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Question 2: "The confusion which characterises the subject of recognition of governments is not due so much to the unsettled state of the principles involved as to the nebulous nature of the term recognition." (Talmon). Is this correct? To what extent do the normative criteria influence the recognition of states and governments?

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Overview

There are about 192 states in the world today, each completely recognised and each belonging to membership of the United Nations[1] and enjoying the full benefits of international recognition. Generally, recognitions of states and governments are considered to be paramount rituals for the legal reputation and political survival of the states and governments concerned as recognitions are generally argued to be the basis of conferring and confirming the international legal personality and legitimacy an entity. Indeed recognition influences an entity's diplomatic discourse, its jurisdictional status, immunities in foreign courts and capacities to make treaties with other nations among others.[2]

Unfortunately, while recognition seems to play a pivotal role for the legal existence, reputation and political survival of states and governments, the doctrine is marred by serious conceptual problem. As Leonard[3] noted, there seems to be lack of a clear understanding of what exactly recognition is and what it is actually meant to imply in international law. Indeed a common understanding and application of recognition seems to differ depending on the context and purpose for which it is being used. The traditional international law scholarship and debate has often been as to whether recognition is a constitutive or declarative act. Practitioners and scholars also want clarity as to whether recognition is a legal or political concept. Moreover there are also associated confusions emanating from attempting to derive meanings from sub-recognition concepts such as 'full recognition' 'official recognition', 'formal recognition', 'judicial recognition', 'diplomatic recognition', 'political recognition' 'de-jure recognition', 'de-facto recognition' etcetera, some of which serves no better practical and academic purposes than mere confusion.

This eassy discusses the complex subject of recognition of states and governments. The present writer admits that there are serious conceptual problems undermining a clear understanding of the term recognition especially the unresolved doctrinal debates between the constitutive and declarative theories of recognition. The eassy however is quick to observe that the problems associated with recognition of states and governments are not just limited to the conflicting theoretical and inconsistent language usage, but it also extends to the application of the principles and criteria involved. The present writer observes that admittedly, there nearly exist a clear normative framework that should guide the recognition of statehood and governments and that should ideally be adequate to help in the distinction between states and non-states and between legitimate governments and illegitimate governments. While some of these criterions have their own ambiguities, the present writer maintains that at-least they provide the much needed necessary benchmark to help distinguish between states and non states and between governments and non-governments. The eassy however observes that unfortunately, in the modern day practice, the normative criteria have been trashed to limited applications while political considerations have taken over control of recognition decisions. The ramification is that in the end, many potential states and governments remain unrecognised even when they seems to meet all of the criteria while those who do not meet the criteria gets recognised. Indeed states making recognition decisions have gone ahead to introduce their own criteria for recognition of statehood and government. In the final

[1] See for example http://www.un.org/members/list.shtml

[2] See for example Dugard, J (1998:58-59), International Law, A South African Perspective, 5th Edition, Juta & Co. LTD, South Africa.

[3] Leonard M. Hammer (2007:31), A Foucauldian Approach to International Law: Descriptive Thoughts for Normative Issues, Ashgate Publishing LTD, England

analysis, the normative criteria limitedly influence recognition decisions not because they are vague, but because they have been undermined by political consideration and individual state interests. Unless a consistent and uniform international practice is re-established, recognitions will appear and remains political gimmicks with legal ramifications though.

Conceptual problems related to the nature of recognition

As initially noted, the dilemma affecting a clear understanding of recognition is tied to the old debate between the constitutive and declarative theories.

The constitutive view of recognition holds that an entity's very legal existence as part of the international system is 'constituted' by the recognition of the entities making up that system.[4] In this sense, laws among nation arise exclusively as a product of sovereign consent with the freedom among members to exclude all who lie outside the consent group. From this perspective therefore, recognition involves assessing whether the entity in question qualifies for recognition as a sovereign, independent state through its fulfilment of the criteria for statehood such as defined territory, population, stable government and full internal and external independence as determined by members of the international system. Recognition, thus creates a new state or regime, establishes and determines its international legal personality[5]. As Leonard sums it, from the constitutive view, an international lawyer might refer to recognition as assisting in the decision-making regarding the existence of a state[6]. Legal relations between two entities who are subject to a superior legal order can therefore only arise as a result of mutual recognition of legal personality.

