. Each decision to recognize is somewhat ad hoc, with the political interests of the recognizing state the major consideration. In many cases the recognizing state may perceive little national interest in a particular change of government, hence down-playing recognition and resuming relations with as little disturbance as possible. However, if the recognizing state perceives that a significant national interest is involved, under the traditional approach it may bargain with the new regime for free elections, a realization of individual freedoms, economic guarantees, and so forth. In the rare case, a state may withhold recognition for a substantial period of time because the new government refuses to comply with such conditions. For example, the U.S. refusal to recognize the government of Albania after World War II continues to the present.

**The Estrada Doctrine.** Under the Estrada Doctrine, the recognition of governments that come to power through extraconstitutional means is for all practical purposes eliminated from diplomatic practice. Only new states are recognized; when a new government comes to power either through constitutional means or otherwise, its relations with outside states remain unchanged.

The doctrine of recognizing only states, and not governments, was first articulated by the Mexican Foreign Minister Don Genaro Estrada in 1930:

It is a well-known fact that some years ago Mexico suffered, as few nations have, from the consequences of that doctrine, which allows foreign governments to pass upon the

legitimacy or illegitimacy of the regime existing in another country, with the result that situations arise in which the legal qualifications or national status of governments or authorities are apparently made subject to the opinion of foreigners.

Ever since the Great War, the doctrine of so-called recognition has been applied in particular to the nations of this continent, although in well-known cases of change of regime occurring in European countries the governments of the nations have not made express declarations of recognition; consequently, the system has been changing into a special practice applicable to the Latin American Republics.

After a very careful study of the subject, the Government of Mexico has transmitted instructions to its ministers or Chargés d'Affaires in the countries affected by the recent political crises, informing them that the Mexican government is issuing no declarations in the sense of grants of recognition, since that nation considers that such a course is an insulting practice and one which, in addition to the fact that it offends the 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, favorably or unfavorably, as to the legal qualifications of foreign regimes.<sup>15</sup>

The Estrada Doctrine embraces the principle of unfettered national sovereignty and rejects interference with the domestic affairs of one state by another through the granting or withholding of recognition. States that have adopted the Estrada Doctrine often say they recognize states, not governments; however, as a practical matter, many states depart from the doctrine whenever they perceive a major political advantage in using the recognition instrument.

A substantial number of states have adopted the Estrada Doctrine, either officially or in practice. In response to the Department of

<sup>14</sup> The statement continues: "Therefore, the Government of Mexico confines itself to the maintenance or withdrawal, as it may deem advisable, of its diplomatic agents, and to the continued acceptance, also when it may deem advisable, of such similar accredited diplomatic agents as the respective nations may have in Mexico; and in so doing, it does not pronounce judgment, either precipitately or a posteriori regarding the right of foreign nations to accept, maintain or replace their governments or authorities. Naturally, in so far as concerns the usual formulas for accrediting and receiving agents and for the exchange of signed letters of Heads of Government and Chancellors, the Mexican Government will continue to use the same formulas accepted up to the present time by international law and diplomatic law" (Whiteman, *Digest of International Law*, vol. 2, pp. 85-86).

State's 1969 survey, thirty-one states indicated that they had abandoned traditional recognition policies and substituted the Estrada Doctrine or some equivalent by which they accepted whatever government was in effective control without raising the issue of recognition. Among the states accepting the Estrada Doctrine were Mexico, France, Finland, Turkey, Germany, Indonesia, and Peru.<sup>16</sup>

**The Tobar Doctrine.** The Tobar or Betancourt Doctrine stands in direct contrast to the Estrada Doctrine. It attempts to encourage democratic and constitutional government by refusing to recognize any government that comes to power through extraconstitutional means until a free election is held and new leaders elected. One writer has noted: "If the Estrada Doctrine mode of approach assumed automatic recognition of new governments, then it might be said that, for practical purposes, the Tobar Doctrine implied automatic nonrecognition."<sup>17</sup> This doctrine is often criticized for its substantial interference with the domestic political processes of sovereign states, and because it bars revolutionary change as a method to overthrow even corrupt and despotic governments.

The Tobar Doctrine was first developed by a foreign minister of Ecuador, and was embodied in a treaty signed in 1907 by five Central American republics. A 1923 treaty went further and barred recognition—even if the people constitutionally approved the change—if the choice of headship or vice-headship fell upon a person connected with the coup d'etat or revolution.

The Tobar Doctrine never has enjoyed widespread acceptance; however, it did not vanish following the termination of the 1923 treaty. In 1963, the governments of Venezuela and Costa Rica attempted to persuade the governments of the Americas to adopt the Tobar Doctrine through a resolution submitted to a meeting of foreign ministers.<sup>18</sup> Although the attempt failed, some states adopted the doctrine unilaterally, including Venezuela and Costa Rica, which applied the doctrine for several years.

**Effect of Recognition.** Just as there has been no agreement on the proper approach to recognition, there is uncertainty and disagreement over the effect of recognition once granted. In short, what does it mean to "recognize" a new government?

<sup>16</sup> See Appendix A.

<sup>17</sup> Martin Needler, "United States Recognition Policy and the Peruvian Case," *Inter-American Economic Affairs*, vol. 16 (Spring 1963), pp. 61, 67.

<sup>18</sup> Whiteman, *Digest of International Law*, vol. 2, pp. 85-86. Guatemala introduced a similar resolution in 1945 that also failed (p. 84).

As Professor Stephen Schwebel has written, the simple answer is that recognition of foreign governments, for all its long history and frequent use, has little substantive content. Governments deal with each other, sometimes extensively, without recognizing one another. They may negotiate and conclude treaties with governments they do not recognize. They may sit in international or regional organizations with other governments they do not recognize. In fact, they may trade with governments they do not recognize.<sup>19</sup> On the other hand, one state may recognize the government of another and yet have no diplomatic relations with that state, even interdicting trade, limiting travel, and maintaining all intercourse with that state through a third party.<sup>20</sup>

The current relations between the United States and the People's Republic of China on the one hand, and until recently Cuba on the other, illustrate the lack of substantive content in the recognition of foreign governments. The United States recognizes the government of Fidel Castro, but until recently it interdicted trade and limited travel, maintaining no diplomatic ties with Cuba. In contrast, although the United States does not recognize the government of the People's Republic of China, a considerable relationship has developed between the two states. Ambassadors have been exchanged and "liaison offices" established in each state. The President of the United States was received as a head of state by the Chinese government. Cultural exchanges have occurred and trade is now lawful between the two states. Both sit on the Security Council of the United Nations. This relationship was established not only while the United States did not recognize the Maoist government but while it recognized another government, that of Chiang Kai-shek, as the government of China.<sup>21</sup>

One might logically inquire why states attach importance to a concept that has so little substantive content. The answer appears to be that the importance attached to recognition derives in part from the weight of tradition and in part from the sense of legitimacy recognition confers. And because states granting or receiving recognition perceive the act as important, they have made it a precondition for other actions that do have inherent significance, such as the continuation of aid or the resumption of diplomatic relations.

The main importance of recognition over the years has been political. Recognition has served as a rough initial indicator of a state's

<sup>19</sup> Stephen M. Schwebel, "Is the 'Recognition' of Governments Obsolete?" *Washington Post*, February 23, 1972, p. A15.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

attitude toward a new actor on the international political scene and of the recognizing state's values and priorities in international affairs.

If a state feels strongly about constitutional government and democratic rule it may refuse recognition until a new government promises to hold elections. If a state wishes to contest vigorously the spread of an ideology it may refuse to recognize governments of that persuasion that come to power. Or if a state wishes to protect the economic interests of its citizens in the foreign state it may condition recognition on economic or investment guarantees from the new government.

On the other hand, if a state desires to protect national sovereignty, or combat intervention in its internal affairs, it may adopt the Estrada Doctrine and reject the political use of recognition entirely.

No one disputes that states repeatedly have used recognition to advance their political interests in the course of the past two centuries. The controversy concerns whether recognition has been effective in advancing the interests of the recognizing state, and if so, whether it is a legitimate political instrument.

# I

## HISTORICAL BACKGROUND, 1780-1960

Obscurity shrouds the precise origins of the concept of recognition of foreign governments. However, recognition finds its general beginnings in the political doctrines of the European monarchies and the rise of the modern nation-state.

The doctrine of the divine right of kings was paramount in the late Middle Ages in Europe and the sovereignty of the king was identified with the sovereignty of the state. The king was the "chosen of God" and thus the only legitimate ruler. From this basic premise sprang the concept of legitimacy which provided that any government that came to power in a state depended for its legality not upon *facto* control, but upon compliance with the established legal order of the state.<sup>1</sup>

Legitimacy was first invoked on behalf of monarchical governments and reached its zenith in the period following the French Revolution when the European monarchies banded together and determined not to recognize a government created in open revolt. Diplomats at the Congress of Vienna in 1814-1815 invoked the doctrine in their attempts to restore monarchical regimes to power. The Quadruple Alliance formed during the Congress of Vienna likewise provided that sovereignty could not be acquired by an act of conquest. Thus, the great powers hoped to defeat any revolutionary attempts to upset the status quo.

