# Sources of the recognition of belligerent status

By Charles Zorgbibe

## Part One

### Recognition by the Government

"Whenever a large organized group believes it has the right to resist the sovereign power and considers itself capable of resorting to arms, war between the two parties should take place in the same manner as between nations..." This statement by de Vattel in the 19th century seemed destined to take its place as a part of positive law, constituting part of what was known as recognition of belligerency, tantamount to the recognition by the established government of an equal status for insurgents and regular belligerents. When a civil war became extensive enough, the State attacked would understand that it was wisest to acknowledge the existence of a state of war with part of the population. This would, at the same time, allow the conflict to be seen in a truer light. The unilateral action of the legal government in recognizing belligerency would be the condition for granting belligerent rights to the parties. It would constitute a demonstration of humanity on the part of the government of the State attacked and would also provide that government with prospects for effective pursuit of the war. By admitting that it was forced to resort to war, it would at least have its hands free to make war seriously.

In their eagerness to demonstrate the advantages of recognizing belligerency, 19th century authors obviously failed to consider the psychological circumstances in which belligerent status would be granted.

Declining to recognize an insurgent government even partially and contemptuously, the State attacked would do no more than recognize that war existed in fact and that the international rules of war should apply to relations between the two parties. It was painful for a State even to go this far since recognition of the insurgents as belligerents amounted to a formal confession of its own temporary impotence and carried with it the risk of strengthening the authority of the rebels.

The seriousness of the step explained the characteristics it assumed. Recognition was not subject to any other fundamental condition than the discretion of the government in question. It was always an optional action and was seldom expressed in a categorical and formal manner, being essentially an expression of the particular nature of the legal government. It was often no more than tacit.

At the end of the 19th century, some authors nevertheless maintained the so-called theory of "obligatory recognition of belligerency", arguing that it was not only a right but a duty of the established government; that a formal act of recognition was not even necessary since the mere existence of a civil war conferred the right of belligerency upon both parties. In his work on the theory and practice of international law, Calvo stated: "Genuine civil war confers upon both parties involved the characteristics and rights of belligerents". Fiore also argued, in his *Nouveau droit international public*, "that quite apart from recognition of the belligerent status... we cannot dispute the *de facto* personality of a political party... nor can we escape from regarding it provisionally as a separate and distinct state." He proposed that executive and judicial authorities accept the exercise of certain sovereign rights by the rebels. It is obvious that these authors refused to regard recognition as a creative act establishing the status of belligerency, but treated it as a declarative act recognizing existing circumstances, both *de facto* and *de jure*. Their view of the matter, however, was not well suited to the nature of conventional interstate society. How was it possible to force a State to recognize the existence on its own territory of a belligerent community, in an international climate characterized by the quasi-monopoly and the unconditional character of State power? Even supposing that such recognition were unnecessary, how would it be possible to define the "state of civil war" which would, in itself, confer the rights of belligerency? Calvo acknowledged the difficulty of answering these questions, noting that it was equally difficult to define absolute

limits and to set forth general rules since "everything depends on the circumstances of time and place, on the extent and duration of the insurrectionary movement, the seriousness and the complication of the interests involved, the principles of law and the general concept put forward by the party which has taken up arms..." In practical terms, the imprecision of the criteria left the legal government discretion to decide whether or not to recognize the existence of conflict.

Recognition of belligerency by another State could not, in law, influence the decision of the legal government. Such recognition of course might have political consequences; the established government might be inclined to consider it as an indication of international public opinion or, more commonly, as motivated by political or economic considerations. Legally, however, foreign powers could well grant insurgents the status of belligerents and enter into relations with them; the government of the divided State would nevertheless remain sovereign and therefore free to apply the provisions of internal penal law to the rebels and to deny them any rights inherent in war between States. On the other hand, once a legal government has granted recognition to its adversaries, it must logically bear the consequences of its decision. When such recognition is freely decided, it creates a new juridical situation and can only be withdrawn after the defeat of the insurgents.

When a legal government intends to accord recognition, its decision is not subject to the fulfilment of certain conditions by the rebel party. The established power cannot lay itself open to the suspicion of weakness; it will certainly not be inclined to treat as serious enemies a handful of rioters. If it considers it to its own advantage to assume belligerent rights, it is free to do so in the light of the sovereign right to make war which is accorded to it by classic theoreticians.

