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Serita, Kentaro

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Recognition of New States and Japanese Practice after the Second World War (2)

Kentaro SERITA

Introduction

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III. Creation of New States and Recognition

There are the various methods by which new States are formed. The two most important are the grant of independence by the previous sovereign, and the forcible seizure of independence by the territory in question. These will be referred to as devolution and secession respectively in this section. The crucial distinguishing feature, as J. Crawford has pointed out,⁽¹⁾ is the presence or absence of metropolitan consent, although in some circumstances this distinction is formal and may even be arbitrary.

Among other modes of creation of new States are the various forms of amalgamation or merger into 'unions of States' with distinct legal personality, dememberment or dissolution of an existing State, and the consolidation of autonomous or separate parts of so called divided States. These will be considered in the next section.

(i) *Recognition of States in the case of devolution*

In section I we concluded that the post-war independence of States was attained by peaceful means under the influence of the United Nations, except a few cases. We have identified seventy-seven instances of recognition of States since 28 April 1952, the day of entering into force of the Peace Treaty with Japan. In approximately sixty-five of these cases, recognition was "instantaneous" in Denys Myers' words,⁽²⁾ that is, substantially concurrent with the official independence day. As regards the U. S. recognition policy towards the New States, O'Brien and Goebel have seen that in the overwhelming majority of cases studied, involving a peaceful transfer of sovereignty, the United States did not take any time for observation and reflection.⁽³⁾ This is true of Japanese recognition policy towards the new States.

Only seven cases are counted among those in which express recognition was accorded by Japan later than two months after the official independence day of a new State. These are the cases of Morocco and Tunisia in the fifties, those of Kuwait and Western Samoa in the sixties, and those of Bangladesh, Guinea-Bissau and Angola in the seventies.

The independence of Morocco was recognized by the Joint Declaration signed by

(1) J. Crawford, *The Creation of States in International Law*, Oxford, Clarendon Press, 1979. p.215.

(2) Denys Myers, "Contemporary Practice of the United States Relating to International Law," 55 *AJIL* 706 (1961).

(3) O'Brien, W. V., and Goebel, U. H. "United States Recognition Policy Toward the New Nation," in O'Brien, W. V., ed., *The New Nations in International Law and Diplomacy*, New York, Praeger, 1965. p.208.

the Foreign Minister of France and the Prime Minister of Morocco on 2 March 1956.⁽⁴⁾ "France solemnly recognize[d] the independence of Tunisia" by the protocol of Agreement, signed at Paris on 20 March 1965, by the Foreign Minister of France and the President of the Tunisian Council of Ministers.⁽⁵⁾ O'Brien and Goebel classified the United States recognition accorded to Morocco and Tunisia as instantaneous.⁽⁶⁾ It seems difficult to find the legal or political reasons for the delayed recognition accorded by Japan.

By the Agreement of 23 January 1899 between the United Kingdom and Kuwait, Kuwait came under British protectorate. The United States appears to take the position that the independence of Kuwait was regained sometime before World War II.⁽⁷⁾ After the World War II, beginning with 24 July 1959, Kuwait had successively been admitted to the following International Organizations : the International Union for Telecommunication, the World Mail Union, the International Civil Aviation Organization, the World Health Organization, UNESCO and the International Labour Organization. Above all, in connection with the application of Kuwait for admission to the UNESCO as a full Member State in accordance with article II, paragraph 2 of the constitution of the Organization, the United Kingdom Foreign Office stated in a letter of 23 May 1960, to the Director-General of UNESCO that—

"Her Majesty's Government regard Kuwait as responsible for the conduct of her international relations".

(E/3363/Add.2, 17 June 1960, p.4)

However that may be, not until 19 June 1961 did the British Government officially recognize the full independence of Kuwait. The United Kingdom and the State of Kuwait, in an exchange of notes on 19 June 1961, constituting an Agreement, referred to discussions between the two Governments concerning the "desirability of adapting the relationship of the United Kingdom of Great Britain and Northern Ireland and the State of Kuwait to take account of the fact that Your Highness' Government has the sole responsibility for the conduct of Kuwait's internal and external affairs" and recorded the following conclusions reached during the course of the discussions:

(4) 2 *Whiteman* 204-206.

(5) For the English text, see 51 *AJIL* 683-684 (1957).

(6) See O'Brien and Goebel, *op. cit.*, note 356 at p.307.

(7) See O'Brien and Goebel, *op. cit.*, p.165.

"(a) The Agreement of the 23rd of January, 1899, shall be terminated as being inconsistent with the sovereignty and independence of Kuwait.

"(b) The relations between the two countries shall continue to be governed by a spirit of close friendship.

"(c) When appropriate the two Governments shall consult together on matters which concern them both.

"(d) Nothing in these conclusions shall affect the readiness of Her Majesty's Government to assist the Government of Kuwait if the latter request such assistance."

Consequently the transfer of sovereignty itself was so peaceful that the recognition of the State of Kuwait could be instantaneous. Japanese actual delayed recognition in these circumstances must be attributed to General Kassem's claim to Iraqi sovereignty over Kuwait. The details are as follows:

On 25 June, only six days after the signing of the new agreement between the United Kingdom and the Sheikdom of Kuwait, the Baghdad Government claimed Kuwait as an integral part of Iraq, on the grounds that Kuwait was part of the province of Basra in the former Ottoman Empire, and that it had been recognized by the United Kingdom as such both before and after the aforesaid treaty of 1899.⁽⁸⁾ Troop movements in Iraq were reported. On 1 July, upon request of the Kuwaiti Government, the United Kingdom dispatched troops to Kuwait in compliance with the provisions of the new agreement. On 12 August the Ruler of Kuwait and the Secretary-General of the Arab League signed an agreement for the replacement of the British forces in Kuwait by an Arab League force.⁽⁹⁾ The agreement with the Arab League was welcomed in London and the British phased withdrawal began on 19 September; the last troops withdrawn on 19 October 1961.⁽¹⁰⁾