It was within this conservative historical context that the American Revolution occurred. Quite clearly, the United States, born of revolution, could not invoke legitimacy to prevent popular changes.

<sup>1</sup> U.S. Department of State, *The Problem of Recognition in American Foreign Policy*, Research Project 174, Division of Historical Policy Research, August 1950, p. 8.



government in foreign states. In fact, the Declaration of Independence had as one of its primal features the right of the people to overthrow an unjust government.

Therefore, it came to the first secretary of state, Thomas Jefferson, to develop and put into practice a revolutionary new theory of recognition to counter the theory of legitimacy, one that gave effect to the consent of the governed.<sup>2</sup> Jefferson developed what came to be known as the de facto theory of recognition, which holds that any government in effective control of a state and representing the will of the people should be accorded recognition. The European monarchies regarded Jefferson's idea as an open encouragement to revolution.

The de facto theory flowed inexorably from Jefferson's general political philosophy, the cornerstones of which were popular sovereignty and the right to revolution. Jefferson, a follower of the social contract theory espoused by John Locke, believed that government was based on the consent of the people and that the people retained a right to abolish any unjust or unrepresentative government and establish one that would represent their will. The step from this belief to the de facto theory of recognition is a short one. One historian has commented:

Thomas Jefferson is rightly considered the author of many of the cardinal principles of United States foreign policy. No doctrine, however, bears more deeply the imprint of his political thinking than does our recognition policy. Indeed, so far removed were his doctrines from the accepted canons of international law, and even from the recent example of the recognition of the colonies by the French government, that it is impossible to trace any relationship between the two. We are obliged to conclude, therefore, that the ideas developed by Jefferson relative to the de facto principle of recognition were of his own invention and in no way connected with previous international precedents.<sup>3</sup>

Jefferson first applied the principle in 1792, upon the fall of the French monarchy, when he instructed the American ambassador in France:

It accords with our principles to acknowledge any Government to be rightful which is formed by the will of the

nation, substantially declared. The late government [set up in France by the Revolution of 1789] was of this kind, and was accordingly acknowledged by all the branches of ours; so any alteration of it which shall be made by the will of the nation, substantially declared, will doubtless be acknowledged in like manner.<sup>4</sup>

In later instructions to the ambassador, Jefferson elaborated on the theme:

... We surely can not deny to any nation that right whereon our own Government is founded—that every one may govern itself according to whatever form it pleases, and change these forms at its own will; and that it may transact its business with foreign nations through whatever organ it thinks proper, whether King, convention, assembly, committee, President, or anything else that it may choose. The will of the nation is the only thing essential to be regarded.<sup>5</sup>

Jefferson's ideas on recognition, enunciated in the above instructions, became the foundation of American recognition policy. Under Jefferson's test, recognition was granted to a new government, whatever the origin of the government, on the basis of two criteria:

- (1) The government to be recognized should be in actual control of the entire governmental authority.
- (2) The government to be recognized should represent the will of the nation, substantially declared.<sup>6</sup>

During the early nineteenth century the United States became the foremost champion of the de facto theory of recognition. In developing recognition policy in this period the foreign policy decision makers stressed the acceptance of the government de facto and assumed that the acquiescence of the people signified the will of the people.<sup>7</sup> Thus, for practical purposes, U.S. recognition policy was virtually automatic, turning solely on a question of fact—did the new government have effective control?<sup>8</sup> If it did, recognition was granted.<sup>9</sup>

<sup>2</sup> Ibid., quoting Jefferson, *Works* (Washington edition) vol. 3, p. 500.

<sup>3</sup> Department of State, *Problem of Recognition in American Foreign Policy*, p. 7.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid., p. 9.

<sup>6</sup> Scholars have argued that the doctrine of nonintervention was a historical development that subsequently justified the de facto theory of recognition but was not, as some have said, the basis for the development of the de facto theory itself. Goebel, *Recognition Policy of the United States*, p. 113.

<sup>7</sup> Department of State, *Problem of Recognition in American Foreign Policy*, p. 15.

<sup>8</sup> Goebel, Jr., *The Recognition Policy of the United States* (New York: Columbia University, 1915).

<sup>9</sup> Ibid., pp. 90-99.

Whatever its democratic sympathies, the United States normally followed the simple formula that the government de facto was equally de jure.<sup>10</sup>

#### Role of Congress

Jefferson envisioned recognition as a function of the executive branch of government, and this is largely how the practice of granting recognition to new governments developed. Congress did however play a limited role in recognition in the early nineteenth century.

In 1811, the House of Representatives passed a resolution claiming the prerogative of empowering the President to accord recognition by appropriating money to pay diplomatic agents to be assigned to the new powers. Similarly, Henry Clay argued for the proposition that Congress could grant recognition to new states or governments, reasoning that by passing a statute regulating universal intercourse, recognition would be automatically conferred:

This House unquestionably has a right to recognize in the exercise of the Constitutional power of Congress to regulate foreign commerce. . . . Suppose for example we passed an act to regulate trade between the United States and Buenos Aires [sic]; the existence of the nation would therefore be recognized as we could not regulate trade with a nation which does not exist.<sup>11</sup>

Clay made further attempts in 1818 and 1836 to gain at least concurrent control for Congress of the power to recognize states and governments. The first attempt was through an amendment to an appropriation bill to include the sum of \$18,000 for one year's salary of a minister to the United Provinces of Rio de la Plata and to pay the cost of maintaining an embassy. Clay felt that passage of the amendment would constitute recognition of the new state.

In 1836 Clay introduced a resolution stating that the inde-

<sup>10</sup> Ibid. A report in 1836 by Senator Henry Clay of the Foreign Relations Committee reflects this noninterventionist philosophy: "The policy which has hitherto guided the Government of the United States in respect to new powers has been to act on the fact of their existence, without regard to their origin, whether that has been by the subversion of pre-existing Government or by the violent or voluntary separation of one from another part of a common nation" (Ibid., p. 16).

<sup>11</sup> *Annals of Congress*, 15th Congress, 1st sess., vol. 2, p. 1499, quoted in Charles L. Cochran, "The Recognition of States and Governments by President John F. Kennedy: An Analysis" (Ph.D. diss., Tufts University, 1969), pp. 33-34. Clay here was concerned with the recognition of new states, not with the recognition of a government within a state. However, the legal rationale would seem to apply to recognition of new governments.

pendence of Texas should be acknowledged by the United States whenever satisfactory information was received that it had a government capable of performing the duties and fulfilling the obligations of an independent nation. This resolution passed the Senate and was endorsed by President Jackson:

It will always be considered consistent with the spirit of the Constitution, and most safe, that it, the spirit of recognition, should be exercised, when probably leading to war, with a previous understanding with that body by whom war can alone be declared, and by whom all the provisions for sustaining its perils must be furnished.<sup>12</sup>

#### Modification of De Facto Principle

There was some modification of the de facto principle before the Civil War. In 1848, a number of revolutions occurred in Europe that evoked great sympathy in the United States and altered recognition policy by placing an emphasis on Jefferson's second criterion, the will of the nation, at the expense of the criterion of effective control.

In February 1848, Secretary of State James Buchanan sent an instruction to the U.S. minister in Paris that went beyond the de facto principle and indicated that recognition policy be applied to favor democratic government.<sup>13</sup> The first part of the instruction to the minister paralleled the usual doctrine.

<sup>12</sup> John Bassett Moore, *A Digest of International Law*, vol. 1 (Washington, D.C.: Government Printing Office, 1906), p. 99. Congress has on various other occasions commented on its role in the recognition of particular governments or states. In 1864 the Committee on Foreign Affairs in the House of Representatives advanced a resolution that stated: "Congress has a constitutional right to an authoritative voice in declaring and prescribing the foreign policy of the United States as well in the recognition of new Powers as in other matters." (*H. Rep. 129*, 38th Congress, 1st session, p. 156.) In 1897 the Senate Foreign Relations Committee recommended adoption by the Senate of a resolution which stated "that the independence of Cuba be, and the same is hereby, acknowledged by the United States of America." (*Sen. Doc. 237*, 56th Congress, 2nd session, p. 64.) These congressional actions concerned the recognition of a new state. However, Congress also took action on the issue of recognition of governments. In 1919 Senator Fall introduced a resolution that sought the removal of recognition from the Carranza regime in Mexico; in 1922 a resolution was introduced to the effect that "the Senate of the United States favors the recognition of the present Soviet Government in Russia." (Ibid., 67th Congress, 2nd session, p. 6945.) Also with regard to the Soviet government, a resolution was introduced in the House "directing the President of the United States to recognize the present government of Russia." (Ibid., 69th Congress, 1st session, p. 8872.) This material was first collected in T. Cole, *The Recognition Policy of the United States since 1901* (Baton Rouge: Louisiana State University, 1928), pp. 12-13.

<sup>13</sup> Department of State, *Problem of Recognition in American Foreign Policy*, pp. 18-19.

In its intercourse with foreign nations the Government of the United States has, from its origin, always recognized *de facto* governments. We recognize the right of all nations to create and reform their political institutions according to their own will and pleasure. We do not go behind the existing Government to involve ourselves in the question of legitimacy. It is sufficient for us to know that a government exists capable of maintaining itself, and then its recognition on our part inevitably follows.