Some authors argue, however, that the government, in making its own sovereign judgement, should take a number of elements into account. In the opinion of de Martens, "the rebel party must be regularly organized, genuinely independent and must respect the laws and customs of war". Bluntschli specifies three conditions, stating that the rebel community can only be recognized if: (*a*) it is recognized as a military force, (*b*) it observes the laws of war in the conduct of hostilities and (*c*) it believes in good faith that it is fighting as a substitute for the State in the defence of its rights. These conditions may serve two different pur-

poses. First, they may prevent the legal government from according precipitate recognition—but this concern is superfluous since, as Wehberg wrote, it is impossible to point to any case of recognition of insurgents by a legitimate government before revolt had assumed the dimensions of civil war. Secondly, fulfilment of the three conditions confers upon insurgents a moral right to recognition. Bluntschli appears to have had this in mind when he cites the conflict of the southern Confederate States as an example of a civil war in which the insurgent party met all the required conditions and obtained the status of belligerent from the established government.

Since it constitutes a confession of impotence, the state of belligerency is seldom explicitly recognized by the established power. For a long time the only example of this form of recognition was a statement on 4 July 1861 by the American Congress that the Union Government was at war against eleven Southern States. More recently—and this second example also relates to a war of secession involving a federal State—we may refer to the "declaration of war" addressed on 12 August 1967 by the Nigerian Executive to the secessionist State of Biafra, prior to which time the federal authorities had admitted to nothing more serious than a "police operation". Most of the time, recognition of belligerency is only implied, consisting in the adoption by the legal government of measures quite incompatible with a state of peace, as if to protect by a purely tacit admission the last shreds of pretence that peace still exists.

It remains to determine what acts amount to a formal recognition of belligerency and leave no doubt as to the intentions of the legal government. The Institute of International Law took up this question in drafting its Neuchâtel Regulations of 1900. While it set aside certain applications of the laws of war made purely for humanitarian reasons and which could not therefore be interpreted as a recognition of belligerency, it required not one but a series of acts. In his quest for a criterion for recognition, Rougier quite properly concentrated not on the number of acts but on their character. Citing concrete examples, he pointed out that one act alone, such as the conclusion of an armistice like that signed by the Netherlands in 1830, and especially the establishment of a blockade against ports controlled by insurgents, like that decreed by President Lincoln on 19 April 1861, could eliminate any doubt. These necessarily implied recognition of a belligerent community, since one could conclude

a treaty with an enemy but not with persons subject to trial in court, and one could not impose a blockade, even on the supposition that this was a peaceful act, against one's own ports.

The theses of these authors nonetheless left open to doubt a wide range of questions as to the real intentions of the party mainly concerned —the established government. From the outset, events during the Spanish Civil War were the subject of divergent interpretations. In July 1936, the Madrid government declared that Spanish Morocco, the Canary Islands and other African possessions were "war zones" and "subject to blockade", these measures being extended on 11 August to the southern coast of Spain and the Balearic Islands. Other powers refused to respect the blockade by using force to prevent their ships being inspected. In the opinion of Padelford and O'Rourke, the Spanish Government had indeed decreed a blockade and in doing so had recognized from the beginning of the conflict the nationalist insurgents as belligerents, the refusal of other States to respect the blockade being due to the inability of the Madrid Government to make it effective. Schulz, by contrast, believed that the declaration of July 1936 did not constitute a genuine declaration of blockade inasmuch as it had dealt mainly with the establishment of "war zones", noting that it did not prevent the issuance of a decree on 27 July 1936 characterizing the cruiser *Almirante Cervera* as a pirate ship. He argued that the Madrid Government had simply wished to claim certain rights unilaterally and had not intended to recognize the rebels as belligerents. The same contradictory points of view appeared during the civil war in Algeria, with a spokesman for the rebel organization interpreting French actions in stopping ships on the high seas and seizing their cargoes as a tacit recognition of belligerency, whereas the French Government appeared to justify these operations on the theory of "legitimate self-defence". Prof. Rousseau expressed regret that such boarding of vessels had not been made entirely legal by explicit recognition of belligerency. The fact is that an insurgent party will always be tempted to interpret certain acts of government authorities as implicit recognition, while the legal government will maintain its own conviction, even by its silence, that it has in no way recognized the rebels as a belligerent group.

