



Determining rightful governments of states in civil conflicts

By: Davante Parries

Old Dominion University, Model United Nations Society

Introduction

The foundational concept of the United Nations is state sovereignty. States are recognized as members when they represent sovereign governments, with a monopoly on legitimate political power throughout their territory. This is basic precondition for admission of a state to the UN, the condition that all 193 member states are expected to meet.

But rival claims to governance are an old problem, growing with the process of decolonization that accelerated after World War Two. Since the end of the Cold War, this precondition has become progressively more dubious, with the collapse of states and the rise of civil war. Instead of single sovereign state, the international community faces many situations in which:

- Countries may not have a sovereign legitimate government.
- There might be a state, but its authority is contested by other factions.
- Its power may not extend far beyond the capital city.
- More than one faction may claim political power.

Previous recognition of a sovereign government was a relatively uncontroversial, expect for specific states that might refuse to recognize a government. Examples of the latter include the United States, which routinely refuses to recognize

governments it disapproves of, including the People's Republic of China (1949-1972), Cuba (1959 – present), Democratic republic of Korea (1950 – present), and Iran (1979 – present).

The problem of recognition become s especially important for the United Nations as it intervenes in armed conflict. Depending on the specific mandate—usually based on a resolution from the UN Security Council—the UN may be responsible for humanitarian relief in post-conflict situations. It may find its freedom of action limited by demands from rival sides, which may refuse to permit assistance to civilians governed by their adversaries. UN agencies such the UN Development Programme (UNDP) or the UN Office for the Coordination of Humanitarian Affairs (OCHA) may find their work stopped and their staff vulnerable to arrest or violent attack.

Background: Who to recognize?

A government is design to maintain order in a society and protect the lives and interest of the citizens in its domain. When the citizens feel/ realize that this is not the truth, they revolt and try to overthrow. This is known as a Coup d'état; the French term meaning blow of state; the illegal action of a small group seeking to directly, and sometime forcefully gain dominance of a nation's government. This action, naturally, is only deemed successful if the gain control, if the group fails the result consequence is civil war. Civil war is a war fought between two

or more groups in a given sovereign nation over a political or cultural issue. For example, the American civil war was a war to maintain the union after the southern states of America broke off due to disapproval of federal government legislation.

Due to the very nature of a civil war; what can be seen as the true form of government can become fizzy. This is particularly true for other governments/nations who wish to develop/ have a relationship with the previous ruling body. The division in the nation disrupts the flow of trade, political actions, and general daily life of the people, not only in the warring nation, but around the world. Yet, when the war is over there is no grantee that the government (if new) will recognize by the global body.

The traditional UN response is to deal with the legitimate government, the government recognized by the international community and represented in the United Nations. Indeed, the UN must deal primarily with its member states. But this government may not control much of a country's territory. And in the most chaotic situations—such as contemporary Syria—member states may disagree on which government is legitimate.

An example is Somalia, where the international community is agreed that there is one legitimate government, the Federal Government of Somalia (FGS) established in 2012 in the national capital of Mogadishu. But the FGS has virtually no power outside the capital city. Emergence humanitarian assistance in the rest of Somalia requires the good-will of other factions. But the... government may refuse to permit such cooperation, which undermines its legitimacy and authority. Balancing these conflicting priorities is a major problem for the entire UN system. Similar problems

hinder humanitarian relief in Central African Republic (CAR), Libya and Mali.

Figure 1. The Somalia federal capital of Mogadishu, surrounded by areas controlled by Shabab rebels



Source: AMISOM, the African Union Mission in Somalia, Peacekeeping Mission Somalia

In such situations, neutrality does not help. The factions in control will force outsiders—including UN agencies—to take sides. But the UN—which relies on the will of its member states—may be unable to determine which side to take. The predictable result is paralysis, political chaos and greater human suffering. But the usual preference of the UN—reflecting the rule of state sovereignty—is to allow member governments to determine what happens on their territory, regardless of whether they actually control it or not. As the legally sovereign, host government, it is their country; they call the shots, as far as the other governments UN is concerned.

Current situation

In the world now, there are civil conflicts such as the civil war in Syria and the deadly march of the terrorist group known as ISIS (Islamic State of Iraq and Syria). What these two have in common is to overthrow the local government and remake it so that it

a lines with the ideals of the new party. These conflicts, as a result, create disastrous problems for the state, its people and the surrounding nations around it. The Syrian conflict, alone, has created several thousand refugees. These refugees flee to neighboring nations, draining the resources of the host nations. This organization is trying to create an Islamic state.¹ In doing so, it has thrown off/undermining the governments of the Middle Eastern nations, thus resulting in the steady dissolving of the rule of law in that area of the world. There are countries in which the rightful government is not brought into question by civil unrest but by other countries.