However, Secretary Buchanan then introduced a new factor: "Whilst this is our own settled policy, it does not follow that we can ever be indifferent spectators to the progress of liberty throughout the world, and especially in France."<sup>14</sup> Secretary Buchanan believed that the United States should be the first to recognize the provisional government because of the democratic nature of the new regime. President Polk supported this idea in his message to Congress in 1848. He stated that while the policy of the United States has "ever been that of nonintervention in the domestic affairs of other countries, leaving to each to establish the form of government of its own choice, all U.S. sympathies were on the side of democracy and the new regime."<sup>15</sup>

However if a return to democratic government was not involved, the normal procedure of recognizing any government in control of a state was followed. For example, the traditional policy of recognizing *de facto* governments was applied with vigor in 1856-1857 in the successive coups in Mexico.<sup>16</sup> During these years there were a number of governmental changes in Mexico. Despite the rapidity of developments the United States recognized each, not concerning itself with the stability of the governments it recognized, much less with a commitment to constitutional government. In May 1856, President Franklin Pierce informed Congress that five successive governments had assumed authority in Mexico in the course of a few months and had been recognized successively by the United States.<sup>17</sup>

<sup>14</sup> *Ibid.*, p. 19.

<sup>15</sup> *Ibid.*, pp. 19-22. This principle was followed by President Taylor in recognizing the new regime that resulted from the Hungarian revolution. The same response was used in the revolution of 1848-1849 in Germany, where the Buchanan corollary was used to justify recognizing a *de facto* government more promptly and enthusiastically than was usual.

<sup>16</sup> *Ibid.*, p. 23.

<sup>17</sup> *Ibid.* In 1856, in perhaps the most sweeping statement ever made by a U.S. President on adherence to a pure *de facto* recognition policy, Franklin Pierce said: "It is the established policy of the United States to recognize all governments without question of their source, or organization, or of the means by which the governing persons attain their power. To us it is indifferent whether a successful revolution has been aided by foreign intervention or not; whether insurrection

#### The Recognition Practice from 1860 to 1913

With the outbreak of the Civil War, American recognition policy became more complex as the United States began increasingly to look to other considerations besides the factual existence of a new government. Factors such as the extent to which the new government represented the will of the nation, the degree of stability which the government possessed, and its willingness to fulfill international obligations, began to play roles in the decision to recognize.<sup>18</sup>

The first signs of a departure from the *de facto* policy came before the Civil War in the policy of Secretary of State Webster. When Louis Napoleon overthrew the French Republic and became virtual dictator of France in 1851, the United States was faced with a case of *de facto* control but with a return to conservative, monarchical government. The United States did not extend recognition to the new regime immediately, but waited until a national plebiscite was held. Secretary Webster summarized the U.S. position in a communication to the American diplomatic representative in France:

Before this reaches you, the election will be over; and if, as is probable, a decided majority of the people should be found to support the President, the course of duty for you will become plain. While we deeply regret the overthrow of popular institutions, yet our ancient ally has still our good wishes for its prosperity and happiness, and we are bound to leave to her the choice of means for the promotion of those ends.<sup>19</sup>

This action by Secretary Webster marked a significant deviation from past recognition practices, one that would appear in later policy. Here the United States waited until elections were held before granting recognition, presumably relying on the second criterion of Jefferson's recognition formula—"the will of the people, substantially declared."

The change in policy heralded by Secretary Webster came to fruition during the 1860s, as a result of the efforts of Secretary of State William Seward, who served under President Lincoln. One of

has overthrown existing government and another has been established in its place, according to pre-existing forms, or in a manner adopted for the occasion by those whom we may find in the actual possession of power. It is the more imperatively necessary to apply this rule to the Spanish-American republics, in consideration of the frequent and not seldom anomalous change or organization or administration which they undergo, and the revolutionary nature of most of the changes." Moore, *Digest of International Law*, vol. 1, p. 142.

<sup>18</sup> Department of State, *Problem of Recognition in American Foreign Policy*, p. 24.

<sup>19</sup> *Ibid.*, p. 22.

Seward's tasks was to prevent the recognition of the Confederacy by the great powers of Europe, a task that had an impact on Seward's views on general recognition policy. It was difficult for Seward to follow an automatic, factual policy of recognition while at the same time opposing the right of other nations to recognize the Confederate government.<sup>20</sup>

According to some historians, the principle that Seward developed was based on the fortuitous fact that the Confederate States of America, because of wartime conditions, never convened a popularly chosen Constituent Assembly nor held elections for a legislative body. Seward seized on this historical accident, so it is argued, to develop the principle that only a regularly organized state formally accepted by the people under its jurisdiction merited recognition. In this inauspicious situation some find "the origin of the doctrine that 'free elections' are requisite to a government's recognition by the United States."<sup>21</sup>

A British jurist, Hersh Lauterpacht, more accurately pointed to the real origin of this principle. While Seward did seize upon the anomaly to justify nonrecognition of the Confederacy, statements by Seward, and before him Secretary Webster, reflect a deep concern for the instability pervading Latin America and a growing dissatisfaction with the never-ending line of military dictatorships. The de facto principle advanced by Jefferson was aimed at elevating the will of the people against the encroachments of monarchical legitimacy. As Lauterpacht notes, however, when it became apparent that adherence to de facto recognition resulted in substituting the tyranny of ruthless and adventurous dictatorships for that of monarchies, the United States adopted the principle of subsequent legitimation by the people.<sup>22</sup>

In 1862 Seward refused to recognize a new government in Venezuela despite its de facto establishment. Seward indicated there was

a Revolutionary spirit pervading the republican states on this continent, and that the United States therefore deemed it a duty to discourage that spirit so far as it can be done by standing entirely aloof from all such domestic controversies until, in each case, the state immediately concerned shall

<sup>20</sup> *Ibid.*, p. 24. Technically, the recognition of the Confederacy would have been recognition of a new state, not recognition of a new government of an already existing state.

<sup>21</sup> Needler, "United States Recognition Policy and the Peruvian Case," p. 63.

<sup>22</sup> Hersh Lauterpacht, *Recognition in International Law* (Cambridge, England: University Press, 1947), pp. 115-16.

unmistakably prove that the government which claims to represent it is fully accepted and peacefully maintained by the people thereof.<sup>23</sup>

Seward went further in modifying the traditional de facto policy in 1866 by instructing the American minister to Peru not to recognize a revolutionary regime that had seized power: "Revolutions in republican states ought not to be accepted until the people have adopted them by organic law with the solemnities which would seem sufficient to guarantee their stability and permanency."<sup>24</sup> Seward felt that the de facto recognition policy stimulated unrest by making it too easy for a self-seeking group of revolutionaries to obtain governmental status.<sup>25</sup> Therefore in such situations recognition should be withheld until there was evidence of a "formal acquiescence and acceptance of the new regime by the people."<sup>26</sup> The Seward argument bears a marked similarity to that advanced by the monarchies of Jefferson's time.

Later administrations did not adopt the Seward view wholeheartedly. Nonetheless, the United States did apply Seward's criteria to various coups in Latin America in the latter half of the nineteenth century. In 1880, the Department of State instructed the American minister to Peru to recognize a new regime in Peru if it was "supported by the character and intelligence of Peru and is really endeavoring to restore constitutional government." In 1883, the United States recognized a new regime in Peru only after the new president was confirmed in office by a representative assembly. In 1885, after one government had fallen from power, the Department of State announced that the new president would be recognized "when his authority shall have been confirmed by the Peruvian people."<sup>27</sup>

**Willingness to Honor International Obligations.** Another criterion—the fulfillment of international obligations—began to receive increasing emphasis in American recognition policy following the Civil

<sup>23</sup> Department of State, *Problem of Recognition in American Foreign Policy*, p. 25.

<sup>24</sup> *Ibid.*, p. 26.

<sup>25</sup> *Ibid.*, p. 24. Seward followed the same policy in 1866 in the coup d'etat in Peru. Seward explained that the United States did not question the right of any nation to change its constitution, even by force in rare instances, but he did insist that the new government be sanctioned by the formal acquiescence and acceptance of the people. U.S. Department of State, *Diplomatic Correspondence*, vol. 2 (1868), p. 864.

<sup>26</sup> Department of State, *Problem of Recognition in American Foreign Policy*, pp. 27-28.

<sup>27</sup> *Ibid.*

War.<sup>29</sup> Technically, this was not a new criterion, since the principle was accepted that the obligations of a state are not affected by changes of government.<sup>29</sup> However, in the years after the Civil War, the United States would not assume that any government in actual control would acknowledge or fulfill its international obligations, that is, would honor treaties and agreements entered into by the preceding regime.

The reason for the increased U.S. interest in this factor, and its application to recognition policy, lay in the growing economic interests of the United States in foreign lands. In the second half of the nineteenth century the United States enjoyed a period of sustained economic growth and expansion, and it became a major creditor nation. Recognition policy was altered to serve this new interest.