Recognition of belligerency discloses a division between the State and a group of its citizens. The respective supporters of the legal government and the insurgents appear suddenly to be going in different

directions as the common ties of allegiance are provisionally undone and the rights of belligerency are conferred upon both parties. The conflict then appears as it really is; the juridical stage has been set.

In according recognition, leaders have not always been aware of the rights which they were granting to the adverse party and the obligations they themselves were assuming. It does not appear, for instance, that President Lincoln in 1861 wished by his declaration of blockade to grant belligerent rights to the Southern States. Some authors have supported the misconceptions of governments. In 1881, in his draft international code, Dudley-Field still argued that recognition conferred belligerent rights only upon the legal government. He went so far as to add that a nation might, without renouncing its rights of jurisdiction over the insurgents, treat them as belligerents.

Most authors, however, have laid stress on the sacrifices imposed upon itself by the established government. In particular, they have contrasted the recognition of belligerency and the application of penal law. When the ties of allegiance have been shed, the captured insurgent is no longer subject to trial but is a prisoner of war. It is true that civil war cannot be entirely comparable to international war, being limited by the circumstances of war and by acts of violence occurring in the course of the armed struggle. If the insurrection is overcome and the ties of allegiance reconstituted, there is nothing to prevent prosecution of the leaders of the rebel party for conspiracy against State security. Lieber made this clear in his Instructions: "Treating, in the field, the rebellious enemy according to the law and usages of was has never prevented the legitimate government from trying the leaders of the rebellion or chief rebels for high treason, and from treating them accordingly, unless they are included in a general amnesty".

On the other hand, the same authors perceive an advantage for a State attacked in suspending the ties of allegiance of its nationals who belong to the belligerent community since it discharges the State of responsibility for acts by the insurgents vis-à-vis all other States. The attitude of the Washington Government after the War of Secession seems indeed to support this point of view in that it rejected all the claims for indemnity addressed to it as a result of actions carried out by the Southern troops, since as regular belligerents their activities did not incur the responsibility of the Union Government. It must be noted however that this refusal by the Federal Government was in every case the response to

the powers which had recognized the belligerency, as in the case of France whose claims were rejected by the Joint Commission set up on 15 January 1880. The American example does not make it possible therefore to postulate, as Rougier does, that the responsibility of the State which has granted recognition ceases *erga omnes*. Logically, the legal government should not be able to escape from its responsibility except towards those States which have granted belligerent status to the rebel party.

The major effect of recognition so far as the attacked State is concerned rests in the fact that it acquires the right of belligerency, that is, to use means of action which are more energetic than those it would derive from the simple application of criminal laws. In the classic era, this right of the State was not disputed either in doctrine or in international practice since *jus belli* appeared to constitute one of the main attributes of sovereignty. If a State decided to declare a state of war with the insurgents, neither the latter nor any third States had the right to refuse to admit this attitude. The fact that the capacity to engage in war was not exercised against another subject of international law but against a community which had hitherto lacked any juridical personality did not appear to disturb the classic authors. Rougier expounds that "the State is recognized by the other powers as a person under the law of nations; from the moment it declares that it is in a state of war, the other nations are aware that its belligerent rights might well conflict with their own rights"; the State may, therefore, exercise its authority to make war against whomever it pleases. Likewise, Strupp comments simply that rebels and the mother country are in the situation of two belligerent States; while, for Lawrence, the important fact is that only the State possesses the legal competence necessary to declare a state of belligerence—the insurgents do not have such competence. The attitude of other governments is also revealing: when Lincoln ordered the blockade of the ports held by the forces of the South, Britain interposed, not to contest the acquisition of belligerent rights by the federal government—a position which would have allowed Britain to maintain its economic relations with the southern States—but to draw the President's attention to the various legal consequences of his decision.