At this stage of situations Japanese Government appeared to have considered the agenda of granting an express recognition to Kuwait. In this connection it is noteworthy that an extradepartmental body, Chūtō-Chōsakai (the Middle East Institute of Japan) reported that Japan recognized Kuwait on 8 December 1961.⁽¹¹⁾

(8) Cf. *Keesing's Contemporary Archives* (hereafter cited as *Keesing's*), 18187A. The Security Council of the United Nations on 2 July adopted the agenda concerning the Complaints presented respectively by Kuwait and Iraq. (SCOR 957th mtg., 2 July 1961).

(9) *Keesing's*, 18355A.

(10) *Ibid.*, 18934A.

(11) Chūtō-Chōsakai (Middle East Institute of Japan) ed., *Kuwait*, 1975, Tokyo, p.243 and see also Chūtō-Chōsakai ed., *Yearbook for Middle East and North Africa*, 1977-78, p.408.

However, following renewed declarations by General Kassem (Prime Minister of Iraq) of his Government's intention to "liberate" Kuwait the British Ministry of Defence announced on 26 December 1961 that it had taken "small-scale precautionary measures ... because tension had been stirred up in the Middle East during the Christmas season." On the same day, the Iraqi Foreign Minister, Dr. Jawad, announced that Iraq would reconsider her relations with any State which established diplomatic relations with "the Kuwait Sheikdom." In accordance with this policy Iraq broke off diplomatic relations on 18 January 1962 with Jordan. The Kuwaiti Ambassador in Tokyo was appointed on 31 January and he was received by the Emperor on 10 March 1962.⁽¹²⁾ Iraq protested against the receiving of Kuwaiti Ambassador by Japan and decided to recall the Iraqi Ambassador in Tokyo on 17 March 1962.⁽¹³⁾ Iraq successively broke off diplomatic relations on 18 March with Iran, on 16 May with Lebanon, on 2 June with the United States and on 8 August with Tunisia, because these countries had established diplomatic relations with Kuwait.⁽¹⁴⁾

In the case of Western Samoa it is on 18 October 1961 that the General Assembly of the United Nations, by resolution 1626 (XVI), endorsed the results of the plebiscite held on 1 May 1961 in the Trust Territory of Western Samoa under New Zealand administration. The General Assembly resolved, in agreement with the Administering Authority, that the Trusteeship Agreement for Western Samoa approved by the General Assembly on 13 December 1946 "shall cease to be in force upon the accession of Western Samoa to independence on 1 January 1962". Accordingly, Western Samoa became an independent State on 1 January 1962. On 1 August 1962 a treaty of friendship was concluded between Western Samoa and New Zealand. On 21 August 1962 Japan sent a telegram, recognizing the Independent State of Western Samoa and making proposals for the diplomatic relations between the two countries.⁽¹⁵⁾

The cases of Bangladesh and Guinea-Bissau fall within those of secession which will be referred to in the next subsection. The instance of Angolan independence calls for some elucidations.

Following the *coup d'état* of 25 April 1974 in Portugal and the new junta's appeal to the liberation movements of the Portuguese African territories for a cessation of hostilities,

(12) *Gaimu-sho Kōhyō-shu* (Foreign Ministry Statements and Documents), Year 1962, Vol. I, pp.122-123. It was published by the Foreign Ministry Notification No.41 (Official Journal No.10570 dated on 16 March 1962) that Japan recognized Kuwait on 10 March 1962.

(13) *Asahi-shimbun*, 18 March 1961 and also see *Keesing's*, 18934A.

(14) *Keesing's*, 18934A.

(15) *Gaimu-sho Kōhyō-shu*, Year 1962, Vol. II, p.47.

the three main Angolan liberation movements—the *Frente Nacional de Libertação de Angola* (FNLA), the *Movimento Popular de Libertação de Angola* (MPLA) and the *União Nacional para a Independência Total de Angola* (UNITA)—all subsequently called separate cease-fires; the UNITA ceased on 17 June, the MPLA on 1 October and the FNLA on 13 October.⁽¹⁶⁾ In early January 1975 these three Angolan liberation movements finally announced the formation of a common front, the absence of which had until then delayed the holding of full independence negotiations with the Portuguese Government. Immediately after its formation, independence negotiations took place and on 15 January an agreement⁽¹⁷⁾ was signed providing for the independence of Angola as from 11 November 1975. The transitional Government, in which equal representation of the three liberation movements was provided for in the Agreement, took office on 31 January. There after the military conflict between the MPLA and the FNLA-UNITA broke out and was aggravated. With fighting continuing, two separate Republics were proclaimed on 10-11 November by the MPLA—backed by the Soviet Union and Cuba—and the FNLA—supported by the United States, China and the South Africa—respectively, following which rival Governments were formed—one by the MPLA in Luand (the capital) and the other, based in Huambo (formerly Novo Lisboa), by the FNLA and UNITA acting jointly. The People's Republic of Angola was immediately recognized by the Soviet Union and the East European States, as well as by Brazil and North Vietnam. Contrary to the official policy of the OAU, which recognized all three liberation movements but neither the MPLA nor the FNLA-UNITA Governments, some member States, including Algeria, Congo, Guinea, Nigeria and the former Portuguese colonies of Mozambique, Guinea-Bissau, São Tomé and Príncipe and the Cape Verde Islands also recognized the MPLA Government.⁽¹⁸⁾ In the next year, on 11 February the MPLA was in control of 10 out of 14 provincial capitals. On the same day the OAU Secretary-General informed Dr. Neto in a telegram that the People's Republic of Angola had been formally recognized by the Organization and admitted full membership. Following the OAU decision Egypt, Togo, Swaziland and Malawi also announced recognition of the MPLA Government. On 17 February France announced its separate recognition of the MPLA Government, thus pre-empting a joint European Community initiative. Japan on 20 and Portugal on 22 February.⁽¹⁹⁾ Japanese Government explained its recognition of the MPLA Government on the grounds that Angola was under effective

(16) *Keesing's*, 26517A, 26863B.