Many of the states in which Americans invested substantially suffered from chronic political instability and deep-seated poverty. This combination resulted in frequent defaults on government bonds and other instruments, making such investments risky. In an attempt to protect American holdings, the United States relied on recognition as a bargaining weapon and increasingly insisted on evidence that a new government would pay its debts and respect foreign investment.<sup>30</sup> In its zeal to protect legitimate interests, the United States repeatedly overstepped the bounds of legitimate action and actually took direct control of the finances of Haiti and the Dominican Republic in order to ensure the sanctity of American investments. Recognition of new governments was a handmaiden of the overall drive to protect U.S. financial interests.<sup>31</sup>

For example, General Guzman Blanco seized power in Venezuela and was recognized promptly by Brazil, Great Britain, France, Germany, Italy, and Spain. The United States withheld recognition, even though Blanco was in unquestioned control of the country and its governmental machinery. Secretary of State Evarts "thought it best to defer intercourse" until the United States could assure itself that

<sup>29</sup> A distinction must be drawn between the ability to honor international obligations and the *willingness* to honor them. While at various times the United States has insisted on both, the major problem arises over emphasis on willingness to honor international obligations. The ability to honor international obligations is merely one aspect of the requirement of effective control of the governmental machinery.

<sup>30</sup> Department of State, *Problem of Recognition in American Foreign Policy*, p. 29.

<sup>31</sup> William Neumann, *Recognition of Governments in the Americas* (Washington, D.C.: Foundation for Foreign Affairs, 1947), p. 7.

<sup>31</sup> President Hayes's annual message to Congress in 1877 is sometimes cited as the first instance of reliance on this criterion in United States recognition policy. However, as early as 1836, Henry Clay had referred to the ability to fulfill international obligations as a criterion for the recognition of a state.

such a step will not only rest on the popular will of Venezuela but will also be beneficial to the relations between the United States and that country. *Good faith in the observance of international obligations is the first essential towards the maintenance of such relations.* At present there is no indication that any change for the better has taken place, either as regards the payment of the indemnity installments, now for several months in default, or the security of the rights of citizens of the United States sojourning in Venezuela.<sup>32</sup> [Emphasis added.]

Similarly, in 1877, the United States withheld recognition from a new government in Mexico because of "occurrences on the Rio Grande border" that raised questions about the willingness of the new regime to honor its international obligations.<sup>33</sup>

These incidents ultimately subsided and formal recognition was granted the next year (May 1878).

The emphasis on fulfillment of international obligations grew more marked at the turn of the century during the presidencies of Roosevelt and Taft. Roosevelt utilized recognition policy as "a means of enforcing his demands—a means to see that American interests were protected and advanced."<sup>34</sup> Taft, if anything, was more aggressive than Roosevelt in protecting American financial interests. As one historian commented: "If Roosevelt had been painstaking in looking after the rights of Americans in foreign states and especially in Latin America, Taft was actually aggressive in attempting to aid American financiers in those regions."<sup>35</sup>

The emphasis on international obligations was limited almost exclusively to the Latin American area. As one historian commented in regard to recognition of a new government in Serbia in 1903:

The fact that no special mention was made of international obligations in the correspondence leading up to the recognition of the government headed by Karageorgevitch does not signify by any means that this instance furnishes an exception to a rather well established rule. American financiers had not found in Serbia the rich opportunity for investment that they had found in Latin America, and American citizens had not yet begun to travel or reside in this part of the world in any numbers. *De facto* control only was necessary in

<sup>32</sup> Cole, *The Recognition Policy of the United States since 1901*, p. 32, citing: Moore, *Digest of International Law*, vol. 1 (1906), p. 50.

<sup>33</sup> Department of State, *Problem of Recognition in American Foreign Policy*, p. 30.

<sup>34</sup> Cole, *Recognition Policy of the United States since 1901*, p. 43.

<sup>35</sup> *Ibid.*, pp. 44–45.

Serbia. De facto control and especially the willingness to fulfill their international responsibilities (which were usually specified by reference to American concessions) and claims were both essential in Latin-American states.<sup>36</sup>

**Recognition Practice toward Coups d'Etat in Central America.** Principles different from those applied to other states governed the grant of recognition to states in Central America in the early part of the twentieth century. The general instability in Latin America was especially pronounced in Central America and there was almost continual warfare in the region in the early twentieth century.<sup>37</sup> President Roosevelt arranged a conference in 1907 to consider the problem, and several conventions were agreed upon, including an annex on recognition policy that was agreed to by Costa Rica, Guatemala, Honduras, Nicaragua, and El Salvador. The annex provided:

ARTICLE 1. The government of the high contracting parties shall not recognize any other government which may come into power in any of the five Republics as a consequence of coup d'etat, or of a revolution against the recognized government, so long as the freely elected representatives of the people thereof, have not constitutionally reorganized the country.

ARTICLE 2. No government of Central America shall in case of civil war intervene in favor of or against the government of the country where the struggle is taking place.

ARTICLE 3. The Governments of Central America, in the first place, are recommended to endeavor to bring about, by the means at their command, a constitutional reform in the sense of prohibiting the re-election of the President of a republic, where such prohibition does not exist, secondly to adopt all measures necessary to effect a complete guarantee of the principle of alternation in power.<sup>38</sup>

The United States was not a party to the treaty but agreed to follow the policy enunciated in the annex in granting or withholding recognition to new governments in the five states of Central America.<sup>39</sup> Thus the criterion of explicit popular support or subsequent ratification by election which had before been invoked in an ad hoc manner was placed on a formal juridical footing in Central America.

<sup>36</sup> *Ibid.*, pp. 83-85.

<sup>37</sup> Raymond Leslie Buell, "The United States and Central American Stability," *Foreign Policy Reports*, vol. 7 (1931), p. 161.

<sup>38</sup> Department of State, *Problem of Recognition in American Foreign Policy*, pp. 28-29.

<sup>39</sup> *Ibid.*, p. 29.

The 1907 treaty was replaced in 1923 by a considerably more drastic version. Under the treaty of 1907 the revolutionary forces could retain power and legalize their position by means of elections. This opportunity was foreclosed by the treaty of 1923 which forbade the leader of the revolutionary forces from assuming control of the government even if he won a free election following the coup and commanded strong popular support.<sup>40</sup>

Both the 1907 and the 1923 treaties had repeated application. Coups occurred in all the Central American countries. Revolutions or coups d'etat occurred in Nicaragua in 1909, 1912, and 1926. Honduras experienced coups in 1911, 1919, 1924, and 1931. General Tinoco assumed power in Costa Rica by extraconstitutional means in 1917. Guatemalan governments were overthrown three times in this period, first in the Cabrera coup in 1920, next in the Herrera coup in 1921, and finally in the Orellano coup in 1930. A coup occurred in El Salvador in 1931.<sup>41</sup>

In each coup, the United States ostensibly followed the treaty in force at that time. However, the actual policy followed by the United States government varied considerably depending on the political forces involved. For example, President Taft and Secretary of State Knox were strongly opposed to President Zelaya of Nicaragua and favored the coup against him in 1909. To aid the anti-Zelaya forces, President Taft refused to allow anyone associated with Zelaya to stand for the presidential election. Similarly, President Wilson was bitterly opposed to General Tinoco, who assumed power in Costa Rica in 1917. Thus, despite the fact that Tinoco met the requirements of the 1907 treaty, President Wilson refused to recognize Tinoco's government.<sup>42</sup>

In Nicaragua, the United States recognized Adolfo Diaz as president even though he was an uncle of one of the leaders of the coup against the existing government, an action in violation of the treaty. The United States repeated the violation in 1926 when it recognized Moncado as president of Nicaragua following the overthrow of Diaz,

<sup>40</sup> Secretary of State Stimson outlined United States policy in a statement: "It [policy of not recognizing unconstitutional governments] is quite different from the general policy of this country and from the general policy of international law toward the recognition of governments in the world at large. The reason for adopting a more stringent policy in regard to Central America was that the five governments of that area had agreed to apply the restrictions themselves, with the object evidently of discouraging a revolution or coup d'etat within the five Republics." Department of State, *Problem of Recognition in American Foreign Policy*, p. 57.

<sup>41</sup> Raymond Leslie Buell, "The United States and Central American Revolutions," *Foreign Policy Reports*, vol. 7 (1931), pp. 187, 201.

<sup>42</sup> *Ibid.*, p. 202.

even though Moncado had led the coup. The failure of the United States to follow either the letter or the spirit of the 1907 and 1923 treaties led to criticism that U.S. policy was not to discourage revolution and coups, the aim of the treaties, but "to maintain in office in Central America presidents answerable to its influence."<sup>43</sup>

The bloodless Tinoco overthrow of the Gonzalez regime in Costa Rica provides a graphic illustration of the deep U.S. involvement in the internal affairs of a Central American country as a result of the 1907 treaty. On January 25, 1917, General Frederico Tinoco overthrew President Alfredo Gonzalez, who claimed that a conflict over an oil concession to American businessmen was the principal cause of the coup. Tinoco nevertheless was initially popular with the people and quickly placed his regime on a constitutional basis. He held elections on April 1, 1917, received an overwhelming majority, and was proclaimed president by the Constitutional Assembly. President Wilson refused to recognize the Tinoco government even though it was eligible under the 1907 treaty. Indeed, the United States hardened its stand and informed Central American governments that recognition of Tinoco would not be "evidence of a friendly feeling toward the United States."<sup>44</sup> Despite this warning, all Central American governments, save Nicaragua, granted recognition as did most South American and European governments.<sup>45</sup> Historians cite two reasons for the U.S. nonrecognition: the doctrine of constitutionalism and Wilson's view that Tinoco had staged the coup at least in part as a result of the actions of American businessmen.

