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The United States and Communist China: The Dilemma of Nonrecognition

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THE UNITED STATES AND COMMUNIST CHINA: THE DILEMMA OF NONRECOGNITION*

We surely cannot deny to any Nation that right whereon our own government is founded, that everyone may govern itself according to whatever form it pleases, and change these forms at its own will. . . . It accords with our principles to acknowledge any Government to be rightful which is formed by the will of the nation, substantially declared.

Jefferson[1]

International law is that body of rules and principles binding upon states in their relations with other states.[2] Although there is dispute as to the applicability of international law to entities other than states,[3] it is clear that states are direct subjects of international law.[4] The sole medium through which a state can act internationally is its government.[5] Recognition of a government is an acknowledgment that that government is the agent of the state which it purports to represent.[6] Refusal to recognize a government is pre-eminently a denial of its claim to act for the state; and when the unrecognized government is in exclusive control of the apparatus of state, nonrecognition is tantamount to denial of the international personality of the state itself.[7]

The United States refuses to recognize the Chinese Communist government, which is, nevertheless, in firm control of mainland China. This situation gives rise to the question of whether nonrecognition is not also a rejection of international law as a system binding upon all states and governments. On the other hand, does international law prescribe such conditions precedent to membership in the interna-

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1. 2 WIGHTMAN, DIGEST OF INTERNATIONAL LAW 68-69.

2. BRIERLY, THE LAW OF NATIONS § 1 (6th ed. 1963).

3. See WOETZEL, THE NUREMBERG TRIALS IN INTERNATIONAL LAW 96-121.

4. Reparation for Injuries Suffered in the Service of the United Nations, [1949] I.C.J. Rep. 174.

5. Lehigh Valley R. Co. v. State of Russia, 21 F.2d 396, 400 (2d Cir. 1927).

6. See Alexandrovicus' Estate, 83 N.J. Super. 303, 199 A.2d 662 (1964).

7. See 1 OPPENHEIM, INTERNATIONAL LAW § 73c (8th ed. 1955).

tional community as to justify nonrecognition of Communist China? Or, does the requirement that international law be substantively *just* necessitate the selective exclusion of certain governments from the international community?

There is substantial divergence of opinion as to the nature of recognition. It is regarded by some as a declaration made in fulfillment of a legal duty. Thus, an entity possessing the requisite elements of a government has a legal right to be recognized, and foreign states are legally obligated to grant recognition.[8] This theory is rejected by those who view recognition as essentially political, *i.e.*, within the discretion of the state.[9] During the nineteenth century the United States adhered to the Jeffersonian policy of recognizing any government which was in effective control of a foreign state.[10] The Wilson Administration departed from this practice by withholding recognition from revolutionary governments whose policies allegedly violated international law. Today the United States maintains that recognition is a political act.[11] Despite sporadic assertions that the sole consideration in granting recognition is national self-interest,[12] it appears that the United States will recognize those governments which are "(1) in control of the machinery of government; (2) Are not confronted with active resistance within the country, and (3) Are willing and able to live up to their international commitments."[13] It is this third criterion which places the United States at variance with the United Kingdom, whose government does not view willingness to observe international commitments as a prerequisite to recognition.[14]

The United States recognizes the Chinese State and recognizes, as the government of that State, "the National Government of the Republic of China, the seat of which is at Taipei, Formosa,"[15] and

8. Lauterpacht, *Recognition of Governments,* The Times (London), Jan. 6, 1950.

9. Kunz, *Critical Remarks on Lauterpacht's "Recognition in International Law,"* 44 AM. J. INT'L. L. 713 (1950).

10. See WIGHTMAN, *supra* note 1.

11. Jananese Government v. Commercial Casualty Co., 101 F. Supp. 243, 246 (S.D.N.Y. 1951).

12. See address of Secretary Dulles as reported in 39 DEP'T STATE BULL. 989-1022 (1958).

13. Letter From John M. Cabot, Chief of the Division of Caribbean and Central American Affairs, to Winnall A. Dalton, Dec. 26, 1944, *supra* note 1 at p. 75.