However, just before the outbreak of the Second World War, the Spanish Civil War—an intermediate phase, it is true, in the evolution of the notion of civil war—saw the beginnings of a new theory, namely,

that other governments must approve before a sovereign government may consider insurgents as belligerents and regard itself as being in a state of war. But this requirement, far from being the expression of a concern to prohibit civil war, turned out to be no more than the reflection of the confusion prevailing in international relations—as was to be proved by the intermittent efforts made by the legal government and some other powers to find a legal "third way" which would be neither the recognition nor the fictitious non-existence of the insurgents. In complete contrast, Georges Scelle maintains that a State's competence to take military action is distinct from its competence to wage war, that military action forms part of police powers which the legal government holds in its constitutional character, and that such action is an obligation since the legal government has the duty towards the international community to keep order within its own zone of territorial authority. This conception is undoubtedly more in keeping with the author's cherished view of an international executive power based on division of functions between States, rather than with international practice.

## Part Two

### Recognition by other States

The recognition of belligerency by other States was established as a practice only gradually: for a long time it was regarded as a preliminary to recognition as a State, in civil wars of secession, of the territory held by the insurgents. For example, in the American War of Independence, France and Spain declared that they considered the rebels as possessing "factual independence". The revolt of the Spanish colonies in America was, indeed, the opportunity for the government of the United States to try to define the theory of recognition of belligerency: "The United States have recognized the existence of a civil war between Spain and its colonies, and have stated their intention to remain neutral, granting to

each of the two adversaries the same rights of asylum and of passage. In our view, each of the belligerents is equally entitled to be treated as a belligerent; both possess sovereign rights of war and the capability of exercising those rights". In 1868, G. B. Lawrence, in his Commentaries on the works of Wheaton, emphasized the distinction between the recognition of the rights of war of a colony or a part of a State and the recognition of its complete independence. But in the following year, during the first war of Cuban independence, Venezuela, Peru and Bolivia recognized the Cuban insurgents boths as belligerents and "as a government". At the end of the century, the recognition of belligerency was still not always dissociated from recognition of the independence of the territory controlled by the insurgents, even if the outlines of the two practices were becoming more clearly delineated: on 28 February and 6 April 1896, the Senate and House of Representatives of the United States Congress urged the Washington government to recognize the Cuban insurgents as belligerents and to create the conditions required for Cuba to obtain its independence. The doubt subsisting, from the beginning, as to the true nature of the recognition of belligerency explains the hesitations and shifts in the attitudes of States concerned, afraid for a long time that any attribution of legal status to the insurgents would be taken as formal recognition of their independence. Up to the time of the American Civil War (War of Secession), United States practice was very accessible to the notion of belligerency. While Great Britain limited itself to recognizing the Greek insurgents in 1825 and the civil war in Portugal in 1828, the Washington government invoked the precedent of the Spanish colonies in America to grant belligerent status to Texas when it revolted against Mexico in 1836, to mere rioters in Canada, without any real organization or political aims, in January 1838, and even to the rebel military faction of General Vivanco in 1858, the last-mentioned giving rise to a protracted disagreement with the government of Peru. But the Civil War engendered a sharp change of principle in the United States. The Confederates in the South were recognized as belligerents by Britain after they captured Fort Sumter, and subsequently by France, Spain and the major European powers. The United States made energetic protests and began a long debate with Britain which ended in the arbitration court in Geneva. From that time, the doctrine of recognition seemed to be more clearcut, but the practice became more strict. The Polish uprising in 1864 brought argument on

the question, as did the Cuban rebellions in 1869 and 1895, and the civil wars in Chile and Brazil in 1891 and 1894, but the result was usually negative. In 1927 Noel-Henry, writing on the subject, noted the total decline in the recognition of belligerency, and the practice lay dormant until 1967, during the civil war in Nigeria, when it again showed signs of life.

The polemics on the subject are understandable. The recognition of belligerency is the decisive act in the relations between the rebels and outside governments. It almost always has the effect of establishing precedents; it concedes a number of specialized powers to the insurgent group, conferring on it a functional personality. Nevertheless, there is one case in which recognition by third parties has only a declarative effect, that is when belligerent status has already been conferred on the insurgents by the legal government. It is true that each recognition has only a limited scope, and obviously other States are not legally bound by the decision of the legal government. But if they recognize the rebels in their turn—and to do otherwise would be to wilfully complicate international legal relationships, once the principal party concerned has declared its standpoint—they are doing no more than noting the factual relinquishment of authority already decided on by the legal government. On this subject, the draft of the rules submitted to the Institute of International Law in 1900 was very clear: it stated that another power was not bound unless it had associated itself with the recognition of belligerency.

