



DETAILED STUDY ON RECOGNITION STATUS OF INSURGENT AND BELLIGERENT ORGANIZATIONS

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ABSTRACT

Coming to the literal interpretation of Insurgent organization and belligerent organization the system of government running parallel to the government of the State and which does not purport to the legal identification of the same and when the same recognised by the State comes under the purview of the belligerent organization. Examples in support of the same are put in the research paper pertaining to LTTE, FARC-EP, CPN-M which need to be explained concerning their recognition status and involvement of Human rights law in the same.

Insurgent Organization

The insurgent forces in Iraq, Status of LTTE, Guantemela, Syria and Libya whether all these existing groups form part of it will be recognise the status of the Insurgent Organization.

Belligerents Organization

The country will recognize the belligerent's lawful right to wage war and could gain recognition as a state. Example: Syria recognizes the Iraqi force as a belligerent force then recognizes territory already controlled by them.

Research Question

1. What will be the rights and obligation when the belligerent status would come into recognition?
 2. Can there be effectiveness in the governance if the Insurgent group are recognised and forms a part of de-jure government?
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Keywords: Insurgent, Belligerent, Lawful Right

INTRODUCTION

The International law originally provided status and considered rebels as having international rights and obligations. Traditionally, insurgents were considered to have international rights and obligations with regard to those states that recognized them as having such a status. The recognition of the same needed to be proved by following criteria:

- a) The rebellions must have effective control over some part of the territory,
- b) The civil disorder should reach at certain degree or intensity that (it may not simply consist of riots or short-lived acts of violence).

When the Status is recognized by the Relevant State the rights and obligation are recognized depending upon the terms of Recognition. In the concept of traditional international law, insurgents which were recognized as belligerents, became recognized to a state as actor with all the rights and obligations . In the present scenario these recognition status have been replaced by compulsory rules of international humanitarian law which apply when the Fight reaches certain thresholds. Ingrid Detter have suggested that the idea that the application of the rules of armed conflict are related to the recognition of belligerency has been

“abandoned”¹, and Heather Wilson has claimed that, since the First World War, the old law is “more theoretical than real”, so both the laws of Armed conflict and humanitarian law shall be respected.

The status of Government that there is no recognition of insurgency or belligerency, and the group is not a national liberation movement that has successfully incorporated the application of the rules of international armed conflict left with armed conflict involving rebels or sometimes termed “armed opposition groups”. The humanitarian law which applies during internal armed conflict gives rise to certain duties for these rebels. There must be active participation and obligation imposed on persons who do not take part in the hostilities. The actual prohibitions include murder, violence to the person cruel treatment done, taking of hostages, humiliating & degrading treatment, and sentences or executions without judicial safeguards. In some cases the situation is put beyond doubt by UN resolutions stating that the humanitarian rules contained in Common Article 3 are to be respected by both sides in a particular conflict. Recently the US Supreme Court has pointed to the applicability of Common Article 3 with regard to the procedural guarantees offered by military commissions due to try individuals captured in Afghanistan during the conflict there between the United States and Al Qaeda Court held that Common Article 3 was applicable to that conflict. The memorandum then requested defence commands and departments to start a prompt review of policies and procedures “to ensure that they comply with the Standards of Common Article 3”.² The United States is engaged in a real, not literal, armed conflict with Al Qaeda and its affiliates and supporters as reflected by the Al Qaeda’s attack on September 11, 2001, an attack that killed more than 3000 innocent civilians. The United States gave two reasoning On a political level, the United States believes that all countries must exercise the utmost power to resolve and defeat the global threat posed by transnational terrorism. On a legal account, the United States believes that it has been and continues to be engaged in an armed conflict with al Qaeda, its affiliates and supporters. United States does not consider itself to be in a state of international armed conflict with every terrorist group around the world.³ When the Protocol II of the Geneva Conventions was drafted, several states explained their conviction that insurgents engaged in a civil war were criminals and that the protocol conferred no international legal personality to them (rights and obligations).⁴

Theories explaining Recognition Status

While defining Recognition, there are basically two theories which discuss the nature of recognition:

Constitutive Theory

This theory explains that it is the act of recognition by other states that creates a new state and endows it with legal personality and not the process by which it actually obtained independence. Thus, new states are established in the international community as fully fledged subjects of international law by virtue of the will and consent of already existing states.⁵The disadvantage of this approach is that an unrecognised ‘state’ may not be subject to

¹ Ingrid Detter, *The Law of War*, 2nd edition, Cambridge University Press, Cambridge, 2000, p. 43.

² Memorandum of 7 July 2006.

³ Statement available at <http://www.state.gov/documents/organization/66174.pdf>.

⁴ Antonio Cassese, “The Status of Rebels under the 1977 Geneva Protocol on Non-International Armed Conflicts”, *International and Comparative Law Quarterly*, Vol. 30, 1981, pp. 416–39, pp. 424–6

⁵ Crawford, *Creation of States*, pp. 19 ff. and J. Salmon, *La Reconnaissance d’Etat*, Paris, 1971. See also R. Rich and D. Turk, ‘Symposium: Recent Developments in the Practice of State Recognition’, 4 *EJIL*, 1993, p. 36.

the obligations imposed by international law and may accordingly be free from such restraints.

