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THE LEGAL EFFECTS OF NON-RECOGNITION OF GOVERNMENTS

The question of the legal effects of non-recognition of governments is one of the most controversial branches of international law. It is the subject of considerable theorizing on the part of writers in the field and frequent litigation in court. The focal point of many of the difficulties facing the courts is the doctrine that recognition is a political question and that courts are bound by executive determination. Since certain cases involving unrecognized governments do not require the decision of a political question, the problem is that of determining when the doctrine is applicable. Before the Twentieth Century the doctrine in the United States raised few problems. This was due mainly to our recognition policy. The United States generally accorded recognition on the basis of effectiveness of the particular government. Continued non-recognition of the government was an indication that the government was unstable and had not attained the status of a "sovereign." The fact that the political departments were considered more competent to determine the status of sovereign was one of the reasons for the doctrine.

But in the Twentieth Century and particularly with respect to

1. For the purpose of this Note the term "government" will include the term "states."
2. Controversy over what is the exact legal nature of recognition has been the subject of a number of articles and books. Most of the conflict has been between adherents of the so-called constitutive and declaratory theories of recognition. The constitutive view is that recognition is a prerequisite to the State's becoming an international person. See 1 Oppenheim, International Law 142-144 (4th ed., McNair, 1928). This view has been severely criticized by many writers. See Chen, The International Law of Recognition 30-46 (1951); Jaffee, Judicial Aspects of Foreign Relations 87-103 (1933); Lauterpacht, Recognition in International Law 52-54 (1947); Brown, The Effects of Recognition, 36 Am. J. Int'l L. 106 (1942). The declaratory view is that a State attains legal stature as soon as it "exists" as a fact, i.e., as soon as it fulfills the conditions of statehood required by international law. Recognition is merely a formal declaration of this fact. See Lauterpacht, op. cit. supra, at 41. The declaratory view has been criticized by Lauterpacht, Id. at 43-51. See also an examination, pro and con, of the view by Chen, op. cit. supra, at 62-78. The practice of American courts in recent years seems to have adopted the constitutive theory of recognition. See, e.g., The Maree, 145 F. 2d 431, 441-442 (3d Cir. 1944). The pre-Soviet cases, on the other hand, were more consonant with the declaratory theory of recognition. See Consul of Spain v. La Conception, 6 Fed. Cas. 359, 360, No. 3,137 (C.C.D. S.C. 1819), rev'd on other grounds, 6 Wheat. 235 (U.S. 1821).
4. See instructions sent to the American Minister in Colombia by the Secretary of State. 1 Moore, Digest of Internation Law 139 (1906).
Soviet Russia recognition has been denied even though there could be no doubt that the government in question had achieved internal control. The doctrine, however, is still supportable on the ground that it would be embarrassing to the political departments if courts were to differ with them on matters of foreign affairs. The question then is when the facts of a particular case involve a matter of foreign affairs so as to preclude judicial inquiry.

The cases fall into three major categories: those concerned with the question of the capacity of an unrecognized government to sue; those involving an assertion of immunity from suit by the unrecognized government; and those dealing with the question of the legal effect to be given the acts or legislation of the unrecognized government.

**Capacity of Unrecognized Government to Sue**

The earliest British cases dealing with the question of whether an unrecognized government can be a suitor in court involved a dispute over certain Swiss funds. Thus in *City of Berne in Switzerland v. The Bank of England* the new government brought suit to restrain transfer of funds deposited by the defunct government in the Bank of England. Lord Eldon, in refusing relief, remarked that it was difficult to say that a court can take notice of a government not authorized by the government of the country in which the court sits. Although Lord Eldon seemed to have taken an inconsistent position a year later, the *Berne* case nevertheless is considered to be an authoritative declaration of the rule that an unrecognized de facto government has no standing in court to bring suit.

The first American case on the point was *The Hornet*, which involved a proceeding against a vessel for violation of the neutrality laws. An agent of a group of revolutionaries in Cuba (the

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7. The City of Berne in Switzerland v. The Bank of England, 9 Ves. 347 (Ch. 1804); Dolder v. The Bank of England, 10 Ves. 352 (Ch. 1805); Dolder v. Lord Huntingfield, 11 Ves. 283 (Ch. 1805).

8. 9 Ves. 347 (Ch. 1804).

9. *Id.* at 348.