(17) For the text (English), *ibid.*, 16973A.

(18) *Keesing's*, 27497A (27500).

(19) *Ibid.*, 27661A (27664).

control of the MPLA Government.⁽²⁰⁾

(ii) *Recognition of States in the case of secession*

Particularly since the sixties, the new States and those that recognize them are diluting the concept of statehood and stretching it downward to include entities that would never have been considered sovereign in the past. The grant of independence by the previous sovereign, consequently, need not always create a presumption that the traditional prerequisites for statehood are in fact present. However, where independence comes as a result of the use or threat of force without the consent of the previous sovereign, the question arises as to the statehood. We know the successful secessionary creations in the cases of Indonesia, North Vietnam, Bangladesh and Guinea-Bissau, as well as the failed attempts at secession—those in Katanga and Biafra. The case of unilateral independence of Southern Rhodesia will be considered in this subsection.

A. Recognition of Guinea-Bissau and non-recognition of Rhodesia

1) Guinea was discovered in the 15th century and the Cape Verde Islands were colonized by the portuguese in about 1460. It is on 19 September 1956 that the *Partido Africano da Independência da Guiné e do Cabo Verde* (PAIGC, African Independence Party of Guinea and the Cape Verde Islands) was formed by Amilcar Cabral in Bissau. In 1961 the PAIGC decided to take up overt armed resistance and by 1970 claimed to have liberated a large part of the country.⁽²¹⁾ In November 1972 the Security Council of the United Nations adopted a resolution recognizing the PAIGC as "legitimate representative" of Guinea-Bissau.⁽²²⁾ A "Republic of Guinea-Bissau" was proclaimed on 24 September by the country's "first popular National Assembly" said to have met in the "liberated area" near the village of Medina de Boe, in the territory's eastern region, according to an announcement published in Dakar by the PAIGC on 26 September.⁽²³⁾ On the other side, the Portuguese delegation at the United Nations issued on the same day a declaration describing the PAIGC announcement as a "propaganda act", the alleged independence of the new State being "a fiction devoid of any legal or moral foundation and corresponding in no way to the conditions prevalent in this Portuguese province".⁽²⁴⁾

(20) *Waga Gaiko-no-Kinkyō* (Foreign Mistry Blue Book), Vol. 20 Part I, p.167.

(21) The note by Ch. Rousseau, 78 *RGDIP* 1167 (1974) ; J. Crawford, *op. cit.*, p.260.

(22) S. C. Res. 322 (1972).

(23) *Keesing's*, 26196A.

(24) *Id.*

On the following day, 27 September, sixteen States including Algeria, Syria, Yugoslavia, recognized the new Republic. By the end of 1973, Guinea-Bissau had been recognized by forty states including the Soviet Union, the People's Republic of China, and India.⁽²⁵⁾

On 2 November the General Assembly of the United Nations by ninety-three votes to seven (Brazil, Greece, Portugal, South Africa, Spain, the U.S.A. and the United Kingdom), with thirty abstentions (mainly European and Latin American countries, among them Japan, France and West Germany) adopted a draft resolution, sponsored by sixty-three member-States, welcoming "the recent accession to independence of the people of Guinea-Bissau, thereby creating the sovereign State of the Republic of Guinea-Bissau."

⁽²⁶⁾ The General Assembly, on 17 December, by its resolution 3181 (XXVIII), approved "the credentials of the representatives of Portugal, on the clear understanding that they represent Portugal as it exists within its frontiers in Europe and that they do not represent the Portuguese-dominated Territories of Angola and Mozambique nor could they represent the Guinea-Bissau, which is an independent State."

Following the *coup d'état* of 25 April 1974 in Portugal and the new junta's appeal to the liberation movements of the Portuguese African Territories for a cessation of hostilities, independence negotiations took place. By 31 May 1974 Guinea-Bissau had been recognized by eighty-four States. On 1 August Japan announced its recognition of Guinea-Bissau, thus pre-empting a western States' initiative.⁽²⁷⁾ Portugal made an announcement through the United Nations on 4 August that she was ready to recognize Guinea-Bissau and to reach immediate agreement for the transfer of power. In fact an Agreement Granting Independence concluded on 26 August,⁽²⁸⁾ Portugal extended *de jure* recognition on 10 September 1974. On the following day the United States of America recognized Guinea-Bissau.

2) The United States of America did not recognize until 11 September 1974 ; the Department of State, on 10 October 1973, had sent instructions to the field on the question

(25) The note by Ch. Rousseau, 78 *RGDIP* 1168 (1974). However, *Keesing's* 26196A reports as follows: Within four weeks of its proclamation the new "Republic" was officially recognized by over 70 Governments of nonaligned or Communist countries. These included most member-countries of the Organization of African Unity (OAU) and several Asian States.

(26) G. A. Res. 3061 (XXVIII). Japan abstained on the grounds that it appeared that Guinea-Bissau had not yet fulfilled the prerequisites of an independent sovereign State. See *Waga Gaiko-no-Kinkyō* (Foreign Ministry Blue Book), Vol. 18, Part I, p.143.

