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Recognition of New States and Japanese Practice after the Second World War (3)

Kentaro SERITA

Introduction (*in No. 15*)

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IV. Unification and Dememberment of States and Recognition

A new State or new States may arise from the uniting of existing independent States or from the dememberment of an existing independent State. Such States are normally the object of the recognition of States. One point to bear in mind is, however, that the unification including federation, or the dememberment must be pacific, because the forced unification or annexation is not only forbidden under the contemporary international law prohibiting the threat or use of force, but also it is not the object of the recognition of States by nature: recognition of annexation is one thing, recognition of States the other.⁽¹⁾

(i) *Unification of States*

First of all we may cite the United Arab Republic (1958-61) formed by the union of Egypt and Syria which became independent on 1 January 1944 and with which Japan established the diplomatic relations on 14 December 1953. On 1 February 1958 a joint communiqué signed by President Nasser of Egypt and President Quwwatli of Syria was issued, wherein was set forth a "Proclamation of the United Arab Republic". On 21 February 1958 the announced plebiscite was held in Egypt and Syria, resulting in ratification of the Union between Egypt and Syria and the election of Gamal Abdel Nasser as President of the United Arab Republic. On 22 February 1958 Japan recognized the Republic, offering the heartfelt felicitations on her independence.⁽²⁾ Against the union of Egypt and Syria, the Arab Union was proclaimed by King Faisal of Iraq and King Hussein of Jordan on 14 February 1958, and this union was formally established on 14 May 1958, after ratification of the Constitution and prior to the formation of the Arab Union Government on 19 May 1958. While Article 2 of the Arab Union Constitution stipulates "With due regard for the provisions of this constitution, each member-state of the Union will maintain its independent international status and its existing system of rule", certain important public affairs, among others, foreign affairs and diplomatic and consular representation; negotiation of treaties, pacts, and international agreements; establishment and management of the armed forces under the name of "The Arab Army" were among the enumerated affairs confined to the Government of the Union in Article 62(a). It was not easy, according to the provisions of the Constitution itself, to categorize the Union into a federation or a confederation definitely. In the meantime, following the armed

(1) Cf. J. Verhoeven, *La reconnaissance internationale dans la pratique internationale*, Paris, Pedone, 1975, p. 32.

(2) *Waga Gaiko-no-Kinkyō* (Foreign Ministry Blue Book). Vol. 3, p.125.

coup d'état in Baghdad on 14 July 1958,⁽³⁾ the Hashemite Kingdom of Jordan officially announced the dissolution of the "Arab Union", stating that "a decree issued by the Jordanian Cabinet, confirmed by His Majesty the King has brought the Hashemite Kingdom of Jordan to function as a separate state in accordance with the Constitution of Jordan, effective from the 1st of August, 1958".⁽⁴⁾ The problem of recognition of the Arab Union disappeared.

On 6 November 1961, the General Assembly of the United Nations resolved, in agreement with the Administering Authority, that the Trusteeship Agreement for Tanganyika, approved by the General Assembly of 13 December 1946, should cease to be in force upon the accession of Tanganyika to independence on 9 December 1961 (GA Res. 1642(XVI)). Japan recognized Tanganyika on the date of independence. British Protectorate of Zanzibar achieved independence on 13 December 1963. On the same day Japan recognized Zanzibar. On 23 April 1964 the Act of Union signed by the Presidents of Tanganyika and of Zanzibar was made public. On 27 April 1964 the United Republic of Tanganyika and Zanzibar (now the United Republic of Tanzania) was established after the formal exchange of ratifications. The federation was recognized without difficulties implicitly or explicitly.⁽⁵⁾

On 31 August 1957, the Federation of Malaya was granted independence within the British Commonwealth of Nations pursuant to the Federation of Malaya Independence Act, 1957. On the same day Japan extended recognition to the new State of the Federation of Malaya. Later on 16 September 1963 the Federation of Malaya became the Federation of Malaysia by the admission into Malaya of Singapore, Sabah, and Sarawak. It had been reported that the Philippines and Indonesia would not recognize Malaysia; it resulted in a rupture of the diplomatic relations between Malaysia and the Philippines, and Malaysia and Indonesia on 17 September 1963. According to the Malaysian Ministry of External Affairs Press Statement, the constitutional position was that the entity of the Federation had not been changed by the Malaysia Act, 1963; it was the same entity but, simultaneous with the admission of the new states, its name had been changed; the question of recognition of Malaysia, therefore, did not arise. Japan seemed to have accepted this position.