There are definitely practical problems associated with this conception of recognition. For instance from its strictest sense, the constitutive theory holds that no new state need have any relationship with another state unless it has been accepted into the community of nations by recognised nations. However, in practice, it has been observed that even 'unrecognised' entities are in reality not totally unrecognised by international law after all because they are still expected to follow certain rules of international law example, respect for human rights. This implies that such entities are actually known to exist and the constitutive view does not constitute anything from this understanding. The reality becomes that even when 'states' and 'government' are officially unrecognised, in practice they actually are actually in existence and operation. The Taliban Government of Afghanistan (1996-2001) was for example unrecognised and yet it was in 'empirical' existence and control of the government of Afghanistan. In this sense, recognition does not constitute anything and neither does it deny the empirical existence of any entity. Practicing recognition from its constitutive sense therefore pose a major challenge to its adherence. The situation even becomes more complex if an entity is recognised by a few states and not by others. It becomes more difficult to say what exactly such entities are, whether they are states or governments from the constitutive sense or whether they are not.

On the other hand is the declaratory theory that holds that the international system encompass and renders rights and responsibilities to such entities that exists as a matter of fact. This implies that recognition of an entity by members of an international system is nothing more than a declaration of an entity already existing by legal fact, in turn implying that there was already existing legal

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[4] See for example Brad, R. R (1998;124), Governmental Illegitimacy in International, Clarendon press, Oxford, USA

[5] See for example Rebecca, M. M. Wallace (2002:77), International Law, 4th Edition, Sweet and Maxwell, London, UK.

[6] See for example Leonard, M. Hammer (2007:31), A Foucauldian Approach to International Law: Descriptive Thoughts for Normative Issues, Ashgate Publishing LTD, England.

relationship by matter of the fact rather than recognition.[7] From this declarative perspective, the international system is taken to automatically accord rights and responsibilities to whatever entities that present themselves in facts. Thus, recognition is seen as a mere formality to validate the existence of an entity that otherwise already exists. A new entity in this sense acquires capacity in international law not by virtue of consent of others but by virtue of particular factual situation and its own effort of constituting it's self without having to wait for the procedure of recognition by others to confirm existence.[8]

The confusion which characterise the subject of recognition therefore seems to lie between the fundamental dilemma of choosing between facts and law as presented by the declarative and constitutive views. The declarative theory and its emphasis on facts of existence entails the acknowledgment of rights to existing facts without regards to the manner in which such entity came into being. Thus, even if a government came to power through revolution, violence or any other manner that violates the law, adherence to the declarative theory would not mind about the method used to come into being but the facts of existence. This can be amounted to toleration of violence and lawlessness. Besides, since the procedures of coming into existence are not taken into consideration, it means that states have discretion on deciding whether to recognise an entity or not depending on whether it suits their interest.[9] Indeed as Talmon[10] argued, it becomes individual state's own political judgement for recognition. Yet the constitutive theory too has its own fallacy. As James Crawford observed; 'If a state is, and becomes an international person through recognition only and exclusively, then rules granting any right to statehood are a priori impossible.[11] Crawford[12] further rightly observed that neither the declaratory nor the constitutive position lays the ground work for dealing with this fundamental tension. In this own word; 'The declaratory theory assumes that territorial entities can be by virtue of their mere existence readily classified as having the one particular legal status and this confuses facts with law... A state is not a fact in the sense that a chair is a fact; it is... a legal status attaching to a certain state of affairs by virtue of certain rule. The declaratist's equation of fact with the law also obscures the possibility that the creation of states might be regulated by rules predicted on other fundamental principles, a possibility which is borne out to some extent in modern practice'.[13] On the other hand, Crawford continued, 'the constitutive theory, although it draws attention to the need for cognition, or identification, of the subject of international law, and leaves open the possibility of taking into account relevant legal principles not based on facts, incorrectly identifies that cognition with diplomatic recognition and fails to consider the possibility that identification of new subjects may be achieved by way of general rules, rather than on an ad-hoc discretionary basis'. [14]

Besides the above problem, there is another problems related to the languages of recognition or non recognition that have not been uniform. As Ian Brownlie noted, there has been the inconsistent usages of languages such as '***de-facto'*** recognition, '***de-jure'*** recognition, 'full recognition',

[7] See example Brad, R. R (1998;124), Governmental Illegitimacy in International, Clarendon press, Oxford, USA
[8] See for example Malcolm N. Shaw (2008:446), International Law, Sixth Edition, Cambridge University Press, UK.
[9] See for example Stefan Talmon (1998: 250), Recognition of Government in International Law with Particular Reference to Government in Exile, Oxford University Press, UK
[10] Ibid
[11] See for example James Crawford (1979:4), The Creation of Statehood in International Law, Oxford University Press, London, UK.
[12] Ibid
[13] Ibid
[14] Ibid