10. "I cannot affect to be ignorant of the fact, that the Revolutions in Switzerland have not been recognized by the government of this country; but as a Judge I cannot take notice of that." Dolder v. The Bank of England, 10 Ves. 352, 354 (Ch. 1805).


"Republic of Cuba") filed leave to intervene which was denied on the basis that the insurgent government was unrecognized. The language of the court would seem to indicate that access to our courts would be denied to unrecognized governments in every case. The "Republic of Cuba" had not, however, achieved territorial security nor had it even been recognized as a belligerent.  

The most extensive case development of the law of recognition in the United States was the result of our relationship with Soviet Russia. The United States Government refused to recognize the Soviet Government even though it had secured territorial control of Russia. On the other hand, the United States Government continued to recognize the Kerensky regime long after it had ceased being the effective government of Russia. By basing the denial of recognition upon reasons other than stability the State Department created difficult legal questions. The problem of whether Soviet Russia could be a suitor in court was summarily handled by categorically denying it access to our courts. The earlier "Russian" cases involved actions brought by the Soviet Government in the federal courts to secure possession of certain ships. The Soviet Government claimed title as the successor of the preceding government. The defunct Kerensky Government contested the actions and they were dismissed on the ground that the Soviet Government was not the recognized representative of the State of Russia.

It should be observed that at this time the non-recognition of Soviet Russia was affirmatively asserted. The State Department had suggested in a letter directed to the District Courts that the Soviet Government was not in any way to be considered the recognized government of Russia. Furthermore, it has been suggested that the Soviet Government had not at this time attained such stability that there was no question of its de facto status. Premature recognition of sovereignty on the part of courts might be considered as much of an insult to the preceding government as would such an action by the State Department.

The Soviet Government was also denied access to our courts

13. See Jaffee, op. cit. supra note 2, at 141.
15. The Penza, 277 Fed. 91 (E.D. N.Y. 1921); The Rogdai, 278 Fed. 294 (N.D. Cal. 1920); The Rogday, 279 Fed. 130 (N.D. Cal. 1920).
in *Russian Socialist Federated Soviet Republic v. Cibrario*., a later New York decision. In that case the Soviet Government brought suit to compel an accounting by one of its buying agents in the United States. In dismissing the action the court reasoned that a foreign power may bring an action in our courts only on the basis of international comity and until the government is recognized so such comity exists. The court added that "recognition and consequently the existence of comity is purely a matter for the determination of the legislative or executive departments of the government."  

The *Cibrario* case presented a somewhat different situation than the federal decisions. First of all, the issue before the court was whether a stable unrecognized government could bring suit in our courts. Moreover, the possibility of embarrassing the Executive Department was not as great since there was no contest between opposing factions over who was the representative of the State of Russia. The Soviet Government brought suit not as a successor government but as an owner protecting funds which it had invested in this country. Furthermore, the United States government had not forbidden commercial intercourse between the Soviet Government and the citizens in this country nor had it prohibited the Soviet Government from placing its funds in the United States. It would, therefore, seem only fair to both an unrecognized government and to citizens engaging in trade to protect the transactions which have arisen from this relationship. Leaving the funds of an unrecognized government free to anyone who wants to help himself may cause greater international complications than allowing the government to sue. At least some sort of temporary receivership should be devised pending recognition so as to protect the property.  

Such a solution was arrived at in an analogous situation in a recent lower federal court decision. In that case the Bank of China, a corporation represented by emigre directors appointed by the Nationalist Government of China, brought suit to recover

20. *Id.* at 262, 139 N. E. at 259. A suit brought subsequently by members of the Cinematographic Committee of the Russian Soviet Federated Socialist Republic was dismissed upon the ground that they were merely agents of the Republic. Preobazhenski v. Cibrario, 192 N. Y. Supp. 275 (Sup. Ct. 1922).
21. See Comment, 31 Yale L. J. 534 (1922). Jaffee argues that this distinction is artificial. The State rather than the government owns the property and therefore when internal governments change succession is not involved. See Jaffee, *op. cit.* supra note 2, at 154.
funds deposited in the Wells Fargo Bank. Attorneys for the directors appointed by the Central Peoples Government filed a motion to dismiss the action or to substitute themselves as attorneys of record. The court held that the trial would be continued sine die, entrusting the funds with the court or an approved trustee until such time as either Communist China becomes a stable, recognized government or the Nationalist Government has secured control of China. Thus the case reveals what can be done when, because of international developments, it is impracticable to favor either the de facto unrecognized government or the de jure recognized government. Dickinson argues that unrecognized governments should have standing in court for the limited purpose of protecting public property or other interests.24