Declaratory Theory

It adopts the opposite approach and is a little more in accord with practical realities.⁶ It maintains that recognition is merely an acceptance by states in an already existing situation. New state will acquire capacity in international law not by virtue of the consent of others but by virtue of a particular situation. It constitutes by its own efforts and circumstances and will not have to await the procedure of recognition by other states. This doctrine owes a lot to traditional positivist thought on the supremacy of the state and the concomitant weakness or non-existence of any central guidance in the international community. For the constitutive theorist, the heart of the matter is that fundamentally an unrecognised 'state' can have no rights or obligations in international law. While recognition of a state by other states has only declarative value such recognition along with membership of international organisations, bears witness to these states' conviction that the political entity so recognised is a reality and confers on it certain rights and obligations under international law'.⁷ Thereby citing some of the examples in support of recognition

Case Study of Insurgents and Belligerents

LTTE (Liberation Tigers of Tamil Eelam)

On account of Human rights norms operate on three levels as the rights of individuals assumed as obligations by the States, and as legitimate expectations of the international community. Human rights law affirms that both the Government and the LTTE must respect the rights of every person in Sri Lanka. The Government has assumed the binding legal obligation to respect and ensure the rights recognized in the International Covenant on Civil and Political Rights humanitarian law. The LTTE plays a dual role the tension between these two roles is at the root of the international community's hesitation to address the LTTE and other armed groups in the terms of human rights law in one are the an organization with effective control over a significant stretch of territory, engaged in civil planning and direction maintaining its own form of police force and judiciary. The other hand is an armed group that has been subject to banning, and fiscal sanctions in various Member States. The LTTE and other armed groups must accept that insofar as they aspire to represent a people before the world, the international community will evaluate their conduct according to the Universal Declaration's "common standard of achievement".⁸

Communist Party of Nepal (Maoist) (CPN-M)

In this matter there were killings by an "illegal armed groups" known as Pratikar Samiti (retaliation groups) later renamed "Peace and Development Committees" as well as killings by a group known as the Special Tiger Force. The UN report does not allege that these groups were supported by the state. Their killings are simply detailed as part of the human rights situation. One recent press release by the OHCHR Nepal Office illustrates the approach: OHCHR has continued to emphasize in its meetings with CPN-M leaders that abductions of

⁶ J. L. Brierly, *The Law of Nations*, 6th edn, Oxford, 1963, p. 138; I. Brownlie, *Principles of Public International Law*, 6th edn, Oxford, 2003, p. 87; D. P. O'Connell, *International Law*, 2nd edn, London, 1970, vol. I, pp. 128 ff.; S. Talmon,

⁷ 92 ILR, pp. 199, 201.

⁸ UN Doc. E/CN.4/2006/53/Add.5, 27 March 2006

civilians for any reason are in violation of CPN-M's commitment to international human rights standards. The Office of the UN High Commissioner for Human Rights (OHCHR) has a human rights field operation in Nepal Office rights situation. Reports include a special section on incidents involving the Communist Party of Nepal (Maoist) (CPN-M).

People's Army (FARC-EP)

This is a legitimate belligerent force, and not a terrorist group the FARC-EP is kidnapping hundreds of civilians every year for financial gain, and currently holding over 700 of them, this does sound more like an illegal kidnapping ring than an insurgent group. The FARC-EP maintains a military campaign in every department (administrative region) of Colombia, and in 1999 controlled an estimated 40 percent of the country's territory. It has maintained a continuous military campaign since 1964, and its activities began during the period called *La Violencia* of the 1950s, which claimed an estimated 300,000 lives. The government of Colombia says it does not recognize the belligerent status of the FARC-EP. This is unsurprising, because the Colombian government would not want to admit that it has a serious conflict occurring within its borders. In addition, an admission that the FARC-EP were belligerents recognized by international law would give legitimacy to the FARC-EP's challenge to the established government. The FARC-EP are a belligerent army of national liberation, as evidenced by their sustained military campaign and sovereignty over a large part of Colombian territory, and their conduct of hostilities by organized troops kept under military discipline and complying with the laws and customs of war, at least to the same extent as other parties to the conflict. Members of the FARC-EP are therefore entitled to the rights of belligerents under international law.

CONCLUSION

The status of Government that there is no recognition of insurgency or belligerency, and the group is not a national liberation movement that has successfully incorporated the application of the rules of international armed conflict, one is left with an internal armed conflict involving rebels or what are sometimes termed "armed opposition groups". The humanitarian law which applies during internal armed conflict gives rise to certain duties for these rebels. There must be active participation and obligation imposed on persons who do not take part in the hostilities. The actual prohibitions include murder, violence to the person, cruel treatment, the taking of hostages, humiliating and degrading treatment, and sentences or executions without judicial safeguards.