‘diplomatic recognition’, ‘formal recognition and so forth.[15] The language of de-facto recognition is generally used with regards to regimes that exercises control in only part of the state’s territory and whose legitimacy is under contest.[16] This form of recognition is argued to be provisional, conditional, implied, incomplete and revocable. In this sense, the usage of recognition is mainly restricted to a government fulfilling some but not all the conditions of the requirements of a government under International Law especially with regards to partially successful government example insurgents and an unconstitutional government.[17] On the other hand, the concept of de-jure recognition is used to imply ‘final recognition’, ‘unconditional’, ‘express’, ‘full’, or irrevocable recognition of a government. However, in law, the legal effect and differences between de-jure and de-facto concept seems not to exist as both de-jure and de-facto entity in fact acts in the capacity of state or government during the time when de-jure recognition still subsist. In this sense, the distinction becomes overlapping. As professor Brownlie puts it, three decades out of date as a matter of the ordinary description of state practice.[18]

Extent of application of criteria for statehood in recognition decisions

As initially mentioned and leaving the theoretical conflicts and the linguistic challenges aside, and as initially aforementioned, the problems associated with recognition of states and governments are not just limited to the conflicting theoretical and inconsistent language usage, but it also extends to the application of the principles and criteria involved. It must be observed that admittedly, there exist a normative framework for recognition of statehood and governments that should ideally help in the distinction between states and non-states and between legitimate governments and illegitimate governments. While some of these criterions have their own ambiguities, at-least they provide the much needed necessary-benchmark to help distinguish between states and non states and between governments and non-governments. The problem as noted is that in the modern day practice, the normative criteria have been trashed to limited applications while political considerations have taken over control of recognition decisions while states have also varyingly introduced additional criteria.

With specific reference to statehood and for the purposes of international law, the traditional criteria for statehood had been that for an entity to be recognised as a state, it should possess; (a) permanent population (b) a defined territory (c) a government and (d) have capacity to enter into relations with other states.[19] The criterion of permanent population connotes a stable community[20] and is naturally required to determine statehood[21] as practically no state can exist without a population. The criterion for defined territory demands that in order for an entity to qualify as a state, it must have a relatively stable territorial boundary implying that without territory, an entity should in principle not qualify for recognition as a state. The criterion for an effective government in principle means that for any entity claiming statehood, it must possess an effective government that is in total control of its territory and that is independent of any external authority. In other words,

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[15] See for example Ian Brownlie (2003:88), Principles of Public International Law, Six Edition, Oxford University Press, New York.

[16] See for example David H. Ott (1987: 86), Public International Law in the Modern World, Pitman Publishers, Great Britain.

[17] See for example Stefan Talmon, ‘Recognition of Governments’: An Analysis of the New British Policy and Practice (1992: 46), British Year Book of International Law 231.

[18] See for example Ian Brownlie, ‘Recognition in Theory and Practice’ in R. St. J. MacDonald & D.M Johnson (eds.) (627-636), The structure and process of international law.

[19] See article 1 of the Convention on Rights and Duties of States (Montevideo Convention), 1933

[20] See ibid, page 70

[21] See Malcolm N. Shaw (2008:199), International Law, Six Editions, Cambridge University Press, UK.

such an entity should be sovereign. The existence of an effective political community, supporting legal order, centralised administrative and legislative organs are some of the evidence of a stable government without which statehood cannot be recognised. The final criterion of statehood, that is, capacity to enter into relationship with other states requires that in order for an entity to be recognised as a state, it should be able to establish and maintain formal relationship with fellow states. This can for example be manifested through diplomatic exchanges, being party to bi-lateral and multilateral treaties as well as participation in other inter-governmental events etc. The capacity to enter into relations with other states is thought to be a consequence of independence. If an entity is subject to the authority of another state in handling it foreign affairs, it fails to meet these requirements and cannot be described as an independent state with total control over its area.

It is certainly difficult to discuss with ease the extent to which the criteria above are influencing the recognition of statehood in the modern world. The starting point is to begin by observing that currently, there are entities that seems to meet all of the above criteria and yet remains internationally not recognised as state and yet there are other entities that appears not to meet the criteria but which are recognised as states. A good example of an unrecognised state is Taiwan that has since 1949 been operating as a state and yet it is not officially internationally recognised, Taiwan has a defined territory in the island with an effective governmental control (although there are claims to its territory by China which in this case does not matter as it can be treated as a case of belligerency), she too had maintained a couple of diplomatic relationship with the US and UK and yet it remains unrecognised as a state.