(27) *Waga Gaiko-no-Kinkyō* (Foreign Ministry Blue Book), Vol. 19, Part I, p.37. By the end of July Guinea-Bissau had been recognized by some ninety States (*Keesing's* 26747A).

(28) 18 *ILM* 1244.

of recognition of a State, as follows:⁽²⁹⁾

"The United States Government has traditionally looked to the establishment of certain facts before it has extended recognition to a new State. These facts include the effective control over a clearly-defined territory and population ; an organized governmental administration of that territory ; and a capacity to act effectively to conduct foreign relations and to fulfill international obligations. In Africa these factual criteria have generally been met in the past, following a peaceful transition to independence from colonial status through an agreement between the colonial power and representatives of the people of the territory concerned. Under international law, however, even if the above factual criteria are present, a state is not obligated to recognize another entity as a state.

"The situation in the territory concerned is not clear enough for us to conduct an initial factual appraisal. The Department will continue to follow the situation closely and assess developments there in light of our dedication to the principle of self determination and our hope that a peaceful solution can be achieved."

An analogous point of view had been presented by European States. For example, the Swiss Government expressed its views⁽³⁰⁾ at the end of February 1974:

"Les conditions permettant de reconnaître la Guinée-Bissau ne sont pas remplies. En matière de reconnaissance d'Etat la Suisse s'en tient aux conditions définies par le droit international : il faut que puisse être constatée la présence d'une autorité souveraine s'exerçant de manière stable sur une population et un territoire définis. Dans le cas des guerres de sécession et d'indépendance, où un territoire cherche à se détacher d'un Etat existant pour constituer un nouvel Etat indépendant, l'élément précité de stabilité exige que l'ancien souverain ait renoncé à recouvrer le territoire perdu ou, s'il ne l'a pas fait, qu'il ne paraisse avoir aucune chance de le reconquérir."

In these circumstances Ch. Rousseau concluded that—

(29) *Digest of United States Practice in International Law*, 1973, p.17.

(30) The Note of Ch. Rousseau, 78 *RGDIP* 1169 (1974).

“Il n'est pas douteux que les reconnaissances intervenues en 1973 ont été prématurées, dans la mesure où le P.A.I.G.C. n'avait pas l'exclusivité de l'autorité sur le territoire qu'il revendiquait et où la lutte se poursuivait avec les forces portugaises. La même critique peut être adressée à la résolution adoptée le 2 novembre 1973 par l'Assemblée générale des Nations Unies.”⁽³¹⁾

Japanese recognition, however, would not be criticized as premature, because, when it was announced, two months had already passed after the hostilities ceased and the independence negotiations began.

3) In principle, as Lauterpacht pointed out, “International Law does not condemn rebellion or secession aiming at the acquisition of independence.”⁽³²⁾ This position was affirmed by the International Law Commission in its discussion of the principle of non-recognition of territorial acquisition by illegal force.⁽³³⁾ However, in various resolutions relating to both the Katangan and the Rhodesian secessions, the Security Council has characterized a secession as illegal.

In the case of Rhodesia, since its unilateral declaration of independence on 11 November 1965, the minority government had exercised effective control within the territory of Southern Rhodesia, and it is the only government which had exercised such control, despite British claims to do so under the Southern Rhodesia Act 1965 and generally.⁽³⁴⁾ There can be no doubt that, if the traditional tests for independence of a seceding colony had been applied, Rhodesia would have been an independent State. However, on 11 November 1965 the General Assembly of the United Nations, by Resolution 2024 (XX) adopted by roll-call vote of 107 to 2 (Portugal and South Africa), with 1 abstention (France)—the United Kingdom and Uruguay not participating—, immediately “condemn[ed] the unilateral declaration of independence made by the racist minority in Southern Rhodesia”. The Security Council, on the following day, decided, by its Resolution 216 (1965), “to call upon all States not to recognize this illegal racist minority regime in Southern Rhodesia and to refrain from rendering any assistance

(31) *Id.*

(32) H. Lauterpacht, *Recognition in International Law*, p.8.

(33) See *ILC Yearbook* 1949, 112-113.

(34) By 1964, Southern Rhodesia had achieved virtually complete internal autonomy, and Britain had expressly accepted a convention of non-interference in internal affairs. The British Government's view on the UDI was that it was a violation of the conditions upon which autonomy and non-interference were granted; and that Southern Rhodesia thereupon reverted to dependent status: J. E. S. Fawcett, “Security Council Resolutions on Rhodesia,” 41 *BYIL* 103, 113 (1965-66).

to this illegal regime", and further, by its Resolution 217 (1965) adopted on 20 November by ten votes to none with one abstention (France), "condemn[ed] the usurpation of power by a racist settler minority ... and regard[ed] the declaration of independence by it as having no legal validity". Japanese Government, acting in line with this United Nations policy, stated on 15 November that Japan would not recognize the illegal regime in Southern Rhodesia.⁽³⁵⁾ Southern Rhodesia was not recognized by any State as independent. On 2 March 1970 Rhodesia proclaimed a 'Republic', but this fact had not been regarded as altering Rhodesia's international status, and certainly had not increased that status. In any event, as McDougal and Reisman pointed out,⁽³⁶⁾ "[it] would be a travesty upon the most basic notion of 'self-determination' to speak of it, in regard to a claim of 6% of a population against 94% of a population, when the goal of the claim is to gain absolute political control over the majority and to maintain them in a state of secondary and powerless citizenship". It may therefore be the case that Southern Rhodesia was not a State because the white minority government's declaration of independence had been internationally null as a violation of the principle of self-determination. Southern Rhodesia had remained a non-self-governing territory under Chapter XI of the Charter of the United Nations until Zimbabwe celebrated its independence on 18 April 1980. The United Nations had known an experience of Hyderabad⁽³⁷⁾ in its early times, but the Rhodesian minority government was not even invited to participate under Article 32 of the Charter or otherwise.⁽³⁸⁾

Japan sent a Special Ambassador to Salisbury to attend the special ceremonies and on the independence day accorded express recognition to Zimbabwe⁽³⁹⁾ that attained

(35) *Gaimu-sho Kohyo-shu* (Foreign Ministry Statements and Documents), Year 1965 Part, II, p.62.