In August 1917 internal problems multiplied, and Tinoco stepped down in favor of Juan Bautista Quiros. The United States refused to recognize Quiros, and he stepped down after twenty days in favor of Francisco Aguilar Barquero, whom the United States said should be the president because he was the third designate elected in 1914 under the 1871 Constitution. This position was outlined by the secretary of state:

The governmental power should be deposited in the hands of Francisco Aguilar Barquero, successor to the executive power, under the Alfredo Gonzalez regime. Barquero should hold free and open elections for president at earliest possible date. Were this done, it would appear that the necessary legal formalities had been complied with to con-

stitute a legitimate government worthy of recognition by the Government of the United States.<sup>46</sup>

The U.S. action was bitterly resented in Costa Rica. When Aguilar was elected designate in 1914, his term was only four years; Costa Ricans regarded as ridiculous the argument that he was the "legal" president in 1919.

#### The Recognition Policy of Woodrow Wilson

President Wilson made significant changes in the traditional recognition doctrine by extending to all Latin America the constitutional criterion that had previously been applied on a formal basis only to the five republics of Central America.

On March 11, 1913, seven days after he assumed office, President Wilson set forth in a public statement the principles for recognition to be followed not only in the case at hand but also in future actions. His statement was a strong endorsement of a policy designed to strengthen constitutional democracy.

Cooperation is possible only when supported at every turn by the orderly processes of just government based upon law, not upon arbitrary or irregular force. We hold, as I am sure all thoughtful leaders of republican government everywhere hold, that just government rests always upon the consent of the governed, and that there can be no freedom without order based upon law and upon the public conscience and approval. We shall look to make these principles the basis of mutual intercourse, respect, and helpfulness between our sister republics and ourselves. We shall lend our influence of every kind to the realization of these principles in fact and practice, knowing that disorder, personal intrigues, and defiance of constitutional rights weaken and discredit government and injure none so much as the people who are unfortunate enough to have their common life and their common affairs so tainted and disturbed. We can have no sympathy with those who seek to seize the power of government to advance their own personal interests or ambitions.<sup>47</sup>

Wilson's policy was a significant though not total break with past recognition policy. The legitimist criteria of the Central America Treaty of 1907 served as a limited precedent for it as did Secretary

<sup>43</sup> Ibid.

<sup>44</sup> Boell, "The United States and Central American Stability," p. 181.

<sup>45</sup> Ibid., pp. 180-183.

<sup>46</sup> Ibid., p. 183.

<sup>47</sup> Hackworth, *Digest of International Law*, vol. 1 (1940), p. 181.

Seward's requirement of explicit popular support. Nonetheless, the Wilson policy marked a strong shift in emphasis.<sup>48</sup>

The Wilson administration utilized recognition as a political sanction to support constitutionalism, particularly in Latin America, and to discourage the overthrow of existing governments. There is an ironic parallel between Wilson's use of recognition to discourage dictators and encourage democracy and the European monarchies' use of recognition to discourage democracy and encourage the monarchical form of government in the eighteenth and nineteenth centuries.<sup>49</sup>

Wilson did not apply this policy often in non-Western Hemisphere changes of government,<sup>50</sup> and even in Latin America he did not invoke it consistently, not applying it to revolutionary governments that seized power in Peru in 1914 and 1919. On the other hand, he did apply it against new regimes in Mexico, the Dominican Republic, Ecuador, Haiti, and Cuba.<sup>51</sup>

Perhaps the primal illustration of the Wilson approach is found in his dealings with General Huerta of Mexico who came to power in 1913. President Wilson stated in August 1913, in instructions to a personal representative who was to negotiate with Mexican authori-

ties, the conditions he thought necessary for a satisfactory settlement of the recognition question:

- (1) An immediate cessation of fighting throughout Mexico, a definite armistice solemnly entered into and scrupulously observed;
- (2) Security guaranteed for an early and free election in which all will agree to take part;
- (3) The consent of General Huerta to bind himself not to be a candidate for election as President of the Republic at this election; and
- (4) The agreement of all parties to abide by the results of the election and cooperate in the most loyal way in organizing and supporting the new administration.<sup>52</sup>

Huerta rejected the conditions. Wilson then maintained his policy of nonrecognition for two-and-one-half years, even after Huerta had been elected by the Mexican people, until Carranza came to power in 1915 and was accorded recognition.<sup>53</sup> Not surprisingly, the Wilsonian recognition policy was criticized, especially by Latin Americans, as placing one state, the United States, in the position of making itself the arbiter over the internal affairs of another, thus violating the principle of nonintervention.

President Wilson generally sought to use recognition as a political weapon to strengthen constitutional government. However, he violated his own ideals on occasion, and attempted to exclude from power certain political leaders the United States did not favor, even after they had been elected. On other occasions he accorded recognition to governments before elections were held if he perceived this to be in the national interest of the United States.

#### The Recognition Policies of Harding, Coolidge, and Hoover

The decade of the 1920s, and the presidencies of Harding, Coolidge, and Hoover, saw a renewed emphasis on American economic interests. When Harding took office, the question of the recognition of the Obregon regime in Mexico was outstanding. American investors in Mexican oil and mining were concerned with a provision of the Mexi-

<sup>48</sup> Department of State, *Problem of Recognition in American Foreign Policy*, p. 36. One historian commenting on this parallel noted: "Recognition thus came to be used as a means of ensuring democratic regimes, at least in middle America, upon the assumption, presumably, that only such regimes were consonant with the Pan American ideal. The conception of recognition as a moral sanction represented a throwback to the legitimist principle of the eighteenth and early nineteenth centuries. Under that arrangement established governments operated their own club with rules of their own choosing and required applicants for membership to comply with those rules. Those rules were based upon the supposed interests of monarchies and the rights of dynastic succession. That system had been rejected by the young American nations as they took their places in the international community. But in what Baty has called 'this illogical twentieth century' it has been resurrected, not, as formerly, for the purpose of defending monarchy, but rather as a means for promoting democratic or constitutional legitimacy. The actual existence of a regime in power in a state and its continuance in power were not deemed sufficient proof that its power rested upon the consent of the governed." D. Dozier, "Recognition in Contemporary Inter-American Relations," *Journal of Inter-American Studies*, vol. 8 (1966), pp. 322-323.

<sup>49</sup> *Ibid.*, pp. 318, 325.

<sup>50</sup> The most significant issue of recognition to arise in Europe during the Wilson presidency was that occasioned by the overthrow of the provisional government of Russia (under Alexander Kerensky) by the Bolsheviks on November 7, 1917. The provisional government had assumed power upon the abdication of the Tzar of Russia, Nicholas II, on March 7, 1917. It was accorded U.S. recognition on March 20. However, the United States withheld recognition of the new Bolshevik government for sixteen years, until November 16, 1933. The reasons underlying the refusal to recognize are well known, and centered on the Bolshevik unwillingness to honor international obligations and the United States aversion to the revolutionary nature of Communist ideology.

<sup>51</sup> Hackworth, *Digest of International Law*, vol. 1, p. 185.

<sup>52</sup> Department of State, *Problem of Recognition in American Foreign Policy*, p. 38.

<sup>53</sup> The government of Carranza was recognized by the United States when it agreed to honor all contracts and obligations of the government that had been superseded, to protect foreign life and property, to make indemnity for injuries caused by the revolution, to allow religious freedom, and to hold popular elections upon the restoration of peace. Whiteman, *Digest of International Law*, vol. 2, p. 70.



can constitution which separated sub-soil mineral rights from the title to the surface.

Senator Albert Fall, the secretary of the interior under Harding, set out the basic United States position: "So long as I have anything to do with the Mexican question, no government of Mexico will be recognized with my consent, which does not first enter into a written agreement promising to protect American citizens and their property rights in Mexico."<sup>54</sup> Secretary of State Hughes reiterated this position. Nevertheless, President Obregon refused the offer to negotiate, contending that he would accept recognition only on an equal basis with the United States and on terms that did not compromise Mexico's sovereignty. The United States rejected this view and advanced the unique argument that recognition did not fall within the scope of international law but was purely a domestic question. The United States then withheld recognition for two and one-half years, even though all Latin American states had recognized the Obregon government.<sup>55</sup>

The constitutionalist views of President Wilson, while not totally rejected by the Harding and Coolidge administrations, were relegated to a position of less importance in U.S. recognition policy. The administrations of Harding, Coolidge, and Hoover normally accepted the general acquiescence of the people as sufficient and did not require formal evidence of popular support for a government that came to power through extraconstitutional means. The administration of President Hoover in fact explicitly abandoned constitutional legitimacy in a statement by Secretary of State Stimson in 1931.<sup>56</sup>

#### The Recognition Policy of Franklin Roosevelt

Latin America. President Franklin D. Roosevelt indicated from the outset that he favored a return to the "traditional" policy of recognizing new governments primarily on the basis of their de facto

<sup>54</sup> Neumann, *Recognition of Governments in the Americas*, pp. 10-11.