(3) Japanese Government recognized the new Iraqi Government on 31 July by its request. *ibid.*, p.125.

(4) 1 *Whiteman* 417-422

(5) Japan recognized it impliedly.

In the case of Viet-Nam one of the divided States,⁽⁶⁾ it was the State of Viet-Nam (later the Republic of Viet-Nam, so called South Viet-Nam) that Japan recognized impliedly by the conclusion of the Peace Treaty of San-Francisco; Japan concluded the Reparations Agreement with this Viet-Nam and had maintained the diplomatic relations with it.

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- (6) In the case of other divided States, as for Germany, Japan resumed the diplomatic relations with the Federal Republic of Germany (FRG) on the date of entry into force of the Peace Treaty with Japan, that is, 28 April 1952, by the exchange of letters of 11 April 1952. And Japan recognized the German Democratic Republic (GDR) by establishment of the diplomatic relations on 15 May 1973, after the FRG and the GDR concluded the Basic Treaty between the two on 21 December 1972.

On the other hand, Korea liberated from 40 years of Japanese colonial government on 15 August 1945 was divided at the 38th parallel with Soviet forces in the industrial north and the United States forces in the agricultural south. Any effort was in vain to establish an independent, united Korea. Finally in 1948 the Republic of Korea was inaugurated on 15 August and the Democratic People's Republic of Korea on 9 September. The General Assembly of the United Nations passed on 12 December the resolution 195(III) which declared:

"2. . . that there has been established a lawful government (the Government of the Republic of Korea) having effective control and jurisdiction over that part of Korea where the Temporary Commission was able to observe and consult and in which the great majority of the people of all Korea reside; that this Government is based on elections which were a valid expression of the free will of the electorate of that part of Korea and which were observed by the Temporary Commission; and that this is the only such Government in Korea".

This was repeated in essence in the resolution of the General Assembly of 21 October 1949 (Res. 293 (IV)) and in the resolution of the Security Council of 25 June 1950 (U.N. Doc. S/INF/4, 1 Feb. 1951, pp.5-6).

The General Assembly resolution of 12 December 1948 recommended that "Member states and other nations, in establishing their relations with the Government of the Republic of Korea, take into consideration the facts set out in paragraph 2 of the present resolution." Res. 195 (III).

Japan, "recognizing the independence of Korea, renounce[d] all right, title and claim to Korea. . ." in Article 2 (a) of the Peace Treaty of 8 September 1951. On the date of entry into force of the Peace Treaty Japanese Government recognized the status as a governmental agency to the Korean mission accredited to the SCAP; that is to say, Japan accorded the implied recognition to the Republic of Korea.

It is clear that there exist now two Korean States, but at what time the Democratic People's Republic of Korea became a separate State is not so clear. It was accepted at the time of the *Pueblo* incident that the twelve mile territorial sea of the Democratic People's Republic of Korea was opposable to the United States(cf. J. Crawford, *op.cit.*, 284). Japanese Government

On the other hand after the conclusion of the Paris Peace Agreements of 27 January 1973, Japan agreed to establish the diplomatic relations with the Democratic Republic of Viet-Nam (so called North Viet-Nam) on 21 September 1973, that is, on that day Japan recognized the North Viet-Nam impliedly. Afterwards the Government of the South Viet-Nam was overthrown on 30 April 1975. The general election for bringing about the unification of Viet-Nam was held in April 1976 and the Socialist Republic of Viet-Nam was inaugurated on 2 July 1976. The Japanese Prime Minister sent on 3 July a telegram celebrating the unification of Viet-Nam; Japan recognized the unified Viet-Nam impliedly.