(36) McDougal, M. S., and Reisman, W. M., "Rhodesia and the United Nations: the Lawfulness of International Concern", 62 *AJIL* 1,18 (1968).

(37) See C. Eagleton, "The Case of Hyderabad before the Security Council", 44 *AJIL* 277-302 (1950).

(38) In 1966 the minority government forwarded communications to the Secretary-General and affirmed a right, as a 'state which is not a Member of the United Nations' to participate in proceedings under Article 32 of the Charter. The Secretary-General stated that 'the legal status of Southern Rhodesia is that of a Non-Self-Governing Territory under resolution 1747...and Article 32 of the Charter does not apply'. There was no dissent from this view: *SCOR* 1280th mtg., 18 May 1966, 23.

(39) *Gaimu-sho Kokuji* (Foreign Ministry Notification) No.152 in the Official Journal No.15972 dated on 18 April 1982.

independence through the armed resistances against "usurpers" of power.⁽⁴⁰⁾

B. Recognition of Bangladesh and non-recognition of Biafra and Katanga

1) East Pakistan was not at any time after 1947 formally a non-self-governing territory. However, its status, at least in 1971, was not quite so clear. According to Principle IV of Resolution 1541(XV), which enumerates the guiding principles for determining obligation to transmit information to the United Nations on non-self-governing territories, a territory is *prima facie* non-self-governing if it is "geographically separate and is distinct ethnically and/or culturally from the country administering it". East Pakistan was both geographically separate and ethnically distinct from West Pakistan. The Resolution 1541 in Principle V continues as follows:

"Once it has been established that such a *prima facie* case of geographical and ethnical or cultural distinctness of a territory exists, other elements may then be brought into consideration. These additional elements may be, *inter alia*, of an administrative, political, juridical, economic or historical nature. If they affect the relationship between the metropolitan State and the territory concerned in a manner which arbitrarily places the latter in a position or status of subordination, they support the presumption that there is an obligation to transmit information under Article 73e of the Charter."

The relation between West and East Pakistan, as Crawford pointed out,⁽⁴¹⁾ both economically and administratively, could fairly be described as one which arbitrarily

(40) Fawcett argues as follows: "The conflict in Indonesia, with which the Security Council had to deal from 1947 to 1949, resembled the Rhodesian situation in that the basic cause was a declaration of independence, in defiance of the metropolitan country, by the Republic of Indonesia. But it was independence in the traditional and respected form of rejection and overthrow of alien rule, not the seizure of power by, and in the interest of, a racial minority. This difference stands out in the handling by the Security Council of the two situations. Though there were extended hostilities in Indonesia between the Netherlands and nationalist forces, and no force was used in Rhodesia at all, the Security Council in effect treated the Indonesian conflict as a dispute between equals under Chapter VI of the Charter, but the Rhodesian situation under Chapter VII as an illegal and dangerous rebellion". J. E. S. Fawcett, *op. cit.*, pp.113-114.

(41) J. Crawford, *op. cit.*, p.116.

placed the latter in a position or status of subordination.⁽⁴²⁾ Moreover the extraordinary circumstances of East Bengal in 1971–1972 were undoubtedly important factors in the decisions of other governments to recognize.

2) At the general election held in Pakistan in December 1970, the Awami League under Sheikh Mujibur Rahman won practically every seat in East Pakistan, and with a total of 151 seats had an over-all majority in the National Assembly. The elections were followed by an extremely tense political situation which eventually led President Yahya Khan on 1 March to postpone the opening of the Pakistani National Assembly, scheduled to convene in Dacca on 3 March, for an indefinite period to enable the political leaders to reach a settlement on the question of framing a Constitution for the country. This decision to postpone the National Assembly session evoked angry protests in Dacca, where a general strike was called on 2 March and mass rallies of workers, students and professional men, including lawyer, demonstrated against the postponement of the Assembly session. On 15 March, in an attempt to save the country from a total split, President Yahya Khan arrived in Dacca for talks with Sheikh Mujibur Rahman, the strictest security precaution being taken by the Army. East Pakistan, meanwhile, was in its third week of strikes and civil disobedience. Many people were reported to have been killed when Pakistan Army troops opened fire on civilians. On 25 March the Press Trust

(42) The first general elections ever held in Pakistan on a basis of "one man, one vote" took place on 7 December 1970 and resulted in an overwhelming victory for the Awami League, led by Sheikh Mujibur Rahman, in East Pakistan. The party fought the elections on the basis of the six-point programme for autonomy for East Pakistan put forward by Sheikh Rahman in 1966 the six points being as follows [See *Keesing's* 24413A]:

- (1) A federal form of government would be established.
- (2) The federal Government would control only defence and foreign policy, all other subjects being vested in the federating States.
- (3) Two separate, freely convertible currencies would be introduced for East and West Pakistan, or if a single currency was maintained constitutional provision would be made to stop the flight of capital from East to West Pakistan. There would be a separate banking reserve and a separate fiscal and monetary policy for East Pakistan.
- (4) The States would have exclusive authority to levy taxes, federal expenses being met from a uniform percentage of all State taxes.
- (5) Separate external trade accounts would be maintained for each of the States, and foreign exchange earned from external trade would be at their disposal. Federal foreign exchange requirements would be met by the States on the basis of an equal percentage rate. Indigenous commodities would move between the States free of taxation or tariffs. The States would be allowed to maintain trade representatives abroad and to negotiate trade agreements with other countries.
- (6) A militia or paramilitary force, an ordnance factory, a military academy and the Navy headquarters would be set up in East Pakistan.