<sup>55</sup> *Ibid.*, p. 11. The United States finally extended recognition following a compromise agreement that established a program of indemnification for expropriated land and protected American oil interests in Mexico.

<sup>56</sup> "The present administration has refused to follow the policy of Mr. Wilson and has followed consistently the formal practice of this Government since the days of Jefferson. As soon as it was reported to us, through our diplomatic representatives, that the new governments in Bolivia, Peru, Argentina, Brazil, and Panama were in control of the administrative machinery of the State, with the apparent general acquiescence of their people, and that they are willing and apparently able to discharge their international and conventional obligations, they were recognized by our government." Department of State, *Problem of Recognition in American Foreign Policy*, p. 48.

existence. He retained but deemphasized the requirement that a new government give evidence of its willingness to fulfill international obligations. President Roosevelt and his secretary of state, Cordell Hull, also stressed the need for consultation among American republics before extending recognition to a new government in the Western Hemisphere.<sup>57</sup>

President Roosevelt's Good Neighbor Policy toward Latin America rested on the doctrine of nonintervention. As a corollary, no test of recognition could pass judgment on the constitutionality of the internal processes of foreign governments. In a direct repudiation of the Wilsonian doctrine, President Roosevelt stated in 1933 that he favored a policy of nonintervention and mutual consultation:

The maintenance of constitutional government in other nations is not a sacred obligation devolving upon the United States alone. The maintenance of law and orderly processes of government in this hemisphere is the concern of each individual nation within its own borders first of all. . . . If and when the failure of orderly processes affects the other nations of the continent it becomes the joint concern of the whole continent in which we are all neighbors.<sup>58</sup>

Despite this general policy, recognition of new regimes in Latin America did not become automatic. Indeed, in the thirteen years of the Roosevelt presidency, recognition of new governments was considered in fifteen instances and significantly delayed or withheld for political purposes on five occasions.<sup>59</sup>

<sup>57</sup> Until the 1920s recognition was an unilateral act, completely within the discretion of the recognizing state. The 1920s saw the first halting movement by an international body to consider the issue, and in 1925 there was an attempt by an inter-American judicial body to codify recognition practice. Following this, no further inter-American steps were taken to codify recognition practice or provide for collective recognition action until the 1940s. The recognition issue increasingly became integrated into the general fabric of the developing inter-American system, and acquired procedures not present in recognition policy in other areas of the world. *Ibid.*, p. 66.

<sup>58</sup> *Ibid.*, pp. 67-68.

<sup>59</sup> For example, recognition was withheld for two years in the United States response to the Hernandez Martinez regime in El Salvador which took power in December 1931. When Roosevelt assumed office, the 1923 treaty concerning recognition of new Central American governments was still in effect. Consequently, when General Hernandez Martinez assumed power, the United States took the position that recognition could not be accorded because the assumption of power violated the terms of the 1923 treaty. Martinez had assumed the presidency through military coup d'etat, and the new regime had not been ratified through free elections. Also, Martinez was disqualified from the presidency since he had been minister of war within six months of the coup. In February 1932 the United States rejected a plan to have Martinez deposit the power of the presidency in the first vice-president for six months and reassume the presidency thereafter.

The overall United States attitude toward military coups in Latin America and recognition of the new regimes is perhaps best captured in a telegram from an embassy official concerning the U.S. position on the assumption of power in Ecuador by General Enriquez in 1937:

A military dictatorship under one guise or another will continue in power in Ecuador for some time to come with possible occasional changes in the supreme chief. The question, therefore, would seem to be the recognition of that form of government which apparently is accepted by the people of Ecuador because (1st) they have no other choice and (2nd) they seem resigned to the fact that constitutional government cannot be had. Accordingly, we shall probably continue to have to deal with this form of government.<sup>60</sup>

**Influence of World War II on Recognition Policy.** With the outbreak of World War II, the American states established the Inter-American Emergency Advisory Committee for Political Defense for the purpose of studying and coordinating measures for preventing subversive activities that might be harmful to the security of the American republics. The committee in 1943 adopted a Resolution on the Recognition of New Governments Instituted by Force which provided:

For the duration of the present world conflict they do not proceed to the recognition of a new government instituted by force, before consulting among themselves for the purpose of determining whether this government complies with the inter-American undertakings of the defense of the Continent, nor before carrying out an exchange of information as

Finally, almost two years later, with Martinez still in power, Costa Rica and El Salvador renounced the 1923 treaty and Costa Rica recognized the Martinez regime. Shortly thereafter the other three Central American states extended recognition through an agreement that the 1923 treaty would continue to bind them, but would not bind either Costa Rica or El Salvador. The United States accorded recognition one day after the Central American states. Department of State, Bureau of Public Affairs, Historical Office, *U.S. Policy toward Latin America: Recognition and Non-recognition of Governments and Interruptions in Diplomatic Relations, 1933-1974* (June 1975), pp. 1-5.

<sup>60</sup> *Ibid.*, p. 12. Between 1934 and 1937, the United States confronted six extra-constitutional assumptions of power in Latin America: (1) Ecuador—October 1943—Paez Government; (2) Paraguay—March 1936—Franco Government; (3) Bolivia—May 1936—Toro Government; (4) Bolivia—July 1937—Busch Government; (5) Paraguay—August 1937—Paiva Government; and (6) Ecuador—November 1937—Enriquez Government. In each coup, the military either assumed power itself or installed a man to head the new government. In each case, the United States granted formal recognition within a month, and contented itself with *pro forma* statements that the new government would honor all international obligations.

to the circumstances which have determined the establishment of the said government.<sup>61</sup>

With the advent of the war, and the establishment of the inter-American committee, the attitude of the new regime toward the war, and specifically toward the Axis powers, became of prime importance in the recognition decision.<sup>62</sup>

The influence of the war issue on the U.S. recognition decision is illustrated in the assumption of power in Argentina by General Edelmiro Farrell in February 1944. Upon taking control, the Farrell government appointed a pro-Axis general as the head of press and information, granted contracts to German firms for the construction of barracks, and censored U.S. films. The United States reacted strongly to these moves, stating that it had "reason to believe that groups not in sympathy with the declared Argentine policy of joining the defense of the Hemisphere were active" in the assumption of power by Farrell.<sup>63</sup> The U.S. ambassador recommended a "minimum action program" as a precondition to recognition to include "liquidation of all Axis organizations and propaganda media, control of prin-

<sup>61</sup> Department of State, *Problem of Recognition in American Foreign Policy*, p. 69. For example, the United States withheld recognition when Major Gualberto Villarroel assumed power in Bolivia in December 1943. On the day of the coup, the U.S. ambassador recommended that recognition not be granted until the government deported certain Nazis and Japanese. Secretary Hull on December 22 told the press that the attitude of the Villarroel government toward the war effort was of first importance and the United States was concerned whether outside influence unfriendly to the Allied cause played any part in the assumption of power by Villarroel.

Secretary Hull went further on January 24 and accused the Villarroel government of links to subversive elements hostile to the Allied cause. According to Hull, the Bolivian coup was "but one act committed by a general subversive movement having for its purpose steadily expanding activities on the continent." Nineteen Latin American states refused to recognize the Villarroel government on the same grounds. The "Axis taint" precluded recognition. In May, Villarroel offered to trade the deportation of Axis nationals for United States recognition. The United States refused the offer.

However, the Bolivian cabinet voted to detain and expel Axis nationals anyway because it wished to identify itself with the Allied war effort. Based on this and other actions friendly to the Allied cause, and after extensive contact between American and Bolivian officials, the United States finally extended recognition on June 23. Department of State, *U.S. Policy toward Latin America*, pp. 14-18.

<sup>62</sup> Department of State, *Problem of Recognition in American Foreign Policy*, p. 69.