14. Address by (British) Ambassador Makins, Catholic University of America, May 13, 1954.

15. Letter From Acting Legal Advisor Tate to the United States District Court for the District of Columbia, Nov. 28, 1951, M. S. Dept. of State, file 793.11/11-2751.

whose lawful authority extends throughout the territory of China,[16] including Formosa and the Pescadores.[17] Juridically, then, the United States regards mainland China, Formosa and the Pescadores as parts of one state, whose government is the National Government. The United States Government has dealt (and is dealing) informally with representatives of the Chinese Communist regime, even to the extent of publishing an "Agreed Announcement" to facilitate the return of civilians to their respective countries.[18] However, the United States Government has made it expressly clear that such contacts do not imply a change in our policy of nonrecognition of the Communist government.[19]

International courts, applying international law, will take judicial notice of the recognition or nonrecognition of one government by another. However, the matter is relevant only as evidence tending to show the factual existence or non-existence of the government in question. Recognition or nonrecognition by one or several states is not determinative of the legal existence of another state or government. Even the evidentiary value of recognition is substantially diminished when the court finds that the granting or withholding of recognition is based on policy rather than objective fact.[20] Therefore, in any litigation before an international court, United States nonrecognition of Communist China would be relevant only insofar as it tended to prove the factual non-existence of the Communist regime as the effective authority in China. However, as a practical matter, it is unlikely that the United States will find itself involved in litigation wherein the status of Communist China is relevant.[21]

United States nonrecognition will have no effect upon litigation before domestic courts of foreign states. The fact that the Government and judiciary of the United Kingdom refused to recognize the Mossadegh government and its nationalization decrees did not influence Italian and Japanese courts in their determinations that the decrees were valid, such a finding being adverse to British litigants in those cases.[22]

16. United States Delegation to the United Nations Release No. 3872, Dec. 1, 1961.

17. Mutual Defense Treaty With the Republic of China, 6 T.I.A.S. 434, 436-37 (1955).

18. 33 DEP'T. STATE BULL. 456 (1955).

19. 30 DEP'T STATE BULL. 950 (1954).

20. Great Britain v. Costa Rica, 1 U.N. Rep. Int. Arb. Awards 369 (1924).

21. RESTATEMENT, FOREIGN RELATIONS LAW OF THE UNITED STATES § 110 (proposed official draft 1962) .

22. Anglo-Iranian Oil Co. v. S.U.P.O.R. Co., [1955] Int'l. L. Rep. 23; Anglo-Iranian Oil Co. v. Idemitsu Kosan Kabushiki Kaisha, [1953] Int'l. L. Rep. 312.

The state and federal courts of the United States generally hold that a sovereign state is permitted to bring an action in the courts of another sovereign state;[23] that a state cannot be sued without its consent in the courts of another state;[24] and that American courts will not inquire into the validity of acts of foreign governments, performed in their sovereign capacities within their own territories.[25] Since a state can act only through its government, an action at law on behalf of a state must be brought by the government of that state. American courts have often been faced with questions involving the standing of litigants who purport to act for foreign states. The general rule applied is that any *recognized* sovereign power not at war with the United States has access to the courts of the United States and of several states.[26] This rule is of no assistance in the case of China. There is no doubt that China is a recognized sovereign power. The fundamental issue is the identity of the agent (*i.e.*, government) of this sovereign power. A long line of decisions have held such questions to be political rather than judicial,[27] to be answered by the executive branch of the government,[28] and not subject to judicial inquiry.[29] The United States Government, through the Department of State, has determined that the Republic of China, through its ambassador, is the proper party to bring actions on behalf of the Chinese State.[30] There is no evidence of any attempt by the People's (Communist) Government to avail itself of the courts of the United States. However, should such an attempt be made, the court would be bound to deny standing to the People's Government:

> A suit on behalf of a foreign state may be maintained in our courts only after the recognition of its sovereignty and only by that government which is recognized as its authorized government.[31]

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23. The Ship Sapphire v. Napoleon III, 78 U.S. 127 (1871).

24. National City Bank of New York v. Republic of China, 348 U.S. 356 (1955).

25. Banco Nacional de Cuba v. Sabbatino, 307 F.2d 845, 855 (2d Cir. 1962).

26. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 410 (1964).

27. *Supra* note 5.