Notwithstanding the criticism of the Cibrario case by leading writers in the field 25 it has been cited in later cases.26 However, some of the force of the decision has been removed by cases allowing suits by corporations owned solely by the unrecognized government.27 But in none of these cases is there any language which indicates disapproval of Cibrario case.28

IMMUNITIES OF THE UNRECOGNIZED GOVERNMENTS

The unrecognized government which apparently may never sue in courts in the United States is protected from suit. Thus in the leading case of Wulfsohn v. Russian Socialist Federated Soviet Republic 20 the court held that an unrecognized government de facto could not be sued for an act of confiscation within its own territory. The court said:

24. See Dickinson, supra note 6, at 134.
28. Only one American case can be found in which an unrecognized government was allowed to sue. This is an unreported Massachusetts case where the unrecognized government of Mexico asked for a temporary restraining order to prevent disposition by a former Mexican official of funds deposited in a Massachusetts bank. The order was granted. For a detailed report of the case by Quincy Wright see Comment, 17 Am. J. Int'l L. 742, 743-745 (1923).
"They [our courts] may not bring a foreign sovereign before our bar, not because of comity, but because he has not submitted himself to our laws... Concedingly that is so as to a foreign government that has received recognition... In either case to do so would vex the peace of nations... Unwittingly it [the court] would find itself involved in disputes it might think unwise... The question is a political one, not confided to the courts but to another department of the government." 30

Writers have approved of the decision31 and immunity from suit has since been extended to other unrecognized governments.32

The Wulfsohn case could have been limited to suits where the property in question was not within the court's jurisdiction. This possibility was dispelled in Banque de France v. Equitable Trust Co.33 where certain gold confiscated by the Soviets in Russia and shipped to the defendants in New York was held to be immune from judicial process. Certain language of the court in the Wulfsohn case also indicated that the grant of immunity was limited to governmental acts.34 But later in Voevodine v. Government of the Commander-in-Chief of the Armed Forces in the South of Russia35 immunity was accorded to the ephemeral Denikin government in a suit based upon a breach of contract. Thus it would seem that with respect to the sovereign itself non-recognition is immaterial in determining jurisdictional immunity. Of course, to refuse immunity to an unrecognized government would be contrary to the rationale of the doctrine relating to recognition. Refusal would indeed precipitate the courts into the political arena.36

There is a further question of whether immunity should extend to public ships or other property of the unrecognized government. Logically the rule should be the same. In quasi-in-rem actions because the defendant in the original action is immune, the property has generally been held to be immune from attachment or other judicial process.37 It would seem quite possible, however, that property in an in rem action would not be immune. This strange

30. Id. at 376, 138 N. E. at 26.
33. 33 F. 2d 202 (S.D. N.Y. 1929).
35. 257 N. Y. 557, 178 N. E. 793 (1931) (memorandum decision).
36. See Dickinson, supra note 6, at 128.
37. Banque de France v. Equitable Trust Co., 33 F. 2d 202 (S.D. N.Y.)
result would be due to the rule in Ex parte Mir' which sets forth the methods in which immunity must be asserted. In order to claim immunity the sovereign or an accredited representative must either appear in the suit itself or obtain a "suggestion" from the executive department that the property is immune. Unrecognized governments would most likely be refused a suggestion of immunity from the State Department and it is doubtful whether such governments could intervene as parties in the in rem action. In a case involving a government with whom the United States had severed diplomatic relations such a result was reached. The Secretary of State refused to make any suggestion of immunity and the assertion of immunity by the master of the ship was held to be of no effect.

ACTS OR LEGISLATION OF THE UNRECOGNIZED GOVERNMENT

Cases dealing with the effect of non-recognition upon the rights of individuals or corporations are the most frequent of all recognition cases. The problem arise when, under the ordinary conflict of laws rules, the law of the foreign nation whose government is unrecognized is to be applied. The question then is what legal effect, if any, will the act or legislation of the unrecognized power be given.

Before 1920 there were relatively few decisions dealing with the validity of the act of an unrecognized government. The only significant judicial development concerned the legal effect to be

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38. 254 U. S. 522 (1921).