of India reported that West Pakistan troops were being landed by sea at Chittagong and were also arriving by air in Dacca. On 26 March a clandestine radio broadcast announced the proclamation of the "sovereign independent people's republic of Bangladesh"⁽⁴³⁾ ("Bengal Nation"). Full-scale civil war erupted in East Pakistan. On 27 August the Provisional Government of Bangladesh opened its first overseas mission in London. Between August and November, relations between Pakistan and India became increasingly strained, as the guerrilla activities in East Pakistan by the *Mukuti Bahini* (Liberation Army) were greatly intensified and the number of refugees fleeing into India rose to over 9,000,000.⁽⁴⁴⁾

The fighting on the East Pakistan border was greatly intensified after 21 November, when the *Mukuti Bahini* launched an offensive against Jessore, reportedly with Indian support. It was officially stated in New Delhi on 28 November that Indian troops had entered East Pakistan on the previous day, after Pakistani artillery had heavily shelled the towns of Hili and Balurghat. The clashes between the Indian and Pakistani forces on the East Pakistan border which had continued since 21 November 1971, developed into open war on 3 December, when the Pakistan Air Force made a surprise attack on military airfields in western India.⁽⁴⁵⁾

3) On 4 December 1971, the representatives of the nine States including Japan requested an immediate meeting of the Security Council of the United Nations to consider the deteriorating situation which had led to armed clashes between India and Pakistan. The Security Council met on the same day.⁽⁴⁶⁾ Belgium, Italy and Japan submitted a resolution. By this text, the Security Council gravely concerned at the hostilities between India and Pakistan which constituted an immediate threat to international peace and security, would : (1) call for an immediate cease-fire ; (2) urge the Governments concerned, in accordance with Charter principles, to bring about conditions necessary for speedy and voluntary repatriation of the millions of refugees ; (3) call for full cooperation with the Secretary-General in relieving the distress of refugees ; (4) request the Secretary-General to keep it informed ; and (5) decide to follow the situation closely. Later an eight-power draft resolution—sponsored by Argentina, Belgium, Burundi, Italy, Japan, Nicaragua, Sierra Leone and Somalia—was introduced to replace the earlier three-power text put

(43) See Bangladesh Proclamation of Independence of 10 April 1971, 11 *ILM* 119-121 (1972).

(44) See *Yearbook of the United Nations*. 1971, Vol. 25, pp.137-143 ; note by Ch. Rousseau, 76 *RGDIP* 544-546 ; J. Salzberg, "UN Prevention of Human Rights Violations : the Bangladesh case", (1973) *Int'l Org.*, 115-128.

(45) *Keesing's*, 25053A. See also 24413A, 24565A. 24989A.

(46) *Yearbook of the United Nations* 1971 Vol. 25, pp.146-161.

forward by Belgium, Italy and Japan and the five-power text proposed by Argentina, Burundi, Nicaragua, Sierra Leone and Somalia. This eight-power draft resolution received 11 votes in favour, 2 against and 2 abstentions ; it was not adopted because of the negative vote of a permanent member of the Security Council (the USSR). On 6 December the representative of Somalia said that the principle of withdrawal of enemy troops from the territory of another country could not be subject to negotiation. It was not for any other State to impose a political solution on East Pakistan by military means. The time had come to transfer the question to the General Assembly, as provided for in the Assembly's "Uniting for Peace" resolution (377A(V)) of 3 November 1950. He introduced a draft resolution, also sponsored by Argentina, Burundi, Japan, Nicaragua and Sierra Leone, by which the Council, taking into account that the lack of unanimity of its permanent members had prevented it from exercising its primary responsibility for the maintenance of international peace and security, would decide to refer the question before it to the twenty-sixth session of the General Assembly (then meeting) as provided for by the Assembly's resolution of 3 November 1950. This six-power text was adopted by 11 votes to none with 4 abstentions—S. C. Res. 303 (1971)—. On the same day India recognized Bangladesh.⁽⁴⁷⁾

The General Assembly took up the question referred to it by the Security Council at two plenary meetings held on 7 December 1971. Before the General Assembly was a draft resolution sponsored eventually by the 34 Member States, including Japan. The 34-power text, as revised during the debate, was adopted by the General Assembly on 7 December by a vote of 104 (China, Japan, the United States included) to 11 (India, the Soviet Union included), with 10 abstentions (France, the United Kingdom ...), as resolution 2793 (XXVI). By the operative part of the resolution,⁽⁴⁸⁾ the General Assembly "call[ed] upon the Governments of India and Pakistan to take forthwith all measures for an immediate cease-fire and withdrawal of their armed forces on the territory of the other to their own side of the India-Pakistan borders". It urged intensified efforts to "bring about, speedily and in accordance with the purposes and principles of the Charter of the United Nations, conditions necessary for the voluntary return of the East Pakistan refugees to their homes".

Following the request of the United States, the Security Council, between 12 and 21 December 1971, held a second series of meetings on the situation in the subcontinent. Representatives expressed substantially the same positions as during the

(47) For the text, 11 *ILM* 121-122 (1972).

(48) For the text, *Yearbook of the United Nations* 1971, Vol. 25, p.160.

earlier meetings, and a number of draft resolutions were introduced, but any of them was not adopted before 16 December. On that day the Pakistani forces surrendered unconditionally. The fighting on the western front ended on 17 December, after a cease-fire had been ordered first by the Indian Government and then by President Yahya Khan.