28. National City Bank of New York, *supra* note 24 at 360.

29. The Rogdai, 278 Fed. 294, 296 (N.D. Cal. 1920).

30. Republic of China v. Pang-Tsu Mow, 101 F.Supp. 646 (D.D.C. 1951).

31. The S.S. Denny, 40 F.Supp. 92, 98 (D.C.N.J. 1941). *But see,* Upright v. Mercury Business Machines Co., 13 App.Div.2d 36, 213 N.Y.S.2d 417. Defendant contracted with a corporate creature of the unrecognized East German Government, which assigned its rights to plaintiff. *Held,* that defendant is not relieved of liability merely because of United States nonrecognition of East Germany. Defendant must further prove that the contract violates public or national policy.

The sovereign immunity of a foreign government does not depend upon its recognition by the forum state, but attaches to every government by virtue of its existence.[32] Thus it follows that the Chinese Communist government is not liable to suit in American courts.

The precise nature, extent, and effects of the *act of state doctrine* are subjects of considerable controversy. However, the immediate question is whether the nonrecognition of Communist China operates to deprive the acts of the Peking government of validity in American courts. The answer seems to be yes. In 1930 it was held that the decrees of the (then unrecognized) Soviet government were not law, and that acts or decrees, to be regarded as governmental, must proceed from a *recognized* authority.[33] It was admitted, however, that acts of a purely ministerial nature (such as would be performed by any government) are valid, though performed by an unrecognized regime.[34] It was later held that the acts of a government in actual control of territory have force within such territory and over its nationals.[35] However, this case is distinguishable from the present Chinese situation in that, at the time of the decision, the United States recognized *no* Russian government. A case more nearly in point is *Latvian State Cargo and Passenger S.S. Lines v. McGrath.*[36] Here the validity of a Soviet decree confiscating property of Latvian nationals was challenged. Although the U.S.S.R. exercised effective control over Latvia, and had "incorporated" that country as a Soviet Socialist Republic, the United States had not recognized the incorporation, and continued to recognize the existence of the Republic of Latvia. The court held the Soviet decrees invalid. Of particular importance is the decision in *Bank of China v. Wells Fargo Bank and Union Trust Co.*[37] The Bank of China, chartered under the laws of the Republic of China, had deposited funds in the Wells Fargo Bank in San Francisco. Subsequently the Communists overran mainland China and decreed all assets of the Bank of China to be vested in the People's Government. Wells Fargo refused to honor the demands for payment made by the Hong Kong Branch of the original (Nationalist-supported) Bank, asserting the Communist decree as its defense.

32. Voevodine v. Government of the Commander-in-Chief of Armed Forces in the South of Russia, 232 App.Div. 204, 249 N.Y.S. 644 (1931).

33. Petrogradsky Mejdunarodyn Kommerchesky Bank v. National City Bank of New York, 253 N.Y. 23, 170 N.E. 479 (1930).

34. See Texas v. White, 74 U.S. 277, 240 (1869).

35. Salimoff v. Standard Oil Co. of New Jersey, 262 N.Y. 220, 186 N.E. 679 (1933).

36. 188 F.2d 1000 (D.C.Cir. 1951).

37. 104 F.Supp. 59 (N.D.Cal. 1952).

Judgment was entered for the Hong Kong Branch, the court refusing to give effect to the Communist decrees.

The case law on recognition as affecting the act of state doctrine is aptly summarized in the Restatement:

> Courts in the United States refuse to give the law of an unrecognized entity the effect it otherwise would have under the rules of conflict of laws, except as to rules regarding the transfer of property localized at the time of transfer in the territory of the unrecognized entity or regime and belonging then to a national thereof.[38]

The foregoing material would indicate that the granting and withholding of recognition are legal acts and, as such, produce definable legal consequences. However, a closer examination of the decisions, and of the role of the executive branch therein, demonstrates that recognition and nonrecognition *per se* are of limited legal effect. Most of the cases involving the status of a foreign state or government, the standing of its agents, or the validity of its laws and treaties, involve also a communication from the Legal Office of the State Department to the appropriate court. Such communications have a direct bearing upon the final adjudication. An interesting acknowledgment of this fact was made by the Court of Appeals of Louisiana in *Republic of Cuba v. Mayan Lines, S.A.*[39] The court enunciated the principle of international law that recognition, once granted, continues until such time as it is withdrawn or cancelled and, therefore, the judiciary recognizes the last-recognized government of the foreign state (here, Cuba). On this basis it was held that the Castro government could bring an action in American courts. The court then admitted, however, that this would not be so if the political department had determined otherwise.

