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DIPLOMATIC RECOGNITION IN AN INTER-DEPENDENT WORLD:

EMERGING THEMES

Policy Planning Staff

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External Affairs and
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Canada

Diplomatic Recognition in an Inter-dependent World:

Emerging Themes

"We can recognize anyone who owes us money."

with apologies to Woody Allen

I. Introduction:

This paper addresses the question of diplomatic recognition. In addition to examining the background to a traditional issue, with its attendant legal implications, it questions its usefulness as a concept at a time of growing inter-dependence and evolution in inter-state law and practice.

Among the key arguments developed in this paper are:

- the legal and political arguments surrounding the question of diplomatic recognition are ringing increasingly hollow; they no longer answer the requirements of a changing international system, especially as we move into a "post nation-state world";
- new concepts are being developed, responding to pragmatic necessities in an inter-dependent world, which have undermined much of the requirement for diplomatic recognition except as a symbolic gesture;
- although diplomatic recognition may not disappear from political radar screens as an issue, it needs to be de-emphasized, just as the pragmatic avenues open to diplomatic exchange need increased emphasis;
- we need a new vernacular when dealing with recognition issues, possibly linked to a more realistic "functionalism"; the black and white arguments of "recognition" or "non-recognition" are useless in an era where sovereignty and statehood may no longer be the key issues; the results make make for a more complex international environment, but one more solidly rooted in reality.

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II. Background:

The current practice of extending diplomatic recognition had its origins in the political doctrines of the European monarchies and the rise of the modern nation-state and is linked to the notion of state "sovereignty". The concept of recognition, however, has never been codified and is not covered by international convention. It had once been considered that a territorial entity only becomes sovereign, and therefore subject to the rights and duties of international law, through its recognition as such by existing sovereign states. It is now accepted that **recognition is essentially a declaration by one state that it takes official note of another state's existence.** It is therefore a political act, which has been used to encourage sympathetic regimes or factions or to discourage governments for ideological reasons.

Recognition may be inferred by two acts of government: the conclusion of a bilateral treaty, or the formal initiation of diplomatic or consular relations. (Recognition is a prerequisite for diplomatic relations, but it is entirely possible to recognize other regimes and governments without having such relations; the USA recognized the Castro government in 1959, but has not had diplomatic relations since 1961). Consular activity without a formal request for exequatur (official authorization) does not imply recognition. Neither does participating in international organizations or conferences in which unrecognized entities take part. (Canadian representatives can thus sit at the same table as entities which we do not recognize and sign treaties that emerge from multilateral conferences without implications for recognition.)

There are three accepted methods of according recognition: **express recognition of governments, tacit recognition of governments and recognition of states only.**

In the case of **express recognition**, a review of generally-accepted recognition criteria is undertaken each time an unconstitutional change of government occurs, and an explicit statement according or withholding recognition is issued subsequently. Under the **tacit recognition** method, relations are maintained on a "business as usual" basis when an unconstitutional change in government occurs, but statements on recognition can be issued in exceptional circumstances, such as when domestic political concerns justify clarification, or when there may be competing factions within another state.

The third method, also known as the "**Estrada Doctrine**", consists of only recognizing new states; when a new government comes to power, irrespective of how it emerged, the relations of that state with other states remain unchanged. The doctrine, first articulated by Mexican Foreign Minister Genaro Estrada in 1930, was intended to prevent interference in the domestic affairs of one state by another through

the granting or withholding of recognition. Initially popular in the developing world, it has now been adopted by many countries in the developed world.

There is a distinction between **de facto recognition** and **de jure recognition** which goes beyond Latin translation. In the case of the Baltics, many countries, including Canada, acknowledged the de facto incorporation of the Baltic republics into the Soviet Union between 1940 and 1991, but did not accept that they were legally part of the Soviet empire (hence withholding de jure recognition). In 1948, when Canada recognized Israel, then in the midst of its war of independence, we withheld de jure recognition, presumably until its borders were more clearly established and its status as a state capable of standing on its own was demonstrated.

III. Canadian policy:

Canada used the **express recognition** doctrine until 1973, when it shifted to a policy of **tacit recognition**. (A number of other countries shared our difficulties with express recognition, and it is no longer common practice.) In 1988, and in light of problems with tacit recognition as a practice, Canada adopted the **Estrada doctrine**, which was perceived as giving a measure of flexibility in our relations with new regimes, and avoiding the need to face difficult questions associated with recognizing governments which may have come to power through what we considered to be illegitimate means. With the practice of recognizing states, our attitude towards a regime is expressed, not through the "black or white" act of recognition, but through political declarations and the intensity of the relationship we wish to develop with a new government.