<sup>63</sup> On April 4, the Argentine chargé d'affaires in Mexico City signed the final act of the Inter-American Conference which called for freedom of the press and protection of individual liberties. On April 9, the United States and twenty other Western Hemisphere states agreed to resume relations. Department of State, *U.S. Policy toward Latin America*, p. 24.

cial Nazi business firms, and internment of Axis diplomats."<sup>64</sup> Non-recognition continued for a year until Argentina on March 27, 1945, declared war on the Axis states and pledged adherence to the acts of the Mexico City conference.<sup>65</sup>

In contrast to the lengthy delay where Axis sympathy was suspected, the United States promptly granted recognition to new regimes in Ecuador in June 1944 and Guatemala in November 1944. The United States did wait until elections were held in the case of Guatemala, but since elections were held only two weeks after the coup, the delay was not substantial.<sup>66</sup>

**Other Parts of the World.** Outside the Western Hemisphere, President Roosevelt generally adhered to the principle of nonintervention.<sup>67</sup> The President refused to grant recognition in the Spanish Civil War until all effective resistance to the national regime had ended. In the grant of recognition to the Franco government, President Roosevelt followed the traditional policy of recognizing a new government solely on the basis of its de facto existence.<sup>68</sup>

However, the question of recognition did not arise in areas outside Latin America often enough to result in the development of a consistently applied policy. Africa, which was to become a fertile ground for military coups in the 1960s, was still under colonial con-

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> On June 7, 1943, following the resignation of President Arturo Rawson of Argentina, General Pedro P. Ramirez assumed the presidency and command of the armed forces. The United States accorded recognition four days later after receiving assurances that the new regime would support the war effort. The tenor of the United States position is reflected in a statement made to the Argentine Foreign Ministry upon the grant of recognition: "[The United States views] with satisfaction the public declarations of the new Argentine Government affirming a policy of friendship and loyal cooperation with the nations of America in accordance with the agreements in force, and that this policy will be implemented by acts. This assurance is especially welcome in view of the fact that these agreements were designed to protect the safety of all American nations which now is gravely threatened by the lawless aggressors." Department of State, *U.S. Policy toward Latin America*, p. 14.

<sup>67</sup> The statement of Secretary Hull in a letter to Representative Tinkham on May 16, 1936, was frequently referred to by officers of the Department of State to explain the prerequisites to recognition of new governments: "It is the rule of the United States to defer recognition of another executive in its place until it shall appear that it is in possession of the machinery of the state, administering government with the assent of the people thereof and without substantial resistance to its authority, and that it is in a position to fulfill all the international obligations and responsibilities incumbent upon a sovereign state under treaties and international law." Whiteman, *Digest of International Law*, vol 2, p. 71.

<sup>68</sup> Department of State, *Problem of Recognition in American Foreign Policy*, p. 70.

trol. Liberia was an exception, and the United States accorded recognition to the administration of President Edwin Barclay in June 1935. Europe of course did not spawn many coups d'etat or revolutions during this time, although the annexation of sovereign states by the Axis powers did raise recognition problems, both at the time of conquest and at the time of liberation and the formation of new governments. The Near East and South Asia as well as the Far East were still largely under colonial control, or were relatively stable during the Roosevelt years.

#### The Recognition Policy of Harry Truman

**Latin America.** A move to codify inter-American recognition practice was made in 1945 when Guatemala presented a draft resolution to the Inter-American Conference in Mexico City. The resolution, which did not enjoy U.S. support, provided that American nations refrain from granting recognition to antidemocratic regimes that might establish themselves in any state in the hemisphere. The Guatemalan resolution was defeated. However, two resolutions on the issue were adopted. The first stated that the right of maintaining, suspending, or renewing diplomatic relations should not be exercised as a means of obtaining unjustified advantages under international law. The second resolution provided that the establishment or maintenance of diplomatic relations with a government did not imply any judgment upon the domestic policies of that government.<sup>69</sup>

In the Truman years, nineteen changes of government in Latin America were achieved through extraconstitutional means. Almost all the changes were military-inspired, and in over half (ten of nineteen) the United States delayed recognition. This reflected a policy decision made within the Department of State to proceed cautiously in recognizing military governments.<sup>70</sup>

Dean Acheson characterized the recognition policy toward changes of government in Latin America in a 1949 speech to the Pan American Society:

Our policy with respect to recognizing new governments in Latin America is not inconsistent with our encouragement of democracy. We maintain diplomatic relations with other countries primarily because we are all on the same planet and must do business with each other. . . . When a freely elected government is overthrown and a new and perhaps

<sup>69</sup> Ibid., pp. 87-88.

<sup>70</sup> Department of State, *U.S. Policy toward Latin America*, pp. 27-54.

militaristic government takes over, we do not need to recognize the new government automatically and immediately. We can wait to see if it really controls its territory and intends to live up to its international commitments. We can consult with other governments, as we have often done. But if and when we do recognize a government under these circumstances, our act of recognition need not be taken to imply approval of it or its policy.<sup>71</sup>

This policy resulted in ultimate recognition of most military governments after a short delay to determine if the regime controlled the territory of the state and was willing to honor its international obligations. Delay also resulted from the practice of consulting with other American states. In practice, as George Kennan aptly noted, recognition was accorded after an interval neither so short as to be undignified nor so long as to make recognition a source of conflict between the United States and the new governments.<sup>72</sup>

In the majority of instances the United States accorded recognition within a month after it satisfied itself that the usual criteria had been fulfilled. The following statement prepared for Secretary Acheson for use regarding the June 1951 military coup d'etat in Bolivia is representative:

From appearances to date the Junta has met the criteria which the U.S. has applied in other recent cases involving the recognition of Latin American governments which have come to power through irregular procedures. It has established its authority over Bolivian territory, with the substantial acquiescence of its people, it has declared its intent to honor Bolivian international obligations, and its assumption of power has not been due to any external influences.<sup>73</sup>

In certain cases when the United States was displeased, especially where a constitutional government was overthrown by the military, as in Venezuela in November 1948, recognition was delayed for a period of months. This was sometimes accompanied by United States interest in a promise to return to constitutional government.<sup>74</sup>

<sup>71</sup> *Ibid.*, p. 48.

<sup>72</sup> *Ibid.*, p. 42.

<sup>73</sup> *Ibid.*, p. 51.

<sup>74</sup> For example, recognition was delayed for several months in response to the January 11, 1946, assumption of power in Haiti by the military. The United States acted cautiously because it did not wish to encourage the establishment of military regimes that promised to observe democratic practices to gain recognition but then ignored their promises after recognition was granted. Department of State, *U.S. Policy toward Latin America*, pp. 45-46.

However, the United States was hesitant to utilize recognition as a club to secure the promise of elections. For example, in the February 1949 forced resignation of President Juan Natalicio Gonzalez of Paraguay, the American chargé recommended that recognition not be granted and that relations be suspended until the new government complied with its promise to hold elections. The Department of State rejected this approach, doubting that the suspension of relations, and presumably the withholding of recognition, would effectively encourage democratic processes or increase stability.<sup>75</sup>

**Other Parts of the World.** Like the Roosevelt administration, the Truman administration did not confront, at least in the traditional sense, enough extraconstitutional changes of government outside Latin America to develop a policy. The "minimal" recognition criteria were applied in a routine fashion, as this response to a coup d'etat in Syria in 1949 reflects:

The Legation has been instructed to inform the Ministry that the United States Government has noted with satisfaction the public assurances which His Excellency the Prime Minister, Colonel Husni Zaim, has made affirming the intention of the new Syrian Government to discharge Syria's obligations arising out of all treaties and international agreements entered into by previous Syrian Governments, as well as its attachment to democratic principles and its intention to hold new elections at an early date.

The Legation avails itself of this opportunity to renew to the Ministry the assurances of its highest consideration.<sup>76</sup>

<sup>75</sup> A similar hesitance is found in the response of Secretary Acheson to another coup in Paraguay in 1949, where he felt that to withhold recognition until after elections occurred: "might be interpreted as an endorsement of the quality of these elections."

This interpretation, the secretary felt, would be particularly damaging since it would lend support to the erroneous but widely held belief that recognition implied approval of a new regime. To rebut this misconception, the secretary stressed on numerous occasions, such as the takeover by Arnulfo Arias in Panama in December 1949, that recognition did not constitute "approval of the manner in which the present government came into power." Department of State, *U.S. Policy toward Latin America*, pp. 46-47.

<sup>76</sup> Whiteman, *Digest of International Law*, vol. 2, p. 455. Similarly, when another government was formed in Syria on August 14, 1949, it was promptly recognized on the same criteria: "The United States Government relies upon the assurances given to it by the Syrian Government that Syria intends to honor its international obligations, and trusts that the friendly relations between our two nations will be continued. The promulgation on September 11, 1949, of a new electoral law reflecting the Syrian Government's intention to hold elections and form a constitutional government has also been noted." (*Ibid.*, p. 455.)

However, the Truman administration faced difficult recognition decisions in two separate instances outside Latin America: (1) the assumption of power by Mao Tse-tung in China, and (2) the liberation of states in Central Europe from Axis control.

In perhaps the most celebrated instance on nonrecognition in modern times, the United States withheld recognition from the new government of the People's Republic of China, which was proclaimed in Peking on September 21, 1949. The establishment of a government headed by Mao Tse-tung followed the crossing of the Yangtze River by Communist troops, and the evacuation of Nanking by the government of the Republic of China. The government of the Republic of China moved to Canton, then to Chungking, and finally to Taipei in December 1949.

President Truman and the Department of State refused recognition to the new government and continued recognition of the Chiang Kai-shek government on several grounds. First, the Mao government was not in control of the entire land mass of China, and a rival government already recognized by the United States continued to function. Second, the new Communist government did not represent the will of the Chinese people. Third, the Communist government was not willing to honor all its international obligations. Fourth, as a sovereign state the United States was free to withhold recognition rather than accord recognition to a government that fomented revolution and hatred of the United States.<sup>77</sup> Nonrecognition continued for the duration of the Truman presidency.