In terms of the population criterion, it cannot be claimed that Taiwan does not meet this criterion as there is after all no specific minimum number of people required to determine statehood. Moreover there is no recorded case of any entity in international law that has been denied recognition because of population size. After all, there are even smaller states with minute population that are currently enjoying recognition status. Example, the Commonwealth Republic of Dominica has a population of less than 70,000 people. Nauru has a population of less than 10,000 inhabitants while Liechtenstein have a population of less than 30,000 but all are recognised states.[22] This means that for the case of Taiwan, the denial of statehood cannot be attributed to this criterion.

The defined territorial test argument is equally in reality inadequate to account for Taiwan non-recognition as a state**.** According to the traditional requirement, in order for an entity to qualify as a state, it must have a relatively stable territorial boundary. However, there are some modern states without unstable territories that are being recognition. Israel boarders for example have been a subject of disputes since the 1940's and yet it is largely recognised as a state by the United Nations.[23] Similarly, Albania in 1913 was recognised by a number of states in spite of lack of settled frontiers.[24] Moreover the requirement for a stable territory is argued not to be important in the determination of statehood. The US representative to the UN Security Council (1948) while arguing for the admission of Israel to the UN is asserted to have said;

"Both reason and history demonstrates that the concept of territory does not necessarily include precise delimitation of the boundaries of that territory. The reason for the rule that one of the

[22] See for example John Dugard (1998:59), International Law: A South African Perspective, 5th Edition, Juta & Co. LTD, South Africa
[23] See for example David H. Ott (1987:46), Public International Law in the Modern World, Pitman Publishers, London.
[24] See for example Ian Brownlie (2003:70), Principles of Public International Law, Six editions, Oxford University Press, UK.

necessary attributes of a state is that of it shall possess territory is one that cannot contemplate a state as a kind of disembodied spirit. Historically, the concept is one of insistence that there must be some portion of earth's surface which its people inhabit and over which its government exercises authority.....No one can deny that the state of Israel responds to this requirement".[25]

This statement probably implies that some of the normative criteria like defined boundary are probably negligible in recognition of statehood.

Regarding the criteria of government, Taiwan too has been consistently holding democratic elections with leadership that governs the entire Taiwanese territory and has relationship with many world countries including USA and UK. This would probably imply that meeting the normative criteria for statehood is not adequate to guarantee recognition. As for the case of Taiwan, there is likelihood that China could be using her permanent position on the UN Security Council to influenced recognition of Taiwan as a state and this becomes more a matter of politics than law.

Factors that seems to greatly influence recognition decisions for states

Indeed it has been observed that states most times make recognition not because the legal requirements have been fulfilled, but because there are certain political interest to pursue**.** After all, recognitions are duties generally fulfilled by the executive arms of the government who are exclusively politicians. State practice has shown that sometimes recognition decisions are made basing on consideration for benefits or purpose of securing particular national interest for the state making the recognition decision.[26] Example, the U.S's recognition of the autonomy of Southern Sudan (2007), even before the conditions of the interim peace agreement between southern and northern Sudan has been fully accomplished is believed to be based on interest for the oil deposits that the U.S has not been able to exploit owing to her hostile political relationship with the Islamic government of Northern Sudan based at Khartoum. Similarly, Russia's continued recognition of the independence of break-away Georgian territory of South-Ossetia is believed to be because of Russian interest in South-Ossetia of re-uniting the North Ossetia race based in Russia with the South Ossetians based in Georgia. In this case, the recognition of the independence of South Ossetia can be argued to be largely dependent on Russian national interest.

As Lauterpacht[27] also observed, recognitions are sometimes based on the 'bargaining power' of the government or state intending to make recognition or the one seeking for recognition. The United States for example delayed the recognition of Georgia and Azerbaijan in 1920 based on the persuasion of Russia who was hitherto was friendly to the Allied Powers.[28] Similarly, Poland 'negotiated' with the Latvian Government that she was willing to grant immediate de-jure recognition to Latvia provided the latter offered a 99 years lease of port to be declared a free port.[29]The recognition of Israel by the UN in the 1940 can also be argued to have based on their bargaining power at the time given the fact that the Israeli boundary was still under disputes at the time.