Defined in this way, recognition of belligerency by another State appears as a very serious act. In dignifying the insurgent group with the status of a new subject, albeit secondary and short-lived, of the law of nations, the other State lays itself open, obviously, to the accusation of interference in the internal affairs of the State affected by the conflict. The very origin of the new practice is in contrast with the procedure in the 16th and 17th centuries, the prevailing custom at that time being to stipulate in peace treaties that if one of the contracting States should be confronted by a rebellion, the other States would refuse any kind of aid to the rebels, would stop all trade with them and would deliver them into the hands of their sovereign government. Recognition of belligerency reflected a greater flexibility in intergovernmental relations, which became less restricted by the rigid principle of legitimacy. At least, international society in the 19th century still remained very homogeneous. Recognition of belligerency by another State was indubitably a form of

intervention in the affairs of the divided State, but it was a means of avoiding intervention, an affirmation of neutrality.

International public opinion in the 19th century, confirmed by the practice of States, did not permit the recognition of belligerency by other States to be effected completely at will. A statement by a third party that civil war existed in a State had to correspond to reality: if belligerency did not in fact exist, or if it lacked the magnitude attributed to it, then the third party was guilty of unfair interference to the prejudice of the legal government. Publicists therefore attempted to define the conditions to be fulfilled by a rebel group in order to deserve recognition.

These conditions were set out in 1900 in Article 8 of the Regulations of the Institute of International Law. They were three in number: the rebels had to control a specific part of the national territory; they had to set up a regular government exercising, if only in appearance, sovereign rights over that part of the territory; they had to carry on the conflict with an organized army observing the laws and customs of war. The existence of a belligerent community, characterized by a combination of factual elements relating to population, territory, government and political objective, are indeed the constitutive elements of a State, even though they might be incompletely developed. As expressed by Bluntschli, these elements were the measures of the insurgent party's capacity to constitute a new State, or, as Holtzendorf put it, the criteria for regarding the party as a belligerent in anticipation of the final organization to which it aspired. This need for the emergence of a "virtual State" in order to make obvious to third parties the conflict taking place within a State community was recognized by countries asked to grant recognition around the middle of the 19th century. When France in 1864 refused to admit the Polish insurgents' belligerent status, President Stourm explained to the Senate:

"The Poles in arms have no government, not even a *de facto* government, for one cannot accord this title to an assembly of a few men whose names are a mystery and whose location is unknown. Neither is it possible to regard as an army those bands and parties who fight, sometimes in one place and sometimes in another, always courageously but without common direction, under a variety of chiefs who do not recognize a single superior. As for territory, we must recognize that these unhappy Poles

have none, except for the places where they temporarily find themselves, places which change every day as they are forced to move, either to seek out or escape from their enemy".

In the same way, the United States in 1869 refused to recognize the Cuban insurgents as belligerents. Senator Sumner, chairman of the Senate Foreign Affairs Committee, explaining this to the Republican Convention in Massachusetts, said: "The Cuban insurgents are bearing arms. I am aware of this, but where are their cities, their strongholds, their provinces? Where are their ports, their law courts, their maritime prize tribunals? Where then is the fact of belligerency?"

It must again be emphasized that the combination of elements required to constitute a belligerent community imply simply a certain degree of organization on the part of the insurgents. In this connection, there is some danger that Bluntschli's formula will be misinterpreted. Reference to the concept of a State may lead some authors to postulate very restrictive conditions, leading in effect to the exclusion of any recognition by third States. Olivart, for example, insisted that the insurgent party must "present the appearances of a State", in which one can already discern the future State and its complete political, administrative and financial structure. There is a more serious risk; that reference to the idea of a State may lead to confusion between belligerency and independence, thus limiting recognition of belligerency to an insurgent party which aims at secession. This confusion is particularly apparent in Dudley-Field, whose position is as follows: when a nation exists within a country, and when the insurgents have an established government in a position to maintain relations with other nations, any other nation is free to recognize them as independent and at the same time to maintain its neutrality.