39. Id. at 532-533. See also Compania Espanola v. Navemar, 303 U. S. 68, 74 (1938). When the claim of immunity is asserted through diplomatic channels and allowed by the Executive Department, that precludes further judicial inquiry into the claim. Ex parte Peru, 318 U. S. 578 (1943); see Compania Espanola v. Navemar, supra, at 74-75. However, if the government appears as claimant, the question of immunity may be decided by the courts. Difficulties have arisen because the State Department instead of either denying the claim of immunity or "suggesting" immunity has sometimes pursued a hazy middle course, asserting that they are presenting the claim for proper consideration by the court as a matter of comity between the United States and the government in question. No specific commitment is made on the matter by the State Department. See Riesenfeld, Sovereign Immunity of Foreign Vessels in Anglo-American Law: The Evolution of a Legal Doctrine, 25 Minn. L. Rev. 1, 50-51 n. 192 (1940). Usually the court has inquired into the validity of the claim of immunity where this form of "suggestion" is presented. Lamont v. Travelers Ins. Co., 281 N. Y. 362, 20 N. E. 2d 81 (1939); Hannes v. Kingdom of Roumania Monopolies Institute, 260 App. Div. 189, 20 N. Y. S. 2d 825 (1st Dept' 1940).


given the various legislative and judicial acts within the territory of the Confederate States of America.\textsuperscript{42} These cases arose after the Civil War. The United States Supreme Court adopted the position that unless the particular acts of the Confederate States aided the rebellion they would be valid even though emanating from an unlawful government.\textsuperscript{43} The Civil War cases are perhaps distinguishable from cases involving the non-recognition of external governments since the necessity of preserving internal order after the war was an important factor in their determination.\textsuperscript{44} Nevertheless the cases are significant in that they do not look to the fact of recognition or the lack of it as the sole criterion in determining whether the acts will be given legal effect.

A few years later a group of state court cases involving the then unrecognized Mexican Government were decided.\textsuperscript{45} The most controversial case decided during this period was \textit{Pelzer v. United Dredging Co.}\textsuperscript{46} In that case a New York court decided an administrator appointed by a Mexican court did not have the right to maintain an action on certain notes payable to the deceased nor could such an appointment be a basis for an ancillary proceeding. The court based its decision upon the sole ground that the particular revolutionary group in territorial control of Mexico had not been recognized as the legitimate government of Mexico. The territory of Mexico did at this time have a relatively effective legal system, and there was apparently no lack of ability on the part of the Mexican court to adequately perform the function of appointing an administrator.\textsuperscript{47} Moreover it could hardly be contended that any political purpose was served by the decision. The \textit{Pelzer} case

\textsuperscript{42} There were a few isolated cases involving the acts of de facto governments decided during the earlier part of the Nineteenth Century. Keene v. McDonough, 8 Pet. 308 (U.S. 1834) (an adjudication by a Spanish tribunal made after the cession of Louisiana to the United States given effect); United States v. Rice, 4 Wheat. 246 (U.S. 1819) (during the War of 1812, legal effect given to the imposition of import duties by the British officials during the occupancy of the American port of Castine).

\textsuperscript{43} Texas v. White, 7 Wall. 700 (U.S. 1868); see Horn v. Lockhart, 17 Wall. 570, 580 (U.S. 1873). See Houghton, \textit{The Validity of the Acts of Unrecognized De Facto Governments in the Courts of Non-recognizing States}, 13 Minn. L. Rev. 216-220 (1929).

\textsuperscript{44} See Horn v. Lockhart, 17 Wall. 570, 580 (U.S. 1873).

\textsuperscript{45} See, \textit{e.g.}, O'Neill v. Central Leather Co., 87 N. J. L. 552, 94 Atl. 789 (1915), aff'd \textit{sub nom.} Oetjen v. Central Leather Co., 246 U. S. 297 (1918) (upholding the acts of military forces under the authority of General Villa); Compania M. Y. R. R., S. A. v. Bartlesville Zinc Co., 115 Tex. 21, 275 S. W. 388 (1925) (referring to these same acts as "banditry" and refusing to give them effect).

\textsuperscript{46} Reported by Dickinson in 22 Mich. L. Rev. 29-30 (1923).

\textsuperscript{47} \textit{Id.} at 30-31.
has consequently been criticized by writers and its mechanical approach to the problem was repudiated by a later New York decision.