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[25] See for example Tim Hillier (1998:84), Sourcebook on Public International Law, Cavendish Publishing LTD, London, UK.

[26] See for example Lauterpacht, H. (1947:33), Recognition in International Law, Cambridge University Press, UK.

[27] Lauterpacht, H. (1947:34-35), Recognition in International Law, Cambridge University Press, UK

[28] See ibid

[29] See ibid

The promotion and protection of human rights has also become a common concern for the international community since 1945 and has directly influenced recognition decisions. It should be noted that consideration for human rights was not a requirement for recognition during the period of the League of Nations and neither was it mentioned in the Montevideo Convention (1933). Thus, before 1945, the manner with which a state treated its citizens was not regarded as a factor on whether to admit a state to the community of nations or not. Example, neither the League of Nations nor any state raised objection to the South Africa's racial policies of apartheid when it became an independent member of the United Nations and yet apartheid is a gross human right violation issue. However, since 1945, many new states with poor human right record have been denied recognition. Example, when the Soviet Union dissolved in 1991, the western power indicated that they would recognise only those parts of the former Soviet Union claiming to be independent state that afforded some evidence of willingness and capacity to protect and respect human rights. Similar assurances were sought from Slovenia, Bosnia-Herzegovinian and Macedonia as a precondition for their recognition as states.

In fact, there are emerging criteria that are more or less driven by political influence. Example, in Europe, new criteria for recognition was adopted during the extraordinary meeting of Foreign Ministers of European Community at Brussels in 1992 in what became known as '*Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union'* which provides that for any new state or government to be recognised.

a) The new states must respect the provisions of the United Nations Charter and commitments subscribed to in the Final Act of the Helsinki and the Charter of parties with regards to the rules of law, democracy and human rights.
b) The state/government must guarantee the rights of minorities
c) Respect the inviolability of all frontiers which can only be changed by peaceful means and by common agreement.
d) Accept all commitments on disarmament, nuclear non- proliferation, security and regional stability.
e) Promised to settle by agreement all questions of succession and regional disputes.[30]

What should be noted is that the above requirements were much more of political demands than legal considerations that were possibly made in fear of eruptions of wars and political instabilities that usually characterise the emergence of new states, just like it was during the post World War I when the emergence of new states led to great political instabilities. By 1992, the fear that the collapse of Soviet Union would cause political instability made the European states to tighten political criterion for recognition.

The normative challenges related to recognition of governments

As Roth[31] Observed, once an entity becomes a state, possessed of all of the rights and responsibilities that membership in the international community entails, it remains to be determined who the government in power is and who can speak and act on behalf of that state? It seems automatic to focus on this question as the participation of states in the international community is exercised by the existence of an acceptable government that in essence helps the state to exercise its international personality. Without governments, states cannot exercise their legal personality. But since governments change from time to time this means that again and again they have to be assessed and evaluated before full recognition and be granted to them. While changes in governments do not affect the personality of the state or its rights and obligations, the

[30] Stefan Talmon (1998: 250), Recognition of Government in International Law with Particular Reference to Government in Exile, Oxford University Press, UK
[31] Brad, R. Roth (1999:121), Governmental Illegitimacy in International Law, Clarendon Press, Oxford, UK

change in governments themselves requires validation from other governments before being accepted as the sovereign government of a state.

Generally, recognition of government is the formal acknowledgement by the recognising state that the regime in question is the effective government and signifies a willingness to treat that regime as such.[32]

Traditionally, the fundamental rule of international law provides that every independent state is entitled to be represented by a government who essentially should be in full control of the country with reasonable expectancy of permanence and should enjoy the habitual obedience of the bulk of the population (rule by the will of the people). A government who fulfils these conditions should ideally be said to represent the states in question and as such worthy of recognition within the provision of the law.[33]