Even more illustrative is *Rich v. Naviera Vacuba, S.A.*[40] The ship *Bahia de Nipe,* which had been privately owned, was nationalized by the Castro government. While at sea it was seized by anti-Castro crewmen and brought to Norfolk. Immediately libels were brought against the ship by American citizens whose property had been taken, allegedly without just compensation, by the Cuban Government. Havana immediately requested that the ship be granted immunity from the jurisdiction of American courts. Pursuant to the Cuban request, the State Department informed the Justice Department that:

> [T]he Department of State recognizes and allows the claim of the Government of Cuba for immunity of said vessel and

38. *Supra* note 21 at § 116.

39. 145 So.2d 679 (1962).

40. 197 F.Supp. 710 (E.D.Va. 1961), *aff'd* 295 F.2d 24 (4th Cir. 1961).

> its cargo from the jurisdiction of United States courts. Accordingly, you are requested to instruct the appropriate United States attorney to file with the United States District Court . . . a suggestion of immunity in this case.[41]

The Secretary of State explained to the Attorney General that "the prompt release of the vessel is necessary to secure the observance of the rights and obligations of the United States."[42] Two days prior to the entry of the *Bahia* into United States waters, the Cuban Government had released an Eastern Airlines Electra which had been pirated from Miami to Havana by Castro sympathizers. Explaining this release, the Cuban authorities said that:

> If the Government of the United States guarantees the right of immunity and sovereignty of the boats and airplanes belonging to the Cuban people that are seized in our country and taken to United States territory . . . the Government of Cuba will accord reciprocal treatment to American boats and airplanes that are in a similar situation.[43]

A supplementary note from the State Department informed the court that ". . . heretofore, assurances were given by the United States that the vessel would be released in the event that the Government of Cuba declared the vessel to be its property. . ."[44] Referring to the State Department communications, the court held itself bound "to give judicial support to that decision."[45] On appeal it was held that the unequivocal declaration of the State Department "in this matter affecting our foreign relations, withdraws it from the sphere of litigation."[46] The *Bahia de Nipe* was released to the Government of Cuba.

This practice, termed "judicial deference"[47] is not new. The courts have been decisively influenced by executive policy in cases arising out of Bolshevik nationalization, German and Soviet occupations of various European states, and the Cuban expropriation laws. The

41. Letter From the files of the Department of State as quoted in Cardozo, *Judicial Deference to State Department Suggestions: Recognition of Prerogative of Abdication to Usurper*, 48 CORNELL L.Q. 461, 466 (1962-63).

42. Rich v. Naviera Vacuba, S.A., 197 F.Supp. 710, 715 (1961).

43. Cuban Government communication as reported in 45 DEP'T STATE BULL. 407-08 (1961).

44. Note From Secretary Rusk to Attorney General Kennedy, Aug. 20, 1961, as reported in Falk, The Role of Domestic Courts in the International Legal Order 147.

45. *Supra* note 42 at 726.

46. Rich v. Naviera Vacuba, S.A., 295 F.2d 24, 26 (4th Cir. 1961).

47. *Supra* note 41.

Petrogradsky and *Salimoff* cases[48] both involved the validity of governmental acts of the unrecognized Bolshevik regime. In the former case the law in question was given no effect. In the latter case, similar legislation was treated as valid. In *Salimoff,* the State Department had informed the court that the United States "is cognizant of the fact that the Soviet regime is exercising control and power . . . and the Department of State has no disposition to ignore that fact."[49] In the *Latvian State Cargo* case,[50] the Secretary of State determined the legal status of the Soviet nationalization laws: ". . . [T]he incorporation of Latvia by the Union of Soviet Socialist Republics is not recognized by the Government of the United States. . . . [T]he legality of the so-called nationalization laws and decrees . . . has not been recognized by the Government of the United States."[51] The Soviet decrees were treated as nullities. In *State of Netherlands v. Federal Reserve Bank*[52] the court accepted the State Department determination that the Nazi-promulgated "laws" for occupied Holland were void and that the legislative acts of the Dutch Government-in-Exile were valid. Recently the Court of Appeals of the Second Circuit justified its inquiry into specific Cuban legislation on the grounds that the State Department had expressed no desire to interfere.[53] As regards Communist China, it is well-established that the courts will render no judgments which will contravene United States foreign policy:

> Both the Nationalist and Peoples Governments have maintained and strengthened their positions. Our national policy toward these governments is now definite. We have taken a stand adverse to the aims and ambitions of the Peoples Government. . . . We recognize only the Nationalist Government as the representative of the State of China. . . . [T]here coexist two governments, in fact, each attempting to further, in its own way, the interests of the State of China, in the Bank of China. It is not a proper function of a domestic court of the United States to attempt to judge which government best represents the interests of the Chinese State in the Bank of China. In this situation, the Court should justly

48. *Supra* notes 33, 35.

49. Salimoff v. Standard Oil Co. of New Jersey, 262 N.Y. 220, 224, 186 N.E. 679, 681 (1933).

50. Latvian State Cargo and Passenger S.S. Line v. McGrath, 188 F.2d 1000 (D.C.Cir. 1951).

51. *Id.* at 1003.

52. 201 F.2d 455 (2d Cir. 1953).

53. Banco Nacional de Cuba v. Sabbatino, 307 F.2d 845, 858 (2d Cir. 1962).

> accept, as the representative of the Chinese State, that government which our executive deems best able to further the mutual interests of China and the United States. . . . [T]he motion for summary judgment in favor of the Bank of China, as controlled by the Nationalist Government, is granted.[54]

Much of the law of recognition is thus the product of *ad hoc* adjudication, and is therefore more difficult to define or predict.

It is established judicial practice to construe recognition as having a retroactive effect, *i.e.*, recognition of a government operates to validate its acts from its inception.[55] It does not follow, however, that United States recognition of Communist China would necessarily validate Peking's acts of state since 1949.[56] A recognizing state can expressly restrict the retroactivity of recognition, as did Britain when it recognized the Lublin Government (of Poland), effective midnight July 5-6, 1945.[57] Nor does it follow that United States recognition of Communist China would imply assent to the latter's claims to Taiwan, the Pescadores, or nothern India.[58] Also, the effects of a recognition can be altered or clarified by treaties and executive agreements; thus the Litvinov Agreement determined the status of otherwise-justiciable acts of the Soviet Government.[59]

NONRECOGNITION AND INTERNATIONAL LAW

An analysis of the American position *vis-a-vis* Communist China reveals that recognition is, at least in part, a legal act. Recognized governments are generally accorded rights which are denied to unrecognized regimes. The fact that the adjudication is sometimes done by the executive, rather than by the judiciary, does not alter

54. Bank of China v. Wells Fargo Bank and Union Trust Co., 104 F.Supp. 59, 66 (N.D.Cal. 1952).

55. See Underhill v. Hernandez, 168 U.S. 250 (1897); Luther v. Sagor, [1921] 1 K.B. 456.

56. The People's Government claims existence from October 1, 1949. 2 WIGHTMAN, DIGEST OF INTERNATIONAL LAW 92.

57. See Boguslawski v. Gdynia Amerykie Line, [1950] 1 K.B. 157, *aff'd.* [1952] 2 All E.R. 470.

58. See Garvin v. Diamond Coal and Coke Co., 278 Pa. 469, 123 Atl. 468 (1924), to the effect that recognition proves nothing as to territorial jurisdiction, and that such a determination is political.

59. United States v. Pink, 315 U.S. 203 (1942). For discussions of possible unilateral adjustments by the United States in the event it should recognize Communist China, see Dean, 24 Far Eastern Survey 75 (1955) and 33 For.Aff. 360 (1955); see also Wright, *The Chinese Recognition Problem,* 49 AM.JOUR.INT'L.L. 320 (1955).

the legal character of what is being done. Recognition is, in practice, a discretionary act. Each government determines what foreign governments it will recognize, and likewise determines the prerequisites for recognition. This gives rise to an anomalous situation. There exists an international community wherein governmental rights and duties are, however imperfectly, outlined. Yet what ought to be a primary right—membership in the international community—seems not to be a matter of right, but of mere privilege. If a society claims to be governed by law, and yet operates under conditions whereby each member is free to decide for himself who the other members shall be, the claim of a legally-oriented society is shaken, and international law is but a veil for subtle anarchy.