Most of the other cases involved the unrecognized Soviet Government. The unrecognized but effective Soviet Government was, of course, quite capable of exercising normal governmental powers and courts were consequently faced with the problem of deciding the validity of its varying decrees (notably the so-called "nationalization" decrees) and legislation. The majority of these cases were decisions by New York state courts involving Soviet confiscatory decrees purporting to affect persons or assets within the United States. The effect to be given the decrees was revealed by statements of Justice Cardozo in Sokoloff v. National City Bank. He indicated that legal effect may be given acts or decrees of an unrecognized government which has achieved control over its territory, if "violence to fundamental principles of justice or to our own public policy might otherwise be done." This is an "inversion" of the "public policy" exception in conflict of laws rules. Normally where the foreign law is applicable it will be resorted to except when the particular act or decree is repugnant to the public policy of the forum. The Sokoloff rule indicates that the application of the foreign law (applicable under conflict of laws rules) of an unrecognized government is to be treated as an exception. Only when public demands its application will the foreign law of the unrecognized government be applied. This approach, however, is a repudiation of the Pelzer doctrine and analogous to the position taken by the courts in the Civil War cases. The approach seems sound in that it relieves individuals of the particular hardships of confiscatory legislation or acts and still allows courts to give effect to some non-repugnant acts or legislation. It would seem, however, that the same objective could be better achieved under the public policy exception without taking into consideration the fact of non-recognition.

The Sokoloff principle was reiterated in James & Co. v. Second
Russian Ins. Co.\textsuperscript{54} where the defendant relied upon the Soviet decrees as a defense to an action on certain insurance contracts. The defendants first asserted that the corporation was dissolved by the confiscatory decrees. Justice Cardozo answered that since the corporation had sufficient vitality to appear in the action, it had vitality to be sued. Secondly, the defendant contended that its liability was extinguished by the decrees. The court, however, concluded that not even a recognized government could terminate the liability of a corporation organized under American law. The decision required no consideration of the effect of Soviet decrees qua Soviet decrees. Nevertheless the court added as a ground for the decision that the Soviet Government was unrecognized and public policy did not require giving effect to its decrees.

The case of \textit{Russian Reinsurance Co. v. Stoddard}\textsuperscript{55} decided a year later was the first case to give partial effect to the Soviet decrees. In that case, a Russian corporation organized under Russian law during the Czarist reign and authorized to do business in New York brought suit in New York to revoke a trust and compel the return of certain securities. The corporation had been nationalized in Russia. Defendant relied upon this as a defense. The court refused jurisdiction. One of the main reasons the court gave for decision was that the defendant might be subject to double liability if the plaintiffs were allowed to sue. This, of course, was entirely possible since other countries had at this time accorded de jure recognition to the Soviet regime and recovery against the defendants in a suit brought by the Soviet regime might be permitted abroad. In the later case of \textit{Petrogradsky M. K. Bank v. National City Bank},\textsuperscript{56} however, a corporation organized under the preceding government was allowed to bring an action at law to collect a debt. The court discounted the possibility of double liability since other countries had not been giving extraterritorial effect to the decrees and also because this was an action at law rather than in equity. The court, although referring to the decrees as mere "exhibitions of power" rather than "pronouncements of authority,"\textsuperscript{57} nevertheless continued to maintain its previous position that everyday business transactions or domestic acts might be given effect.\textsuperscript{58}

This series of cases indicates that the type of acts involved rather

\begin{itemize}
  \item \textsuperscript{54} 239 N. Y. 248, 146 N. E. 369 (1925).
  \item \textsuperscript{55} 240 N. Y. 149, 147 N. E. 703 (1925).
  \item \textsuperscript{56} 253 N. Y. 23, 170 N. E. 479, cert. denied, 282 U. S. 878 (1930).
  \item \textsuperscript{57} \textit{Id.} at 28, 170 N. E. at 481.
  \item \textsuperscript{58} \textit{Id.} at 28-29, 170 N. E. at 481.
\end{itemize}
than the fact of non-recognition was the important consideration in determining their validity. There was only one case during this period involving acts or legislation of the Soviet Government which were not repugnant to the public policy of the state of New York.\(^5\)

In that case the court, in upholding the validity of the act in question said that determination of the legal effect of acts of an unrecognized government upon private rights of individuals is a judicial question, not a political one. Dictum in one case also indicated that a marriage valid in Russia would be valid in this country.\(^6\)