In the case of the Somali Republic (now the Somali Democratic Republic), the ceremonies in connection with the independence of the Somali Republic at Mogadiscio on 1 July 1960 celebrated not only the independence of Somalia, the former United Nations trust territory under Italian administration, but also the union, in the new Somali Republic, of Somalia with Somaliland, the former British protectorate which became independent on 26 June 1960. Japan recognized the Somali Republic explicitly, but on the occasion of the independence of British Somaliland Japan did not accord formal rec-

also seems to have accepted the view that the North Korean twelve mile territorial sea was opposable to Japan, according to the Japanese announcement of 19 November 1975 "on the incident of firing from the North Korean vessels on the *Shoseimaru* (registered at Saga Prefecture, Japan and manned by Skipper TAGAWA Mikio and 8 crew members) on September 2, 1975 on the Yellow Sea". As of 11 October 1982, 117 States have established the diplomatic relations with the Republic of Korea and 106 States with the Democratic People's Republic of Korea; 69 of these States have maintained the diplomatic relations with both Korean States.

	Date on which Asian States established the diplomatic relations	
	with the Republic of Korea	with the Democratic People's Republic of Korea
Thailand	1958. 10. 1	1975. 5. 8
Indonesia	1973. 9. 17	1964. 4. 16
Philippines	1949. 3. 3	
Malaysia	1960. 2. 23	1973. 6. 30
Singapore	1975. 8. 8	1975. 11. 8
Japan	1965. 12. 18	
China		1949. 10. 6

ognition although the Foreign Minister sent a congratulatory telegram.⁽⁷⁾

(ii) *Dememberment of States*

The United Arab Republic [U.A.R.] was formed by the Union of Egypt and Syria in February 1958. But an army coup aimed at the secession of Syria from the U.A.R. and the restoration of Syrian independence took place in Damascus on 28 September 1961. President Nasser broadcast over Cairo radio, announcing that he had ordered the armed forces of the U.A.R. to suppress the Syrian rebellion. On the following day Jordan and Turkey recognized the new regime in Syria. The new Syrian Government formally notified the United Nations on 1 October of Syria's secession from the U.A.R. Finally President Nasser accepted the secession of Syria from the U.A.R. in his broadcast of 5 October. Following this broadcast many States successively extended recognition to the new regime.⁽⁸⁾ Japan recognized Syria explicitly on 17 October.⁽⁹⁾ In passing it is convenient to point out that a Syrian request to resume the United Nations seat was accepted by the General Assembly on 13 October without objection.⁽¹⁰⁾

Under the new French Constitution of 1958 the majority of the territories of French West and Equatorial Africa chose during the last few months of 1958 to proclaim themselves autonomous republics within the French Community. On 30 December 1958 the Autonomous Republics of Senegal, Sudan (formerly French Sudan), and Dahomey decided at a conference of the three Prime Ministers to form a Federation of Mali which the Government of Upper Volta subsequently agreed to join.⁽¹¹⁾ However, when the new Federation came into official existence on 4 April 1959, it consisted of Senegal and the Sudan only. On 20 June 1960 the Federation of Mali achieved complete independence,

(7) *Gaimu-shō Kokuji* (Foreign Ministry Notification) No. 57 in the Official Journal No. 10065 dated on 11 July 1960; *Gaimu-shō Kōhyō-shū* (Foreign Ministry Statements and Documents), Year 1960 Part II, p.48; *Waga Gaiko-no-kinkyō*, (Foreign Ministry Blue Book), Vol.5, p.144. Also although the United States did not extend "formal recognition" to British Somaliland upon achieving its independence, Secretary of State Herter sent a congratulatory message to "Their Excellencies, Council of Ministers of Somaliland, *Hargeisa*", because the main purpose of this independence was to permit the former British protectorate to unite as one State with its neighbour, Somalia, which was shortly to achieve independence. cf. 2 *Whiteman* 216.

(8) *Keesing's* 18439A.