However, although recognition is a matter of discretion, it is not a matter of *arbitrary* discretion. The members of the world community do not, as a rule, deny recognition to others upon mere whim or narrow national self-interest. Nonrecognition is the exception, not the rule. The nonrecognition of Communist China is a prominent issue precisely because it is an *abnormal* situation. The states of the world could, by abuse of the power to recognize, reduce the international community to chaos and international law to a sham. But the fact remains that they have not done so. The absence of a universal and automatic standard for determining when a government should be recognized should not cause legal consternation. The standards for determining negligence are equally uncertain, nonetheless it is decided every day that defendants were or were not negligent, *i.e.* that their conduct was or was not unreasonable under the circumstances.

Similarly, the governmental act of withholding recognition violates the international legal order only if the act is unreasonable under its circumstances. Conversely, when the act is reasonable, it is consonant with international law. To narrow the issue, the nonrecognition of Communist China by the United States is justified if it is reasonable; and it is reasonable if (1) the criteria for recognition are reasonable, and (2) their application to the facts is accurate.

Eleven days after Mao Tse-tung proclaimed the establishment of the People's Government, Secretary of State Acheson outlined United States criteria for recognition: the government must control the country that it claims to control, it must recognize its international obligations, and it must rule with the acquiesence of its people.[60] In October, 1949, the Communist regime probably satisfied none of these tests. However, it is now apparent that the People's Government is in firm control of nearly all of China and that it rules with the (how-

60. *Supra* note 56.

ever unenthusiastic) acquiesence of the Chinese people. The United States denies recognition to Communist China because, it is alleged, Communist China refuses to honor its international obligations.[61] There are those who assert that willingness to fulfill international obligations is not a proper test for determining whether or not a government should be recognized,[62] and this view is shared by the United Kingdom and, apparently, by France.[63] However, a large number of states reject the purely objective test,[64] and others, who disclaim the international obligations test do, in fact, apply it.[65]

It is not unreasonable to require a government to honor its international obligations as a prerequisite to its acceptance into the international community. The requirement is simply an assurance that the government is willing to obey the law. There is nothing unique about such a standard. One who violates domestic law is, upon conviction, deprived of rights which he would otherwise enjoy. An applicant for naturalization is invariably required to demonstrate a willingness to support the laws of the state whose citizenship he seeks. The admission of new members to the United Nations is expressly conditioned upon their being "peace-loving states" disposed to perform the obligations contained in the Charter.[66] It is therefore quite reasonable to require a goverment to demonstrate a willingness to honor its obligations to other governments.

The application of this criterion to Communist China leads to the inescapable conclusion that the Peking regime does qualify for recognition. Her ideological predilections and international misconduct are ample proof of an unwillingness to honor international obligations:

> The Chinese Communist Party, which has led the Chinese Revolution to victory, is armed with Marxism; this is epitomized in the famous words of Mao Tse-tung: The integra-

61. Statement by Ambassador Stevenson, United States Delegation to the United Nations Release No. 3872, Dec. 1, 1961.

62. *Supra* note 8.

63. Statement Concerning China by General Charles DeGaulle, Jan. 31, 1964, French Press and Information Services Release No. 201 A.

64. STEINER, COMMUNIST CHINA IN THE WORLD COMMUNITY 443-450.

65. India claims to apply only objective standards. *The Representation of China in the United Nations, (Indian) Ministry of External Affairs,* MEA 11 (1959). However, the Indian Government has indicated a determination to depart from strict objectivity in the event that Southern Rhodesia declares its independence. *Statement by His Excellency Sardar Swaran Singh, Minister of External Affairs of India, in the General Assembly on December 14, 1964,* Permanent Mission of India to the United Nations (1964).