Since the fundamental question involved in these cases is the extent to which courts will take into consideration the recognition policies of the Executive Department, much can be learned about the legal effects of non-recognition by examining post-recognition cases. New York cases decided soon after the de jure recognition of the Soviet Government indicated the continued policy of the New York courts of attaching little importance to the fact of recognition or non-recognition.\(^61\) The validity of the confiscatory decrees was still denied where they conflicted with public policy.\(^62\)

Subsequent federal cases\(^63\) and some recent New York cases,\(^64\) however, indicate a trend toward giving greater effect to the recognition policies of the State Department. The shift in attitude of the courts began with United States v. Pink.\(^65\) In that case, the United States brought an action as an assignee of certain claims of the Soviet Government based on the Soviet "nationalization" decrees of 1918. This so-called "Litvinov Assignment" was part of an executive agreement concluded with the Soviet Government.

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60. See Banque de France v. Equitable Trust Co., 33 F. 2d 202, 205 (S.D.N.Y. 1929).


simultaneous with the recognition by the United States of the Soviets. The court held that extraterritorial effect must be extended to the decrees notwithstanding the fact that they were repugnant to the public policy of the state of New York. It is not clear whether effect was given merely because Soviet Russia was at that time a recognized government or that the executive agreement with Russia prevailed over state policy. Subsequent lower federal court opinions have indicated that the former view was the basis of the decision. New York cases decided after the Pink case seem to interpret the case as requiring affirmative extraterritorial effect to the decrees only when an executive agreement analogous to the "Litvinov Assignment" is involved. This would seem to be the more reasonable interpretation since otherwise greater effect would be given to foreign acts or legislation that is accorded to states by virtue of the Full Faith and Credit Clause of the United States Constitution.

Assuming that the Pink case does stand for the proposition that recognition itself requires extraterritorial effect to be given the decrees of a recognized government, does this mean that the fact of non-recognition will automatically deny such effect? Recent New York and federal decisions involving decrees of the unrecog-

66. The reason that New York public policy was an obstacle is that federal courts must follow the substantive law of the state in which they sit, Erie R. R. v. Tompkins, 304 U. S. 64 (1938), 22 Minn. L. Rev. 885, including the state conflict of laws rules. Klaxon Co. v. Stentor Co., 313 U. S. 487 (1941).

67. There is language in the opinion which does support the view that courts are bound by recognition alone. United States v. Pink, 315 U. S. 203, 229, 231 (1942). Justice Stone in his dissent assumed that the grant of recognition was the basis of the decision. Id. at 242 et seq. See also Borchard, Extraterritorial Confiscations, 36 Am. J. Int'l L. 275, 279 (1942); Note, 51 Yale L. J. 849 (1942). Most of the opinion, however, concerned itself with the effect of the "Litvinov Assignment." United States v. Pink, supra, at 221-234. See also Stevenson, Effect of Recognition on the Application of Private International Law Norms, 51 Col. L. Rev. 710, 719-725 (1951).


70. See United States v. Pink, 315 U. S. 203, 251-252 (1942) (dissenting opinion); Stevenson, supra note 67, at 722.


72. See The Maret, 145 F. 2d 431, 441-442 (3d Cir. 1944); The
nized Baltic Republics\textsuperscript{73} indicate that it may. One writer has pointed out, however, that in each of these cases not only was the government unrecognized but there was a State Department certification of non-recognition of the validity of the particular act itself.\textsuperscript{74} A different conclusion by the courts as to the validity of the decrees would, of course, be undesirable. The certification, however, was not stressed as an important factor in either the New York or federal decisions.

A more liberal attitude is present in a recent federal decision involving the Communist Government of China.\textsuperscript{75} The court, although denying the validity of the acts of the Communist Government, indicated that our active intervention against the Communist Government rather than the mere negative policy of non-recognition was the basis of the decision. Moreover, in denying relief to the Nationalist Government of China, the court gave limited recognition to the de facto status of the Communist Government.