In conformity with this policy, Canada has contacts with liberation groups and so-called "governments-in-exile", but it does not "recognize" them as the sole legitimate representative of a state (nor, indeed, in any other capacity). The issue of recognition of governments in exile once arose when Canada had an express recognition policy (eg., Free Poland), but should not be an issue under the Estrada doctrine.

As to the conditions under which the Estrada doctrine would be invoked, three criteria have traditionally been advanced in international law and practice as constituting the elements essential to statehood. These are:

- a relatively well-defined territory;
- a settled population; and
- a government independent of any other state and having the capacity to

exercise its authority over the territory and population.

These criteria would appear to be objective. They provide grounds, for example, for failing to recognize a Biafran statehood, in the absence of a government with effective authority over the territory of Biafra. They might also provide grounds for withholding recognition from a new, independent Croatia, given the occupation of part of its territory by Serbia and the largely undefined territory and borders which it might eventually claim. On the other hand, we do not necessarily recognize countries which meet all three criteria, such as the Democratic Peoples' Republic of Korea, in view of other, over-riding political concerns.

Adoption of the Estrada doctrine alleviates some political problems associated with recognition. But the legal framework for addressing recognition issues is far from comprehensive, and is largely over-shadowed by political considerations which impinge on recognition whenever the question arises. Recognition remains important because it is associated with the concept of "state sovereignty". But it is of declining usefulness in a modern era where many actors--not merely states--occupy the international stage, and where pragmatic, functional concerns have led to relationships which are now increasingly difficult to characterize.

IV. Political judgments:

If we judge from past practice, political judgments largely inform decisions as to (a) whether to recognize a state and (b) when to announce recognition. Canadian practice since the change of recognition policy in 1988 is too brief to shed much light based on precedent. If we include the experiences of other countries, as well as political judgments based on earlier policy, the following factors are relevant in the decision-making process:

1. Viability and real independence of the new state:

The viability and the real independence of a new state are among the first issues considered in weighing recognition. The staying power of its leadership, the strategic significance of its geographical situation and its military and economic capabilities have an impact in assessing whether a state will endure. Although Israel declared its independence on May 14, 1948, Canada waited for satisfactory proofs of compliance with the essential conditions of statehood to announce de facto recognition on December 24, 1948. De jure recognition was only granted on May 16 1949. The

presence of Indian troops in Bangladesh was a source of concern when recognition of Bangladesh was considered. Viability or real independence has been overlooked in some cases when a State was anxious to recognize a new state for political purposes.

2. Effect on relations with mother state:

The recognition of a seceding state can be considered a hostile act by the central authority and be condemned as intervention in the internal affairs of a country. Pakistan severed diplomatic relations with the first states (all from the Eastern Bloc) which recognized Bangladesh in 1972, but it could not afford to do so when larger and friendlier countries also granted recognition. When it became apparent that the UK, Australia and New Zealand would recognize Bangladesh, Pakistan withdrew instead from the Commonwealth as a form of protest (re-joining again in 1989).

3. Nature of the Bilateral relationships:

The nature of the bilateral relationship with the "mother state" in the event of a messy divorce will be a relevant factor. If the relationship has been cordial or good, political considerations may argue for buying time pending a decision, and awaiting the decisions of other states. If the relationship is not particularly strong, recognition may be relatively unimportant, and timing becomes a judgment to be assessed mainly in terms of domestic constituencies. Canada's recognition of the Pinochet government in Chile in 1973, for example, was considered somewhat precipitous by many Canadians, even though the new regime had clearly satisfied legal criteria.

4. Views of allies, friends and neighbouring states:

Consultations among like-minded countries are common before granting recognition, as states are generally reticent to be premature with recognition, or to do it alone or in bad company. The United Kingdom, Australia and New Zealand tried to coordinate with many other countries the announcement of their recognition of Bangladesh. More recently, members of the European Community have been jointly weighing decisions on the recognition of Slovenia and Croatia. Neighbouring states are in a privileged position to offer insight, but at the same time their views could be biased by their own particular interests. Strategic and

security considerations, for example in the case of an entity which has nuclear weapons on its soil, would warrant consultations with NATO allies.