66. U.N. CHARTER art. 4, para 1.

> tion of the universal truth of Marxism-Leninism with the concrete practice of the Chinese Revolution.[67]

Marxism views the state as a superstructural extension of the prevailing economic mode of production,[68] existing solely to perpetuate that economic system. The Marxist-Leninist goal of the destruction of capitalism necessarily involves the destruction of the "capitalist states." Such ideology can acknowledge no rights in capitalist states:

> The Chinese people have always considered their revolution as part of the world socialist revolution. . . .[69]

> All revolutionary people can never abandon the truth that all political power grows out of the barrel of a gun.[70]

> The vanguard of the proletariat will remain unconquerable in all circumstances only if it masters all forms of struggle —peaceful and armed . . . legal and illegal.[71]

Communist China's international behavior substantiates her philosophical commitment to violence and disorder. The General Assembly of the United Nations has condemned Communist Chinese aggression in Korea,[72] and declared Peking's treatment of military and civilian prisoners to be "atrocious" and "in violation of rules of international law and basic standards of conduct and morality and as affronting human rights and the dignity and worth of the human person."[73] In 1959, the General Assembly went on record as deploring the suppression of the Tibetan people by the Chinese Communists, and a special committee of the International Commission of Jurists found that the Peking regime had committed acts of genocide in Tibet.[74] Upon gaining control of the mainland, the Communists seized all United States consular property in Peking, in direct violation of the Sino-American Treaty of 1943.[75] The more recent international adventures of the Communist government need no elaboration.

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67. People's Daily (Peking), Oct. 1, 1959.

68. See MARX AND ENGELS, THE COMMUNIST MANIFESTO; LICHTHEIM, MARXISM; LENIN, IMPERIALISM: THE HIGHEST STAGE OF CAPITALISM.

69. Statement by Foreign Minister Chen Yi, New China News Agency, Oct. 3, 1959.

70. People's Daily (Peking), Dec. 10, 1961.

71. Letter From The Central Committee of the Chinese Communist Party to the Central Committee of the Soviet Communist Party, June 14, 1963, reported in HOUSE COMMITTEE ON FOREIGN AFFAIRS, 88TH CONG., 1ST SESS., THE CONDUCT OF COMMUNIST CHINA. 5 (Comm. Print 1963).

72. HOUSE COMMITTEE ON FOREIGN AFFAIRS, *supra* note 71 at 1.

73. *Id.* at 10.

74. *Id.* at 7.

75. *Id.* at 9.

Since the criteria for recognition used by the United States are reasonable, and their application to the Chinese *status quo* is accurate, it follows that United States nonrecognition of Communist China is reasonable. In view of the absence of a universal legal standard for recognition, the position of the United States is consistent with those international legal principles which do exist. Nevertheless, the Chinese recognition problem accentuates the deficiencies of the international legal order: to the extent that the rights of any state or government depend upon the discretion of another state, a fundamental premise of any legal system—equality before the law—is absent.

On the other hand, the policy of extending recognition to any group exercising political control, without regard to its attitude toward the rights of others, does violence to international law. The deleterious consequences of indiscriminate recognition are evident in the *Sabbatino* case.[76] Here the Cuban Government invoked its status as a recognized sovereign to gain access to the courts of the United States, whereupon it pursued its claims to property (formerly owned by American citizens) acquired by the Cuban State through an expropriation decree which was manifestly contrary to international law (in that the property was taken without just compensation). The United States Supreme Court held that, as the expropriation decree was a Cuban act of state, it could not be questioned in a foreign court, notwithstanding its patent illegality. Thus the premise that all governments are entitled to recognition can be a convenient device, in the hands of unscrupulous governments, to obtain judicial approbation for the most flagrant violations of international law.

If the United States were to abandon its present position and recognize Communist China, there would follow an almost universal acknowledgment of the right of all states and governments to be treated as such. However, as *Sabbatino* demonstrates, such deference to formal rules often operates to subvert the substance of international law. Ultimately, then, the Chinese recognition problem presents, not a choice between legal principle and political policy, but a choice between conflicting demands of international law. The United States has chosen to preserve substantive international law to the detriment of procedural international law. So long as Communist China remains ideologically and politically committed to international chaos, the recognition dilemma is insoluble.

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76. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964).