Heretofore, we have been concerned principally with the extraterritorial effect of acts or legislation of the unrecognized government. Acts or legislation purporting to have effect only within the territorial jurisdiction of the unrecognized government have been looked upon more favorably by the courts.\textsuperscript{76} In the leading case of \textit{Salinoff & Co. v. Standard Oil Co.},\textsuperscript{77} the Soviet Government had confiscated all oil lands in Russia and sold the oil to the defendant. The former owner brought suit for an accounting on the grounds that the confiscatory decrees have no effect. The Court of Appeals of New York affirmed the lower court order, dismissing the complaint. The court concluded that since the Soviet Government was a government in fact, its decrees have force within its borders and over its nationals.\textsuperscript{78}

It is apparently well settled that the acts of a recognized government within its territorial jurisdiction may not be questioned even


\textsuperscript{74} See Stevenson, \textit{supra} note 7, at 725-727.

\textsuperscript{75} Bank of China \textit{v. Wells Fargo Bank & Union Trust Co.}, 92 F. Supp. 920 (N.D. Cal. 1950), \textit{appeal dismissed and cause remanded}, 190 F. 2d 1010 (9th Cir. 1951).

\textsuperscript{76} \textit{See} Underhill \textit{v. Hernandez}, 168 U. S. 250, 252 (1897).

\textsuperscript{77} 262 N. Y. 220, 186 N. E. 679 (1933).

\textsuperscript{78} \textit{Id.} at 226-227, 186 N. E. at 682.
though contrary to the public policy of the forum.\textsuperscript{79} The \textit{Salinoff} decision seems to indicate that this doctrine will be applied to unrecognised governments. One writer has contended, however, that such a conclusion is neither supported by the language of the court or prior judicial development of the doctrine.\textsuperscript{80} But confiscatory acts are contrary to the public policy of New York and yet declared ineffective only when purporting to operate extraterritorially. Another writer has suggested two possible factors which influenced the decision.\textsuperscript{81} First, that the executive policy as set out in the opinion closely bordered on \textit{de facto} recognition; secondly, that the party who obtained the confiscated goods was a United States Corporation, and the party from whom the goods were confiscated was a Soviet national.

Although the policy in favor of this so-called Act of State doctrine itself seems questionable,\textsuperscript{82} there appears to be no acceptable reason for limiting its application to recognized governments. The rationale of the doctrine is the fear that to question a particular country’s acts would “vex the peace of nations.”\textsuperscript{83} This applies equally to unrecognised governments. A further reason for the Act of State doctrine is the interest in protecting individuals who have relied upon the acts of a recognized power.\textsuperscript{84} It could be asserted that an individual should not rely upon the acts of unrecognised powers. Stevenson argues that this is an unrealistic view since American recognition policy most certainly precludes an individual from determining when acts of an unrecognized government would be nullities.\textsuperscript{85}

\textbf{Conclusion}

This Note has been concerned with the basic question of what materiality the fact of non-recognition has in determining whether an existing government has the capacity to sue, immunity from suit, or if its acts have any legal effect. The cases seem to indicate that an unrecognized government cannot sue in our courts. It seems desirable that, for the limited purpose of protecting its property or

\begin{itemize}
\item [80.] See Stevenson, \textit{supra} note 67, at 713.
\item [81.] See Comment, 19 U. of Chi. L. Rev. 73, 79 (1951).
\item [82.] See Comment, 57 Yale L. J. 108 (1948).
\item [83.] Oetjen v. Central Leather Co., 246 U. S. 297, 303-304 (1918).
\item [84.] See Stevenson, \textit{supra} note 67, at 718.
\item [85.] Id. at 718-719.
\end{itemize}
funds invested in the United States, it be allowed to bring suit. The unrecognized government is protected from suit. This protection, however, may not extend to its property in in rem proceedings because of the particular procedure the government must follow in asserting its immunity. Protection should be extended to this situation.

It is not too clear what effect will be given to acts or legislation of the unrecognized government. The overall attitude of the New York courts seems to indicate that the fact of recognition or non-recognition will not be an important factor in determining the validity of the acts or legislation. Federal decisions would give a broader effect to the recognition policies of the State Department. However, unless the Federal Government is a party to the proceedings or has itself declared that the acts should not be given legal effect, the validity of acts or legislation which affect only the private rights or obligation of individuals or corporations should be determined without reference to the fact of nonrecognition or recognition. The ordinary conflict of laws rules will prevent the application of acts or legislation repugnant to the public policy of the forum. It seems that the Act of State doctrine applies to unrecognized as well as recognized governments. Although the doctrine itself may be subject to criticism there seems to be no reason to limit its application to recognized governments.