Communist activity also presented President Truman with recognition problems in another area of the world, the sovereign states that had been conquered and occupied by the Axis powers during World War II. In February 1945 at the Yalta conference, the United States, Great Britain, and the Soviet Union in a unanimous "Declaration on Liberated Europe" agreed that the three governments would assist the liberated states "to form interim governmental authorities broadly representative of all democratic elements in the population and pledged to the earliest possible establishment through free elections of governments responsive to the will of the people."<sup>78</sup> In certain cases, such as Albania, major problems arose and recognition was not accorded.<sup>79</sup> However, in other instances elections were held, a new

government was formed, and recognition was promptly accorded, as occurred in Poland.<sup>80</sup>

#### The Recognition Policy of Dwight Eisenhower

Latin America. Recognition policy toward Latin America under Eisenhower was dominated by two considerations: (1) the new regime should be in effective control of the state; and (2) the new regime should be anti-Communist. If both factors were met, recognition was promptly extended, even though in some instances an elected president might be replaced by a right-wing military junta that repressed human rights or violated civil liberties. While the United States still inquired whether the new regime was willing to honor its international obligations, this was, in most cases, merely *pro forma*. Elections were seldom mentioned when the United States extended recognition, and rarely was a promise to hold elections, legislative or presidential, advanced as a condition to recognition.

The Eisenhower administration faced nineteen instances in Latin America where the question of recognition arose. In only two cases was recognition delayed, and then for only six weeks. In most situations, a non-Communist bent plus effective control was enough to gain recognition.<sup>81</sup>

A number of the military regimes that were accorded quick recognition because of their anti-Communist beliefs did promise to hold free elections, apparently on their own initiative.<sup>82</sup> While the

would be held and that the treaties and agreements in effect between the United States and Albania on April 7, 1939, remained in effect. Assurances were given with respect to democratic elections but problems developed over certain bilateral treaties, and the government of Albania refused to accede to the treaties until certain "corrections" had been made. (Whiteman, *Digest of International Law*, vol. 1, pp. 322-325.) These treaties were never "corrected" and to the present, the United States does not recognize the government of Albania.

<sup>80</sup> Whiteman, *Digest of International Law*, vol. 2, pp. 410-412.

<sup>81</sup> On January 1, 1959, following years of revolutionary activity by Fidel Castro, President Batista fled Cuba. On the evening of January 1, Fidel Castro proclaimed Manuel Urrutialeo to be provisional president. The United States extended recognition on January 7 in a formal diplomatic note. Two years later, in January 1961, President Eisenhower broke diplomatic and consular relations with the government of Cuba. Nonetheless, recognition of the Fidel Castro regime continued. *Ibid.*, pp. 268-270.

<sup>82</sup> For example, the United States granted recognition to a military junta six days after it overthrew the elected president of Honduras, Julio Lozano Diaz, on October 21, 1956. The United States accorded recognition because the junta was considered friendly to the United States and was anti-Communist, and in addition, had announced its willingness to fulfill its international obligations, and restore constitutional rule through elections. Department of State, *U.S. Policy toward Latin America*, pp. 58-59.

<sup>77</sup> *Ibid.*, pp. 90-110.

<sup>78</sup> *Ibid.*, p. 408.

<sup>79</sup> Pursuant to the principles established at Yalta, the United States, through a diplomatic note of November 12, 1945, responded to a request for recognition from the new Albanian government and indicated its willingness to recognize the government of Albania provided that assurances were given that free elections

United States was undoubtedly glad to receive such assurances (Haiti, 1956; Honduras, 1956; Venezuela, 1958), there is no evidence that it demanded such promises as a condition to recognition.

Indeed, on several occasions the Department of State refused to rely on a promise to return to constitutional government as a condition to the grant of recognition. For example, in the June, 1957 takeover by General Antono Kereau in Haiti, the American ambassador requested that recognition be deferred until the intentions of the new regime toward elections became clear. The Department of State rejected this suggestion, arguing that conditioning the grant of recognition on the holding of elections constituted intervention in the domestic affairs of Haiti.<sup>83</sup>

**Other Parts of the World.** Eisenhower, like Roosevelt and Truman before him, did not confront many recognition decisions outside Latin America. The significant cases included Vietnam (1953), Tunisia (1957), Iraq (1958), Burma (1958), Pakistan (1958), Korea (1960), Laos (1960), Turkey (1960), and the continuing problem of the refusal to recognize the People's Republic of China.

The July 14, 1958, coup in Iraq is representative of the Eisenhower policy. Here the military overthrew the monarchy of Iraq and almost immediately announced that it would honor all its international obligations, including those relating to petroleum. On July 30, Secretary of State Dulles recommended to President Eisenhower that the United States recognize the new government of Iraq.

I believe that we should shortly recognize the new government in Iraq. Although we deplore the brutality which characterized its seizure of power, the new regime has quickly restored order, is in full control of the country and apparently faces no organized opposition. The Foreign Minister and other officials have repeatedly said that Iraq wishes to continue close friendly relations as well as economic cooperation, particularly in oil matters, with the United States and other Western powers. These assertions have been accompanied by public assurances that the new government would fulfill Iraq's international treaty obligations.<sup>84</sup>

<sup>83</sup> Ibid., pp. 65-66.

<sup>84</sup> Whiteman, *Digest of International Law*, vol. 2, pp. 450-451. The recommendation continued: "The question of recognition of the Iraqi Republic has been discussed with representatives of the Muslim Baghdad Pact countries, Iran, Turkey and Pakistan, who have indicated their understanding of the advisability of our recognizing the new Iraqi Government without undue delay so as to be in the best position to protect United States interests in Iraq and to exert constructive

United States recognition policy throughout the 1950s was distorted somewhat by the continued nonrecognition of the People's Republic of China. While in the normal case the United States followed the *de facto* approach with anticommunism an additional criterion, State Department officials often defended the nonrecognition policy towards Communist China in sweeping, doctrinal terms, causing confusion and misstating general policy. For example, Secretary Dulles stated in an address in 1954:

Let me first recall that diplomatic recognition is a voluntary act. One country has no right to demand recognition by another. Generally, it is useful that there should be diplomatic intercourse between those who exercise *de facto* governmental authority, and it is well established that recognition does not imply moral approval.

President Monroe, in his famous message to Congress, denounced the expansionist and despotic system of Czarist Russia and its allies. But he said that it would nevertheless be our policy "to consider the government *de facto* as the legitimate government for us." This has indeed been the general United States policy, and I believe that it is a sound policy. However, where it does not serve our interests, we are free to vary from it.

In relation to Communist China, we are forced to take account of the fact that the Chinese Communist regime has been consistently and viciously hostile to the United States.<sup>85</sup>

#### Summary

U.S. recognition policy from the time of Jefferson until 1960 was complex and changing. There was much confusion and disagreement over the proper role of recognition from one administration to another, and usually significant confusion and inconsistency within an administra-

influence upon the new regime. It is expected that the Baghdad Pact countries also will soon extend recognition. The Governments of Lebanon and Jordan have similarly expressed to us in private their appreciation of the considerations which argue for early recognition by the United States. Other Arab states, such as Saudi Arabia and Tunisia, have already extended recognition. We will wish to consult with other friendly nations, such as the NATO powers, but your authority is now sought for the United States to extend formal diplomatic recognition to the Republic of Iraq as soon as such action is deemed appropriate." The United States extended recognition on August 2, 1958 (ibid.).

<sup>85</sup> Department of State, "The Threat of a Red Asia," address by Secretary of State Dulles, *Bulletin*, vol. 30 (April 12, 1959), pp. 539-540.

tion. U.S. policy varied from a de facto policy of almost automatic recognition to the active use of recognition to achieve policy goals.

The changing nature of recognition policy and the inconsistent application of the policy continued into the Kennedy administration, to which we now turn.

## 2

# U.S. RECOGNITION POLICY UNDER JOHN F. KENNEDY, 1961-1963

### Latin America

President John F. Kennedy based his recognition policy toward Latin America on two deeply held views—his antipathy toward military dictatorships and his belief in the need for social, economic, and political progress through the Alliance for Progress. Kennedy's basic foreign policy, vividly reflected in his recognition policy toward Latin America, broke sharply with U.S. foreign policy under Eisenhower. In the 1950s the United States accepted de facto military regimes obtaining power through coup d'état, and gave them military, economic, and humanitarian assistance. If the new regime was friendly and anti-Communist, it could count on a warm United States response. One historian has observed that "the operative premise seemed to be that dictators offered the surest defense against the threat of communism."<sup>1</sup>

Kennedy rejected the complacent acceptance of military regimes and strongly denounced militarism in Latin America. He believed that democratic, constitutional government was a precondition to the social and economic development Latin America so badly needed and therefore he premised his most ambitious Latin American programs on the development of strong, constitutional government.<sup>2</sup> Consequently, the Kennedy administration viewed military coups d'état in Latin America with considerable distaste and sought a return to constitutional government in as short a period as possible. As one writer commented:

<sup>1</sup> E. Liewen, *Generals vs. Presidents—Neomilitarism in Latin America* (Praeger: New York, 1964), p. 114.

<sup>2</sup> *Ibid.*, p. 115.