5. The possible impact of recognition:

Some models of recognition are virtually problem-free. Free decisions to dissolve federations present no problems. Singapore's dissociation from the Malaysian Federation was followed by Canadian recognition two days later. The dissolution of the United Arab Republic did not even raise the issue of recognition (as it had been a union more in words than in fact), and the respective seats at the UN that Egypt and Syria had forfeited in favour of a single seat for the UAR were restored. Recognition becomes problematic in the case of break-away states, where there is discord between the two entities. In these cases, other states assess recognition in part on the likely impact of that act by one state or by the international community on:

- the dynamics within the state itself: would recognition precipitate civil strife or exacerbate political tensions (a possible Croatian scenario)?
- the dynamics within the state from which the new state is breaking away: would recognition complicate a delicate political situation, or would it be preferable to allow parties to work out differences free of signals of outside preference (the Soviet dilemma)?
- the dynamics of the immediate community of states: would there be a "spill-over" effect from one act of recognition, or would an act of recognition have an adverse impact on the immediate region (the southern Soviet republics)?

The argument that recognition decisions are sui generis is largely a product of these and similar assessments about the possible impact of recognition in various circumstances.

5. Views of Canadian domestic interest groups:

The reality of domestic politics is that key constituencies play a large part in the question of recognition. Canadians with family

connections to other countries of origin have strong views and highly-developed lobbying skills, often based on misconceptions of what recognition involves. Among the key questions which the political level will wish to assess are: Would Canadian groups strongly support or strongly oppose an act of recognition? How large or vocal are domestic interest groups? Are they strategically located in key constituencies, and do they have vocal supporters in Parliament or within the governing party? To what extent are their views reflected in domestic media coverage? How would the Canadian public in general react to recognition?

6. Principles relating to self-determination and democracy:

The widespread acceptance by states in recent years of new principles of state conduct, especially respect for human rights and democratic institutions, has found its way into the political considerations which underpin recognition policy. In the case of unions or federations once united under authoritarian or totalitarian control, and which are dissolving with the spread of democratic institutions, Canada and other countries have developed principles which relate to self-determination, human rights and democracy, drawn from the United Nations and CSCE experiences. In September 1991, USA Secretary of State Baker suggested five principles by which may provide a framework for recognition, based on the process through which states come to independence:

1. The populations concerned must themselves determine their future, peacefully and consistent with democratic values and practices and with the principles of the Helsinki Final Act;
2. Existing internal and international borders should be respected; any change should occur only by peaceful and consensual means consistent with CSCE principles;
3. Democracy and the rule of law must be supported; peaceful change should occur only through an orderly, democratic process, especially through elections;
4. Human rights based on full respect for all individuals, including the equal treatment of minorities, should be safeguarded; and

5. International law and obligations should be respected, especially adherence to the provisions of the Helsinki Final Act and the Charter of Paris.

These factors help to make informed decisions on each case. The last thirty years, which have been the decades of the emergence of new states, have produced an impressive body of precedent and practice. But they do not remove the problems. Larger countries have a greater weight in the recognition equation simply because they are large; no matter what happens with Russia (or whether it meets CSCE principles if it becomes independent and sovereign), the West will have to find a way to "recognize" its existence in a way which makes a practical relationship possible. Smaller states are more vulnerable, as the Pakistani experience over Bangladesh illustrates. The view that each situation is sui generis is largely true, but also singularly unhelpful to charting a course for the future.

V. The Deficiencies of Recognition:

Recognition holds a symbolic appeal. It is linked to the concepts of sovereignty and independence, and the accreditation of embassies and a diplomatic community are part of the baggage of independent statehood. But the practice of recognition has been greatly over-emphasized:

- it conveys the concept of independence at a time when inter-dependence has become the dominant paradigm of international relations (is Moldova more independent because it is "recognized" as a sovereign state?);
- it ignores the practical realities of contact and association which most states have with other states, irrespective of their doctrines of recognition (we will deal with Ukraine pragmatically, irrespective of how we treat the recognition issue);
- it has become a political barrier to constructive international dialogue (eg., recognition of Israel by Arab states);
- it deals inadequately with the situations of states which might be independent in theory but which have in effect delegated important aspects of their political, economic and military sovereignty to some form of supra-national association or even confederation (can we recognize both a confederal Yugoslav authority and also six sovereign republics? If we can, does recognition or sovereignty have any real meaning?) and

- it stresses a "statist" conception of international politics at a time when borders are disappearing and non-governmental relationships are assuming an importance in some cases far greater than that of the governmental sector.

The inconsistencies and uncertainties which seem to surround the issue stem in part because recognition as a doctrine no longer responds to the key question of diplomatic inter-change, namely, how to deal with other states. We have extended recognition to entities, such as Monaco, which do not meet the legal criteria, and we have denied recognition to other entities which meet those same strictures (North Korea).

Moreover, the demands of inter-dependence, and especially the need for representation in multilateral institutions, have broken down the fixed lines of statehood. Even though there are few embassies in Taipei, many countries are effectively represented through various type of "offices" which are essentially "ambassadorial" in the scope of their work. Taiwan is an economic power in Asia, and could become a signatory to the GATT despite its political ambiguity. Along with Hong Kong (another non-independent entity), it is about to become a member of the Asia Pacific Economic Council, where all other members are commonly recognized states.