The position is more qualified among such authors as Lapradelle and Politis who propose to limit the recognition of belligerency to secessionist movements. In 1891, the Colombian Foreign Minister even incorporated this erroneous thesis in instructions issued to officials in his ministry concerning the attitude to maintain concerning the Chilean civil war: "The insurgents do not at all propose to divide the Republic of Chile and establish a new State, independent of the one now existing in that country, but rather to replace the present government of the Chilean nation. This is therefore not a war of independence but a simple insurrectionary movement. On the basis of current opinion, a govern-

ment defending itself against insurrection has the right to expect that other governments will continue official relations with it alone. In wars of independence, on the contrary, foreign States may, under certain conditions, recognize the new government without doing injury to the divided nation."

Recognition of belligerency should not be linked to the probability of eventual success by the insurgents. In practice, of course, the contrary principle has sometimes prevailed in inter-State relations, as illustrated in a message by President Monroe on 8 March 1822. Monroe said that when a movement was strong and consistent enough to make its success probable, the rights provided under international law to equal parties in a civil war would be extended to it. Such an interpretation appeared primarily in the works of authors who wished to be very strict in stating the conditions for recognition. Olivart for example, when the Cuban insurrection was at its peak, wrote at the request of the Madrid government: in reality, it is a matter of establishing, through recognition, that a genuine civil war is taking place, that the limits of simple rebellion have been surpassed. In law, the judgement is not at all related to the prospects of success for either party at the time of recognition... even though the final decision of a third government may be influenced by a degree of apprehension about the future in the event of a victory by the insurgents. While it is wrong to postulate a strong position for the insurgents as a prerequisite for recognition, it is also true, on the contrary, that an extreme deterioration in the position of the rebel party may lead to withdrawal of recognition by a third government—at least when the insurgents have been defeated, disorganized and driven from their territory, and the belligerent community constituting the juridical basis for recognition has disappeared.

On the other hand, the need for insurgents to respect the laws of war is unanimously affirmed. The insurgents must earn recognition by their conduct. They may indeed have all the attributes which constitute a belligerent community, but to grant them the status of belligerents would nevertheless be a serious error, if they sought victory by violating the laws of war, by violence, terror and crime. Failure to observe the laws of war however must be systematic and "isolated minor infractions" may be tolerated. In granting, and possibly in withdrawing, recognition, some discretion in assessing whether the insurgents have complied with the laws of war is therefore left to the third State.

The fundamental requirement set forth by a great many of the classic theoreticians now appears to have little basis: the interests of third States. This narrow conception of recognition, linked to the selfish interest that a third State might have in redefining its relations with the parties to a conflict, was expressed for the first time in 1866 by Richard Henry Dana in his edition of Wheaton's *Elements of International Law*. As Prof. Garner pointed out, Dana's opinion was greatly influenced by his disapproval of the recognition of the Confederates as belligerents by England in 1861 and by his desire to prove that the British attitude ran counter to the law. Subsequently, the Washington government appeared to adopt this idea, first with regard to Great Britain, as evidenced by the letter sent on 15 May 1869 by Secretary of State Fish to the American ambassador in London concerning the Alabama affair. The same was true during the two Cuban wars of independence. In the face of public opinion which favoured recognition of the insurgents, Presidents Grant and McKinley, at an interval of 22 years, in their messages of 7 December 1875 and 6 December 1897, justified their refusal to recognize the Cuban rebellion by the absence of "necessity" on the grounds that the interests and rights of the United States were not affected by the events. Nevertheless, although numerous authors in the following years cited Richard Henry Dana as their authority in reiterating the condition he had formulated, inter-State practice did not, on the whole, support their position. In 1869, Peru recognized the Cuban insurgents, not on any grounds that the conflict was taking place on its borders or at sea and that it was unable to avoid becoming involved, but simply because of its openly proclaimed intention to cause trouble for Spain, with which it was then in conflict. When the Institute of International Law was drafting its Regulations of 1900, it excluded the requirement of a particular interest of the third power. In plenary session, it rejected by a large majority Article 9 of the draft proposal which stated that, even then (when the insurgents meet the required conditions), a third power is not entitled to grant recognition unless this is required for a proper reason, that is, a reason which is essential for the safeguard of a national interest. While Rougier, two years later, as if automatically, restated the condition of a particular interest, he deprived it in practice of any real meaning. To the economic and commercial imperatives which, according to the first restrictive arguments, were the only ones which could justify recognition, he added pure