The legal *'effective control'* test as the basis for recognition of a government seems to be up-held and applicable in situation of group or collective recognition such as by the United Nations (UN), African Union (AU), European Union (EU) etcetera BUT it is not usually being practiced/adhered to in situations of unilateral recognitions made by individual countries whose decisions are usually largely influenced by political considerations. With collective recognition, membership and representation to international organisations, usually when faced with recognition challenges especially by two rivals 'governments' each claiming legitimacy as the rightful representative of a nation, international organisations are forced to independently assessed and choose which of the rivalling governments is actually in the 'most effective control' over a state. For the case of representation to the United Nations, it has been a general practice by the General Assembly (GA) to accept delegation credentials properly issued by the head of states, head of government or foreign minister of a member state. Where rival delegations present credentials issued by officials of rivalling governments of a state, the General Assembly do an independent neutral assessment to establish which government has the 'most effective control' and legitimate control over a territory worthy of recognition as the representative of the state in question. Example, when the UN was faced with the circumstance of China Vs Taiwan in the 1940s, it had to make a choice between the Communist forces in control of the mainland China and the Nationalist forces in control of Taiwan Island as to who should be the official representative of China in the UN. Eventually, the Communist regime was chosen because they were securely in control of the mainland unlike the Nationalist forces that were merely in control of an island (Taiwan).[34]

However, when individual states are making their unilateral decisions, the 'effective control' tests are never adhered to. Example, in the Taiwan vs. China conflict mention above, the United States of America (USA) had already unilaterally and arbitrarily recognised Taiwan as the legitimate government of China based on its political interest in the Nationalist regime of Taiwan pursuing capitalism while Russia on the other hand recognised the Communist regime of mainland China based on its adherence to the communist ideology. Essentially, it was no longer a question of law but political interests between communists and capitalists regimes.

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[32] See Rebecca M. M. Wallace (2002:76), International law, Fourth Edition, Thomson Sweet & Maxwell Publishers, London, UK.

[33] See for example John Dugard (1998:82), International Law: A South African Perspective, 5th Edition, Juta & Co. LTD, South Africa; see also Lauterpacht, H. (1947:88), Recognition in International Law, Cambridge University Press, UK.

[34] Se for example Brad, R. Roth (1999:121), Governmental Illegitimacy in International Law, Clarendon Press, Oxford, UK

The tests of *'the will of the people'* or '*obedience of a bulk of the population'* as a basis for legitimisation and recognition of a government is another legal criteria that has suffered from arbitrariness, inconsistent practice and based largely on political influence. Theoretically, a regime that imposed its leadership upon the people of a state and contrary to the internal laws of a state is illegitimate and deserves no international recognition. Legitimate governments are theoretically therefore only those that ascend to power through democratic elections or other means provided for in a state's internal law. In practice however, there are a number of 'illegal regimes' that came to power especially in Africa and other third world countries that by internal laws of those countries should not have been recognised but who in practice have been recognised by other states, turning them into legitimate government. Moreover there is the frequent impracticability of empirical investigations by 'outsiders' on the political sentiments and the will of the people over a government. These difficulties eventually render the determination of the decisions to recognise to individual state decisions based on their judgements

The difficulties associated with recognition of governments have made many people to question its relevance. Indeed there have been uncertainties as to whether recognition still exists or whether it has already been abandoned. The British government for example by the 1980's was thought to have ceased recognitions of governments. Lord Privy Seal, Sir Ian Gilmour is noted to have delivered a written communication to the House of Commons declaring the end of recognition of government by the British government thus, '...We have conducted a re-examination of British Policy and practice concerning the recognition of governments. This has included a comparison with the practice of our partners and allies. On the basis of this review, we have decided we shall no-longer accord recognition to governments...'[35] while the statement says so, in practice, recognition of governments still exists. There are therefore a lot of confusions related to the practice of recognition.

Conclusion

In conclusion, as Leonard Observed, 'recognition is at a cross road. Unlike other international law decisions where a state might be bound to a normative framework, recognition is essentially left to the will of states'.[36] While the normative criteria exist, their applications are largely at political discretion. Established states are indeed free to decide according to their unfettered discretions and by consulting its own interest only whether another community shall enjoy the rights of sovereignty and independence inherit in statehood. By refusing to recognise by the law, a state denies the right of independent existence to a political community apparently fulfilling the conditions of statehood. Regarding the recognition of governments, non-recognition can be amounted to denying the recognition of the state itself as it is the governments that do international businesses on behalf of the states. In general, international law needs to re-define itself and a enumeration of the subjects to which its rules should apply and consequently, that a legal doctrine must determine when new entities will become fully subjects to these new rules of recognition. As regards the theoretical conflict, neither the constitutive nor the declarative theory satisfactorily explains modern state practice.

[35] Stefan Talmon (1998: 250), Recognition of Government in International Law with Particular Reference to Government in Exile, Oxford University Press, UK

[36] Leonard, M. Hammer (2007:31), A Foucauldian Approach to International Law: Descriptive Thoughts for Normative Issues, Ashgate Publishing LTD, England