(9) *Gaimu-shō Kokuji* (Foreign Ministry Notification) NO. 210 in the Official Journal No.10491 dated on 7 December 1961, *Gaimu-shō Kōhyō-shū* (Foreign Ministry Statements and Documents), Year 1961 Part II, p.79.

(10) As to legal questions of this procedure, see J. Verhoeven, *op. cit.*, p.32 and J.C. Crawford, *op. cit.*, pp.294-295.

(11) *Keesing's* 16571A, 16618A.

following the ratification of the independence agreement signed in Paris on 4 April between France on the one hand and Senegal and the Sudan (the constituent units of the Mali Federation) on the other.⁽¹²⁾ Japan recognized the Mali Federation by sending a congratulatory telegram on 5 July 1960.⁽¹³⁾

The Senegalese Legislative Assembly, however, proclaimed the independence of Senegal as a separate republic on 20 August. After General de Gaulle had held separate meetings with the Prime Minister of Senegal and the Prime Minister of the Federation and of the Sudan Republic, the French Government formally recognized the independence of Senegal on 11 September. Subsequently on 22 September the Sudanese Legislative Assembly, accepting that the Federation no longer existed, proclaimed the independence of the Sudan as the Republic of Mali, the new State being recognized by France on 23 September. The Federation of Mali thus ceased to exist as if an ephemera.⁽¹⁴⁾ The two republics of Mali and Senegal were admitted to membership of the United Nations on 28 September. Japan voted for the admission and recognized the two republics by sending a congratulatory telegram on 4 October.⁽¹⁵⁾

Singapore achieved independence from colonial status by the admission into the Federation of Malaya with Sarawak and Sabah (formerly British North Borneo) on 16 September 1965 (thereafter the Federation renamed as the Federation of Malaysia). This island State of Singapore, however, being mainly composed of Chinese people, seceded on 9 August 1965 from the Federation of Malaysia and became an independent sovereign State under an agreement concluded on 7 August between the Federal and Singapore Governments. The British Government announced on 9 August that Britain would recognize Singapore an independent State.⁽¹⁶⁾ Japan recognized Singapore explicitly on the same day.⁽¹⁷⁾

(12) *Ibid*, 17513A.

(13) *Gaimu-shō Kokuji* (Foreign Ministry Notification) No. 58 in the Official Journal No. 10065 dated on 11 July 1960; *Gaimu-shō Kōhyō-shū* (Foreign Ministry Statements and Documents), Year 1960 Part II, p.56.

(14) See Rosalyn Cohen, "Legal problems arising from the dissolution of the Mali Federation," 36 *BYIL* 376-384; A. Gandolfi, "Naissance et mort sur le plan international d'un Etat éphémère: la Fédération du Mali," (1960) *AFDI* 881-906.

(15) *Gaimu-shō Kokuji* (Foreign Ministry Notification) No. 105 in the Official Journal No. 10141 dated on 8 October 1960; *Gaimu-shō Kōhyō-shū* (Foreign Ministry Statements and Documents) Year 1960 Part II, pp.66-67.

(16) *Keesing's* 20891A[20892].

(17) *Gaimu-shō Kokuji* (Foreign Ministry Notification) No. 178 in the Official Journal No. 11613 dated on 27 August 1965.

V. Legal Nature of Recognition of States

After a brief survey of Japanese practice in the State recognition since the World War II, we will return to the problem of the legal nature of recognition of States, because we have two conflicting theories over the nature of recognition: the constitutive and the declaratory.

The post-war independence of States was attained by peaceful means under the influence of the United Nations, except a few cases. In the case of independence as a result of such peaceful decolonization, many States including a metropolitan State and neighbouring States have sent their special representative to attend the special ceremonies, and/or sent a congratulatory message. Japan also did so in many cases. Such "instantaneous" recognitions accorded in substance concurrently with the official independence day have for the object, first of all, to confirm the creation of a new State, and then to enter into and promote the friendly general relations, especially legal, political, economic, social relations, with it from the viewpoint of the mutual interests. We have four cases of peaceful independence in which Japanese recognition was accorded later than two months after the official independence day: Morocco, Tunisia, Kuwait and Western Samoa. In any case the statehood was beyond doubt, but Japan had a little interest in Maghreb States, and Japan seems to have waited and seen how things would turn out in the case of Kuwait and Western Samoa. Consequently it may be concluded that such recognition is an optional and political act having the effect of confirming the creation of a new State and of expressing the intention of the recognizing State to have some intercourse with it. This is true of the cases of unification or dememberment of States.