political interest, and indeed simple moral interest, going so far as to state that the readiness with which the United States had always recognized American civil wars was derived from the preponderant political influence that State had in the two Americas. The author in this case does not seem to require a particular interest of the third State to justify recognition but his intention seems rather to explore the various kinds of interest which induced the State to grant recognition. In any event, the war in Spain provided the occasion for a definite, though implicit, repudiation of the doctrine of "special interest". When the London Non-Intervention Committee discussed the possible according of belligerent rights, the debate was concerned with the supposition of a general recognition by all the twenty-seven European States represented, and not only by those States whose interests were particularly affected. One might of course reply to this that it is in fact the States which perceive that their interests are deeply involved in a civil war which grant the belligerent status to insurgents. Non-recognition of the insurgents in the Polish and Hungarian revolts of 1830 and 1848 can certainly be explained in part by the fact that these wars were carried out only on land; it was not in any event motivated by the absence of one of the conditions required for recognition.

Beyond the mere listing of the conditions required, who is to judge whether they have been met or not? This will obviously be a matter of independent choice by the government doing the recognizing. This reality, born of the anarchy of traditional inter-State society, serves undoubtedly to minimize the rigid requirements drawn up by the various authors.

The insurgents in every civil war, in their desire to gain recognition attended not only by legal but also by moral benefits, tend to claim a veritable right to be recognized. Their supporters have often cited the instruction sent by the British Foreign Office to Stratford Canning, ambassador at Constantinople, on the occasion of the Greek uprising of 1825, to the effect that a certain level of strength and consistency achieved by any large mass of a people engaged in a war conferred upon that population the right to be dealt with as belligerents. The doctrine of obligatory recognition has gained little respect by the authors however, with the exception of such classic writers as Bluntschli, who wrote in his Codified International Law (Droit international codifié) that "... when a political party seeks the achievement of certain public objectives and

organizes itself as a State... the laws of humanity require that the status of belligerent be accorded to that party". So far as practice is concerned, it is impossible to dispute the clarity of the British declaration of 1825—although one must note that it was made in order to defend the British point of view on a specific matter and that, after more than a century and a half, it has not been followed by any similar official statement. The fact is that the history of civil wars, for the most part, is the history of unrecognized insurrectionary movements. The comment by the American Secretary of State Fish in a letter to Ambassador Motley on 25 September 1869 expressed the reality more accurately than did the declaration by the Foreign Office. Fish wrote that it was up to every sovereign power to decide for itself, on its own responsibility, whether or not it wished at any given time to accord belligerent rights to insurgents who were the subjects of another power. During the war in Spain, the attitudes of third States were quite typical. All the conditions required for recognition of the military party as belligerents had long since been met when the twenty-seven powers participating in the Non-Intervention Committee refused to grant them this status.

The Spanish war also provided the occasion for reverting to the theory of obligatory recognition, which suddenly reappeared not only in the works of authors favouring the military rebellion but also in those of jurists who sought to convert international law into a coherent system, making for an equitable international order. For the latter, whose views were often expressed by Georges Scelle, international legal doctrine might just as well have continued to adhere to the thesis of optional recognition. In reality, they maintained that it had done no more than record positive law, a law which had developed in a period when the development of international standards was influenced only by the selfish interests of States and not by the interests of the international community. For them the time had come for a reform of positive law, and not simply for codifying it. When insurgents had established their power over part of the territory of a State, provisionally exercising administrative functions and exerting their *de facto* authority over that segment of the nation, international law had to reckon with the facts. Recognition, if accorded, should have a declaratory and not a constitutive character. Even further, it was to be hoped, once civil war had genuinely been made subject to regulation through the automatic attribution of certain rights to insurgents, that the specific act of recognition would become unnecessary;

and, when the rule of international organization and of fundamental standards had been assured, that the distinction between a simple insurrection and a civil war would be made collectively and would be consistent with the general interest of international society.

This doctrinary thesis was hardly destined to have any effect upon the juridical aspects of the Spanish war. It did at least find expression, following the Second World War, in humanitarian law; in Article 3 of the Geneva Conventions of 1949. To this extent, by minimizing interest in the concept of belligerency, it created at least a small breach in the classic law on recognition of insurgents.

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