The concept of recognition remains trapped in a "statist" conception of international relations at a time when sovereignty, recognition and international borders are decreasingly relevant.

VI New Issues of Recognition:

We are moving into a "post nation-state" world, in which power is diffused beyond and beneath the nation state as it has been conceptualized for the past 300 years. The institutions that have traditionally embodied the nation state are regularly denied their sovereign power in a world in which power is increasingly shared. A few examples:

- the European Community is clearly an international player in its own right; it sits around the G-7 table, and we accredit representatives to it; it has the power to regulate the activities of its constituent parts in many respects comparable to, or even stronger than, the Canadian government.
- Canadian provinces, USA states, German laender and many other entities have hundreds of agreements on issues of mutual concern in areas in which they are constitutionally empowered; their agreements

are binding and effective, and they are not considered treaties only because provinces and states are a priori considered to be non-sovereign bodies in international law, a tautological loop that spares us the qualms of recognition.

- there is a growing recognition of the desirability of larger economic groupings (EEC, NAFTA, ASEAN), which necessarily must have some of the trappings of political power, if only to level the playing fields; this is being accompanied by the rise of localism or regionalism, stressing the political alienation that arises with distant power and the preoccupations of locally-focussed polities.

As the international community has tried to accommodate new realities into old definitions, the concept of recognition has been bent out of shape. In response to the Yugoslav crisis, there is talk of "de-recognition", in effect, declaring Yugoslavia dead, replacing it with something else. In the Haitian crisis, because we recognized the state but had no lever to focus our disapprobation of the new government, we developed the concept of "recognition but disapproval". This response would have barred the alleged government of Haiti from a meeting of Francophonie, irrespective of policies towards recognizing states or governments. In Ukraine, we are near an economic arrangement and a treaty in everything but name, in spite of exercising caution about the formalities of recognition.

The issue is not sovereignty. Canada and the United Kingdom are different countries in spite of having a common "sovereign". The UK and the EC share powers despite the absence of any traditionally sovereign power vested in the European Community. Ukraine is not going away, whether we recognize it or not, and in spite of what we say when recognition is conferred ("de facto" or "de jure").

We need new language and new concepts. We need additional elements for a more comprehensive, "functional" framework for inter-entity relationships. There are precedents and examples, which include the role of Canadian provinces abroad and the roles of multilateral organizations. We might begin by acknowledging that in a post nation-state world, "recognition" as a formal concept has reached the end of its life-cycle. We should be searching for a complex of mechanisms which, for example, would recognize the authorities of Kiev in matters over which they exercise jurisdiction, the Ukrainian authorities over matters of republican responsibility, and the central Soviet authorities in matters retained by (or delegated to) the Centre.

What are the implications? International negotiations, agreements and treaties would be conducted between entities on the basis of the powers that they enjoyed, without any derogation from the authority or status of the instruments agreed to. Central governments of one state could enter agreement with provinces or state

governments of other countries, if there were a parallelism in their powers and authority. Membership in international organizations would be a function, not of "nation-state" status, but of the focus of the organization and the powers enjoyed by a particular level of authority. An Arctic Council, for example, might see Canadian territories (North-West Territories, Yukon) alongside an American state (Alaska), at the same table as nation-states (USSR, etc.) and Greenland (however defined).

Our concept of recognition, to the extent that we needed one, would thus be substantially different. It would be a doctrine in which we did not recognize states or governments *per se*, but in which we recognized the authority of governments to act as international entities (having legal personalities) in areas where their authority could be demonstrated, either through constitutional or delegated authority. This would make the recognition issue one of clarifying authority rather than one of choosing between competing levels of authority. In fact, it might well have some roots in the traditional concept of recognition as drawn from the Estrada doctrine.

VI. Conclusion:

In the end, we may need to de-emphasize the notion of "recognition" to the point where it gradually disappears as a doctrine in international law and practice. We may need to revert instead to the issues of:

- respect for principles we value (democracy, respect for human rights), thus loading our political vernacular with a philosophical commitment to responsiveness and an acceptance that institutional sovereignty must be derived at root from the fundamental freedom of the individual; and
- clarity in the division of powers permitting entities with international responsibilities to participate effectively in the international arena, taking fully into account the complexities inherent in "non-parallel" patterns of power distribution from state to state.

The dominant mood is pragmatism. The political principle is functionalism. In the spirit of Woody Allen, although perhaps not exactly in his words, "We can recognize anyone who owes us money."

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