In the case of secession such as Bangladesh or Guinea-Bissau, what kind of effect does recognition have: this is to be discussed in accordance with State practices. Japanese recognition of Bangladesh or Guinea-Bissau was respectively accorded prior to the recognition by the metropolitan State.⁽¹⁾ It was, however, after the complete realization of the cease-fire that Japan recognized Bangladesh, and after the commencement of the

(1) To cite other example, Guinea which voted against the French Constitution of the Fifth Republic and declared independence on 2 October 1958 was accorded recognition by Japan on 14 November 1958 prior to the French implied recognition of 7 January 1959.

independence negotiation between the PAIGC and Portugal that Japan accorded recognition to Guinea-Bissau. In International Law we talk about the premature recognition when independence is achieved by the armed struggle against the metropolitan State and the prerequisites for statehood are not considered as fully met. While Japanese recognition in each case is not criticized as premature, recognition extended by India to Bangladesh may be deemed as premature because that act was taken when the struggle still continuing between Bangladesh and Pakistan. In the case of the war of secession the effective control over a clearly-defined territory and population has been traditionally required as a test for recognition. The test of this stability of government is expressed as follows in the Swiss Government's terms in the case of Guinea-Bissau,

“l'élément . . . 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.”

It is from this viewpoint that Ch. Rousseau concluded that “il n'est pas douteux que les reconnaissances intervenues en 1973 ont été prématurées.”

In other words, the fact that an entity meets the traditional test for recognition shows that it has come into the world as a true State; recognition accorded before such an entity comes into existence as a State may be deemed as premature, that is, such recognition may be construed as an illegal intervention in the domestic matters in International Law. Recognition which fully meets the above-mentioned conditions may not be considered as premature even if a metropolitan State such as Pakistan denies the statehood and is against the recognition of such an entity, because a new State is already brought into existence. Consequently it may be concluded that from a legal point of view recognition has only a declaratory effect even in the case of secession.⁽²⁾ It is natural in that case that from a political point of view recognition may contribute towards the consolidation of the status of the recognized State so long as recognition has for the object to enter into and promote the general relations with the recognized State.

(2) See the Resolutions of the *Institut de Droit International* (1936): “La reconnaissance a un effet déclaratif. L'existence de l'Etat nouveau avec tous les effets juridiques qui s'attachent à cette existence n'est pas affectée par le refus de reconnaissance d'un ou plusieurs Etats.” *Annuaire* 1936, Vol. II, pp. 208–209, 215–216, 251.

Reversely, where an entity is widely recognized as a State, especially where such recognition has been accorded on non-political grounds, that is strong evidence of the statehood of that entity though it is not conclusive. And where the status of a particular entity is doubtful, or where some necessary element is lacking, recognition, apart from its evidential importance, may oblige the recognizing State to treat the recognized entity as a State. In Charpentier's terms⁽³⁾ recognition may render opposable a situation otherwise not opposable. To cite some examples in practice, the fact that Rhodesia had not been recognized by any State, or that the Transkei has been recognized only by South Africa which granted independence to it, is an evidence that Rhodesia had not been, the Transkei is not, an independent sovereign State.

VI. Concluding Considerations

1. Japanese recognition policy towards the new States as seen in practice is characteristic in that Japan does not adopt as a criterion a capacity to act effectively to conduct foreign relations and to fulfill international obligations and that Japan accords recognition automatically and instantaneously to new States especially since 1960. It is disputably confirmed that Japan and many States attach importance to the principle of self-determination as one of the criteria of State recognition.