Figure 3. Crime and Ukraine



Source: Forbes

Crimea is another clear example of this. The Crimean peninsula was part of Ukraine since it became independent in 1991, but with a high proportion of Russian speakers. Invaded and taken over by Russia in February 2014, it was formally annexed by Russia on 21 March 2014. The annexation is not recognized by the Ukrainian government in Kiev and its supporters. With two UN member states divided on the issue, there is not much the UN can do. In effect, the region is beyond the reach of the

¹ Nation meaning a land/area occupied one specific group or ethnicity. Versus, state which means nation in the connotative sense.

international community. Foreign governments can get involved, but must do themselves by supporting either Russia or Ukraine, without a formal UN mandate.

Figure 4. China and Taiwan



Another example of unresolved government is the relationship between the People’s Republic of China (mainland China) and the island of Taiwan. Taiwan has not declared independence from China, and claims legal sovereign authority over all of China, denying the legitimacy of the 1949 revolution. In effect, Taiwan is, in effect, an independent country, but regarded by China as a troublesome province. The People’s Republic of China uses its much greater power to stop other governments from recognizing it, so Taiwan lacks protection under international law and is not a member of United Nations. Instead, China insists the dispute is exclusively a domestic matter for China itself to resolve. Blocked by China’s determination, the UN is unable to act on the dispute. Again, outsiders act on their own. The United States guarantees the security of Taiwan, supplying it with weaponry, often leading to fear of war between China and the United States.

Figure 5. Kashmir divided

War has occurred three times because of the South Asian region of Kashmir, located between China, Pakistan, and India. It has been contested since 1948, when it became part of India. A predominantly Muslim region in mostly Hindi India, it has an important independence movement, and an important part (one-third of the inhabited area) is controlled directly by Pakistan. A smaller part—uninhabited—is controlled by China. Pakistan routinely calls for a referendum to settle control, which India refuses to permit. India also refuses to allow the United Nations to act on the situation, which continue after over 75 years. The UN regularly calls for peaceful resolution of the conflict, but is unable to do more. Humanitarian assistance has been approved by the UN, working through the governments of India and Pakistan to reach the parts of Kashmir they each control.

Role of the United Nations

One of the things the United Nations does is debate the legitimacy of a state. Part of the requirements a state must go through in order to be recognized as a state is having a legitimate government. Under international law, a state's government must be recognized if it has effective territorial

control. As such, the United Nations will not recognize the will of an unlawful government, and by extension an unlawful state.

Given that civil conflicts are issues conducted within a sovereign state, the United Nations does not have the ability to determine the form of government that a state should have. As such, the United Nations has not presented nor passed any resolutions that address the issue of rightful government. However as part of recognition process, the United Nations can revoke the membership of a nation whom lacks a stable, functioning government. One of the states that have met this criteria as of yet is South Sudan.

Country positions

China: The rightful development of government lies upon the states. Even during civil conflict, it is the state responsibility to form a synthesis and enforce the rule of law within its sovereign borders. All territories under that govern of a state is to be governed by that government.

European Union: the 28 member states of the EU and the EU itself tend to favor measures that assure humanitarian action, regardless of which governments they must deal with. Pragmatic demands for emergency aid are especially important. The EU will work with existing governments where they can respond, and deal with other factions when necessary.

France: France respects state sovereignty, but will work with rival claimants when governments are not effective or are guilty of human rights crimes. In Syria, for example, it has played a leading role supporting opposition factions, fighting against the government of Bashar Assad.

Non-Aligned Movement (NAM), the 120 countries of NAM mostly share colonial experiences which make them very hesitant about changing borders or recognizing rival governments. They tend to stress the importance of working with legitimate sovereign governments, even if their actual power is contested. This applies to most NAM countries, including most African, Asian and Latin American governments.

Russia believes that those people who fall under a nation's people should operate under the rule of law of that nation. This includes the Russian people who live in Crimea. Russian neo-conservative leaders like Alexander Dugin argue that Russia has an obligation to protect Russian speakers throughout Eurasia, especially in the 'near abroad' countries such as the Baltic states, Eastern Europe and Central Asia.

The United Kingdom views the rightful government as the government that best represents the nation's people. The element of a civil conflict alters the view of the effectiveness of a nation's government greater.

The United States is divided on issues of recognition. It respects legitimacy and sovereignty, and expects all UN members states to respect its own sovereignty, but the United States routinely deny recognition of governments it deems rouge or unacceptable, and works with rival actual power, facilitating long-term planning and preparing for action.

claimants to power. The United States works to undermine governments it finds objectionable, regardless of their legal legitimacy.

Options for UN action

The United Nations—with a sharply divided membership—has not resolved basic questions of how to deal with situations when a member state loses political authority or legitimacy. Instead it tends to respond piecemeal, incrementally, to specific situations, following the path of least resistance as it tries to balance the need to act against the imperative of sovereignty.

- **Act only when invited by sovereign host governments.**
- **Continue to support incremental action** in specific situations, avoiding collective principles that create difficult and unpredictable precedents the UN might not want to be bound by throughout the future.
- **Identify specific situations** where the need for action surpasses the risk of creating long-term precedents.
- **Establish new principles** for dealing with separatist factions and non-state actors (NSAs) who have