4) Recognition of Bangladesh was accorded by East Germany and Bulgaria on 11 January 1972 ; by Poland and Mongolia on 12 ; by Burma on 13 ; by Nepal on 16 ; by Barbados on 20 ; by Yugoslavia on 22 ; by the Soviet Union on 24 ; by Czechoslovakia on 25 ; by Hungary on 26 ; by Cyprus on 27 ; by Australia, New Zealand, Fiji and Cambodia on 31 ; by the United Kingdom, West Germany, Austria, Denmark, Norway, Sweden, Finland, Iceland, Western Samoa and Tonga on 4 February; by Thailand on 7 ; by Japan and Cuba on 10 ; by Ireland, Belgium, the Netherlands and Luxemburg on 11 ; by France and Italy on 12 ; and by Canada on 14 February.⁽⁴⁹⁾

On 4 April the United States recognized Bangladesh.⁽⁵⁰⁾ In these circumstances independence of Bangladesh became an established fact in the world. Recognition of Bangladesh by Pakistan was accorded on 22 April 1974 when about 60 States had recognized Bangladesh.⁽⁵¹⁾ Bangladesh was admitted to the United Nations on 17 September 1974.

Bangladesh is one of the instances in which a new State emerges from the State that acquired independence from colonial status imposed by Western States; it may be, in the Verhoeven's words, the case of "le démembrement non-colonial".⁽⁵²⁾

5) It may be convenient to refer to the attempted secessions of Katanga and Biafra here.

The former Belgian Congo was granted a hurried independence in 30 June 1960 as the Republic of the Congo (now Zaire). No effective preparations had been made ; the new government was bankrupt, divided and in practice hardly able to control even the capital. Katanga, the richest Congolese province, declared its independence eleven days after independence of the Congo itself and the secession was not ended until 21 January 1963. During that time the Katangan government was considerably more stable than the central government of the Congo, though that stability was somewhat factitious, given substantial external involvement, and the revenues of the *Union Minière*, as Crawford pointed out.⁽⁵³⁾

(49) *Keesing's*, 25109A (25113).

(50) Note by Ch. Rousseau, 76 *RGDIP* 538, 559 (1972).

(51) Ch. Rousseau, *Droit international public*, Tome III, Paris, Sirey, 1977, p.543.

(52) J. Verhoeven, *op. cit.*, p.29.

(53) J. Crawford, *op. cit.*, pp.263-264.

However, the Security Council of the United Nations, by its resolution adopted on 24 November 1961 by 9 votes to none with 2 abstentions (France, United Kingdom), "*deploring* all armed action in opposition to authority of the Government of the Republic of the Congo, specifically secessionist activities and armed action now being carried on by the Provincial Administration of Katanga with the aid of external resources and foreign mercenaries, and *completely rejecting* the claim that Katanga is a 'sovereign independent nation,'" declared "that all secessionist activities against the Republic of the Congo are contrary to the *Loi fondamentale* and Security Council decisions" and specifically demanded "that such activities which are now taking place in Katanga shall cease forthwith."⁽⁵⁴⁾ Katanga was recognized by no State, despite its claim to self-determination.

Biafra declared its independence⁽⁵⁵⁾ on 30 May 1967 seven years after the Nigerian independence. The Nigerian civil war came to an end on Monday, 12 January 1970, when the Biafran Army Chief surrendered to the Nigerian Federal Government in the following terms : "I Major General Philip Effiong, Officer administering the Government of Biafra now wish to make the following declaration : ... That the Republic of Biafra ceases to exist."⁽⁵⁶⁾ Implicit in this declaration, as D. A. Ijalaye pointed out, is the notion that Biafra at one point existed as a republic, but did it ever exist as a State in International Law? Five States recognized Biafra unconditionally. The first to recognize Biafra was Tanzania. Its recognition was accorded on 13 April 1968. Biafra was successfully recognized by Gabon on 8 May, by Ivory Coast on 14 May, by Zambia on 20 May 1968. Haiti recognition was reported by New York Times on 1 August 1968. On 31 July 1968, France apparently moved towards recognition of Biafra, but never did so.⁽⁵⁷⁾ The vast majority of States adjudged that Biafra did not qualify for recognition as a State : indeed, there was no case even of belligerent recognition in the civil war. It must be the case that Biafra was not a State. Consequently recognition of five States must be primature. Unlike the Katangan case there was no substantial United Nations involvement and the O. A. U. was a strong supporter of the central government. It is the principle of the territorial integrity that prevailed. (to be continued)

(54) *Yearbook of the United Nations*, 1961, pp.80-81.

(55) For the text of the Proclamation of the Republic of Biafra. *ILM* 665-680 ; Biafra Territorial Waters Jurisdiction Decree, *ibid.*, 681.

(56) David A. Ijalaye, "Was 'Biafra' at any time a State in International Law?" 65 *AJIL* 551 (1971); see also K. W. J. Post, "Is there a case for Biafra?" *International Affairs*, Vol. 44 pp.26-39 (1968).

(57) David A. Ijalaye, *op. cit.*, pp.553-554.