2. In the case of independence by secession after the World War II, all but one case of Bangladesh are independence by the indigenous people from the western colonial status and thus in the context of decolonization. There was realized the principle of self-determination; independence from Western colonies and that acquired by the people languishing in colonial bondage. On the other hand the UDI of Rhodesia was proclaimed not by the colonial people but by the colonist usurpers as Japanese Government had also made a few observations on it and in this sense contrary to the principle of self-determination.

Biafra and Katanga are unsuccessful modern cases of secession as mentioned above. It was the principle of the territorial integrity that prevailed. Biafran people, however, are distinct ethnically, religiously, linguistically from other Nigerian people and they declared independence based on the principle of self-determination. As we know,

(3) J. Charpentier, *La Reconnaissance internationale et l'évolution du droit des gens*, Paris, 1956, pp. 217-25.

there was no substantial United Nations involvement and the O.A.U. was a strong supporter of the central government. Here before us are conflicting the two principles: the self-determination and the territorial integrity.

The United Nations has played an important rôle in decolonization. In 1960 the General Assembly adopted the guiding principles for determining obligations to transmit information to the United Nations on non-self-governing territories, among which the principle "geographically separate and distinct ethnically and/or culturally from the country administering it" played thereafter a decisive rôle among others in relation to the Portuguese overseas territories.

Among the cases in which the secession from a newly independent State was at issue: those of "le démembrement non-colonial" in Verhoeven's terms, it was the territorial integrity of Nigeria or the Congo (now Zaire) in the failed attempt at secession of Biafra or Katanga that prevailed over the self-determination and it was the self-determination in the successful secession of Bangladesh that prevailed over the territorial integrity of Pakistan. The principle "geographically separate" seems to have operated in favour of independence. In the present international law the principle of self-determination is established as a positive legal principle at least to that extent.

3. The Transkei which was granted "independence" by South Africa in furtherance of the bantustan policy has not been recognized by any State. The Transkei was accorded "self-government" in 1963 and became "independent" on 26 October 1976 by the South African Status of the Transkei Act.⁽¹⁾ On the following day⁽²⁾ the General Assembly strongly condemned the Bantustan policy again and rejected the "independence" of the Transkei as "invalid," "call[ing] upon all Governments to deny any form of recognition to the so-called independent Transkei." The Transkei severed on 10 April 1978 and resumed

(1) See 15 *ILM* 1175.

(2) G.A. Res. 31/6A adopted by 134:0:1 (United States) as follows:

The so-called independent Transkei and other bantustans

The General Assembly,

Recalling its resolution 3411 D (XXX) of 28 November 1975 condemning the establishment of bantustans by the racist regime of South Africa,

Taking note that the racist regime of South Africa declared the sham "independence" of the Transkei on 26 October 1976.

Having considered the report of the Special Committee against Apartheid and its special reports,

on 7 February 1980 the "diplomatic" relations with South Africa.⁽³⁾ The possible justifications for non-recognition are that the Transkei was created directly pursuant to a fundamentally illegal policy of *apartheid*; that the Transkei was created in violation of the principle of self-determination; that the Transkei was both economically and politically dependent on South Africa.

As compared with the other cases of granting of independence, it is clear that the creation of the Transkei was an integral part of a policy which violates the fundamental principle of racial equality and non-discrimination. Consequently it may be concluded that in the present-day international law respect for human rights and realization of self-determination play a decisive rôle in the creation and recognition of States.

1. *Strongly condemns* the establishment of bantustans as designed to consolidate the inhuman policies of *apartheid*, to destroy the territorial integrity of the country, to perpetuate white minority domination and to dispossess the African people of South Africa of their inalienable rights;

2. *Rejects* the declaration of "independence" of the Transkei and declares it invalid;

3. *Calls upon* all Governments to deny any form of recognition to the so-called independent Transkei and to refrain from having any dealings with the so-called independent Transkei or other bantustans;

4. *Requests* all States to take effective measures to prohibit all individuals, corporations and other institutions under their jurisdiction from having any dealings with the so-called independent Transkei or other bantustans.

(3) See 83 *R.G.D.I.P.* 126 and 84 *R.G.D.I.P.* 847.