New States and Japanese recognition

<i>Name</i>	<i>Date of Independence</i>	<i>Date of Japanese Recognition</i>
Algeria	1962. 7.3.	1962. 7. 4
Angola	1975.11.11	1976. 2.20
Bahamas	1973. 7.10	1973. 7.27
Bahrain	1971. 8.15	1971. 8.24
Bangladesh	1971. 3.26	1972. 2.10
Barbados	1966.11.30	1966.11.30
Botswana	1966. 9.30	1966. 9.30
Burma	1948. 1. 4	1952. 5. 2*
Burundi	1962. 7. 1	1962. 7. 3
Cambodia	1949.11. 8	1952. 6. 2*
Cameroon	1960. 1. 1	1960. 1. 1
Cape Verde	1975. 7. 5	1975. 7.11
Central Africa	1960. 8.13	1960. 8.13
Chad	1960. 8.11	1960. 8.11
Comoros	1975. 7. 6	1977.11.14*
Congo	1960. 8.15	1960. 8.15
Congo (Zaire)	1960. 6.30	1960. 6.30
Cyprus	1960. 8.16	1960. 8.16
Dahomey(Benin)	1960. 8. 1	1960. 8. 1
Djibouti	1977. 6.27	1977. 6.27
Dominica, Commonwealth of	1978.11. 3	1978.11. 3
Fiji	1970.10.10	1970.10.10
Equatorial Guinea	1968.10.12	1968.11.12*
Gabon	1960. 8.17	1960. 8.17
Gambia	1965. 2.18	1965. 2.18
German Democratic Republic	1949.10. 7	1973. 5.15*
Ghana	1957. 3. 6	1965. 3. 6
Grenada	1974. 2. 7	1974. 2. 7
Guinea	1958.10. 2	1958.11.14
Guinea-Bissau	1973. 9.24	1974. 8. 1
Guyana	1966. 5.26	1966. 5.26
Iceland	1946. 6.17	1956. 12.8*
India	1947. 8.15	1952. 4.28*
Indonesia	1945. 8.17	1952. 4.28*
Israel	1948. 5.14	1952. 5.15*
Ivory Coast	1960. 8. 7	1960. 8. 7
Jamaica	1962. 8. 6	1962. 8. 6
Jordan	1946. 3.22	1954. 7.14*
Kenya	1963.12.12	1963.12.12
Kiribati	1979. 7.12	1979. 7.12

<i>Name</i>	<i>Date of Independence</i>	<i>Date of Japanese Recognition</i>
Korea, Republic of	1948. 8.15	1952. 4.28*
Kuwait	1961. 6.19	1962. 3.10*
Laos	1949. 7.19	1952. 6.20*
Lebanon	1941.11.26	1954. 1. 7*
Lesotho	1966.10. 4	1966.10. 4
Libya	1951.12.24	1957. 6. 2*
Madagascar	1960. 6.26	1960. 7. 5
Malawi	1964. 7. 6	1964. 7. 6
Malaysia	1957. 8.31	1957. 8.31
Maldives	1965. 7.26	1965. 9.14*
(Mali, Federation of	1960. 6.20	1960. 7. 5)
Mali, Republic of	1960. 9.22	1960.10. 4
Malta	1964. 9.21	1964. 9.21
Mauritania	1960.11.28	1961.10.29
Mauritius	1968. 3.12	1968. 3.12
Morocco	1956. 3. 2	1956. 6.19
Mozambique	1975. 6.25	1975. 6.25
Nauru	1968. 1.31	1968. 1.31
Niger	1960. 8. 3	1960. 8. 3
Nigeria	1960.10. 1	1960.10. 1
Pakistan	1947. 8.15	1952. 4.28*
Papua New guinea	1975. 9.16	1975. 9.16
Philippines	1946. 7. 4	1952. 5.17*
Qatar	1971. 9. 1	1971. 9.10
Rwanda	1962. 7. 1	1962. 7. 3
Saint Lucia	1979. 2.22	1979. 3. 9
Sao Tome and Principe	1975. 7.12	1975. 7.22
Senegal	1960. 8.20	1960.10. 4
Seychelles	1976. 6.28	1976. 6.28
Sierra Leone	1961. 4.27	1961. 4.27
Singapore	1965. 8. 9	1965. 8. 9
Solomon Islands	1978. 7. 7	1978. 7. 7
Somalia	1960. 7. 1	1960. 7. 1
South Yemen	1967.11.30	1967.12.12
Sri Lanka	1948. 2. 4	1952. 4.28*
St. Vincent and the Grenadines	1979.10.27	1979.10.27
Sudan	1956. 1. 1	1956. 1. 6
Suriname	1975.11.25	1975.11.25
Swaziland	1968. 9. 6	1968. 9. 6
Syria	1941. 9.27	1952.12.29*

<i>Name</i>	<i>Date of Independence</i>	<i>Date of Japanese Recognition</i>
Syrian Arab Republic	1961. 9.28	1961.10.17
[Tanganyika	1961.12. 9	1961.12. 9]
Tanganyika and Zanzibar (Tanzania)	1964. 4.26	1964. 4.26*
Togo	1960. 4.27	1960. 4.27
Tonga	1970. 6. 4	1970. 6.26
Trinidad and Tobago	1962. 8.31	1962. 8.31
Tunizia	1956. 3.20	1956. 6.26
Tuvalu	1978.10. 1	1978.10. 1
Uganda	1962.10. 9	1962.10. 9
United Arab Emirates	1971.12. 2	1971.12. 3
[United Arab Republic	1958. 2.21	1958. 2.22]
Upper Volta	1960. 8. 5	1960. 8. 5
Vanuatu	1980. 7.30	1980. 7.30
[Viet-Nam, Republic of	1949. 3. 8	1952. 6.18*]
[Viet-Nam, Democratic Republic of	1945. 9. 2	1973. 9.21*]
Viet-Nam, Socialist Republic of	1976. 7. 2	1976. 7. 3*
Western Samoa	1962. 1. 1	1962. 8.21
Zambia	1964.10.24	1964.10.24
[Zanzibar	1963.12.10	1963.12.10]
Zimbabwe	1980. 4.18	1980. 4.18

note

1. Dates with asterisk : dates of implied recognition
2. States with parentheses [] are extinct.