

Philippine State Practice on Recognition

By ESTER M. SISON

Recognition, according to Hyde, has been defined as the "assurance given to a state that it will be permitted to hold its place and rank, in the character of an independent political organism, in the society of nations".¹ Although seemingly limited to recognition of states this definition is merely a general one. Recognition maybe of a new state, new government, of insurgency, and of belligerency.

While the existence in fact of a new state or government is independent of its recognition by other states as long as it possesses the essential attributes of statehood, yet a state can not exist in complete isolation. Her mere desire to stay aloof from international affairs will not prevent her from being entangled in international conflicts. Her appearance on the international scene must be a matter of interest to all the other states. The disappearance of geographical boundaries as a result of the progress in communication, navigation, commerce, and trade gave rise to international problems and conflicts. The rise of fascism, nazism and now communism created world tension and let to the present day interest in the existence of stable and "peace-loving" governments. Recognition is thus essential in order that a new state can enter into normal intercourse with other states and become a member of the society of nations.

Present State of Recognition in International Law And the Practice of States:

There is, under traditional international law, a conflict of opinion among writers as to whether recognition is declaratory or constitutive; that is, whether a state exists prior to recognition and recognition merely declares the existence of that fact or whether it is brought into being by the act of recognition. Prof. Lauterpacht maintains the constitutive view in a recent article.² The American Republics concluded at Montevideo in 1933 a convention which emphatically states the declaratory position.³ Confusion, according to Prof. Jessup, is caused by the fact that some writers consider recognition as a purely political act whereas others stress its legal character.⁴ Lauterpacht⁵ supports the legal view that recognition involves an assertion of a right to recognition and a

¹ Hyde, *International Law*, Vol. 1, p. 148

² Lauterpacht, "Recognition of States in International Law", 53 *Yale L. J.* (1944), 385

³ U.S. Treaty Ser. No. 881. The proposition was reaffirmed in Art. VII of the Draft Declaration of the Rights and Duties of American States, approved by the Governing Board of the Pan-American Union, July 17, 1946.

⁴ Jessup, "A Modern Law of Nations", p. 43

⁵ See Lauterpacht, "Recognition of States in International Law", 53 *Yale Law Journal* (1944).

duty to recognize while Kunz⁶ in support of the political view states that under positive international law there is no right to demand recognition by a new state or government nor is there a legal duty to recognize them. The reason for the unsatisfactory state of the law is because recognition is an amalgamation of political and legal elements and there is difficulty of divorcing the legal aspects from its political implications. Kelsen in distinguishing the political and legal act of recognition impliedly acknowledged its dual nature. The first, he observes, consisting of the willingness to enter into political relation is an act wholly within the discretion of the recognizing state. But the legal act of recognition is the ascertainment that certain requisites, prescribed by international law, have been fulfilled by a legal community or government.⁷

Recognition primarily involves the actuations of states. Resort to the practice of states is not only necessary but a proper approach in order to obtain direct evidence of the different elements that enter into the act. While international law lays down the requisites attributes of statehood which would justify a new state in demanding recognition, it leaves the ascertainment of the existence of these facts to the discretion of the recognizing state. The exercise of this discretion is at all times subjected to various political influences and considerations. It is no surprise therefore that recognition is oftentimes referred to as a question of policy, a matter of political expediency or as an object of bargaining or to borrow from Lauterpacht, "there are abuses of recognition."

The bulk of state practices, headed by the United States and Great Britain, supply proof of the active role played by political factors in the act of recognition. From earlier times, instances are not lacking in attempts to use recognition not as a means of safeguarding national interest but also to secure certain benefits. Thus, even the lofty position assumed by the United States in the question of the independence of the Latin-American states was not always free from attempts to safeguard United States interests. Historians tell us that the recognition of the United States by France in 1778 was not entirely disinterested. When the question of the recognition of Albania came before the United States, representatives of both countries pointed to some connection between the grant of recognition by the United States and the grant of oil concessions by Albania.⁸ When the kingdom of Hejaz and Nejd approached the United States for recognition, the Department of State, in a communication to the American Legation at Cairo, expressed the opinion that the final decision would be largely influenced by the character and extent of American commercial interest, actual as well as potential, in Hejaz.⁹ The British offer to recognize the defacto Finnish government was induced by a desire to secure the release of British subjects arrested by the Germans

⁶ Kunz, "Critical Remarks of Lauterpacht's "Recognition in International Law", Vol. 44 The American Journal of International Law (October, 1950) p. 713.

⁷ See Kunz, Critical Remarks of Lauterpacht's "Recognition in International Law", 44 The American Journal of International Law (October 1944), p. 714

⁸ 1 For. Rel. U.S. 1922 (U.S. Dept. State 1938) 594-95

⁹ 1 Hackworth, Digest of International Law (1940) at 218.

and at the same time to secure guarantees for the maintenance of neutrality (including the passage of allied troops through Finnish territorial waters).¹⁰ Neither are instances lacking in recent times of attempts to make recognition dependent upon political conditions and considerations. It is not uncommon, therefore, to see the great allies, the United States and Great Britain taking opposing stands in matters of recognition. Let us take the case of Israel.¹¹ The United States recognized it as a defacto state within a few hours of the declarations of independence whereas Great Britain declared it will not recognize it, because it has not fulfilled the basic criteria of an independent state. Mr. Austin's sharp reply to the strong criticism of Syria of America's quick recognition of Israel lend much to support the view that recognition is often times a matter of discretion than a legal duty.¹² Political and economic factors also played a part in British recognition of the effective Red government of China. On the other hand, United States interest in democracies, caused her refusal to recognize Red regime in China and her continual recognition of the Nationalist government which is now reduced to Formosa. British and American recognition of the new government of the "peoples' democracies" in Europe are not exactly the exercise of impartial and judicial attitudes inasmuch as the interest of these states in democratic states and governments can not be denied.

It is difficult to deduce from the practice of states a clear statement as to the exact nature of the act of recognition. While states do not deem themselves free to accord or withhold recognition to new state in arbitrary and capricious manner, nevertheless they will continue to act with an eye to the particular interest they aim to protect. For even if the legal duty to recognize existed, as Jessup pointedly remarks, it would "afford slight satisfaction in the absence of organized international machinery to enforce the obligation."¹³ It is indeed a truism that political considerations are ever present in matters of recognition. Since the recognizing state, as Oppenheim points out, is "both the guardian of its own interests and an agent of international law," it is unavoidable that political considerations may from time to time influence the act or the refusal of recognition.¹⁴ Whether the act, therefore, be the exercise of discretion or the fulfillment of a legal duty, it is safe to assume that whenever a new state has complied with the essential requisites of statehood, the old states will grant recognition in the absence of impelling reasons which would induced them to act otherwise.

¹⁰ Communication of the British Ambassador to the United States Secretary of State, May 4, 1918, 2 For. Rel. U.S. 1918, Russia (U.S. Dep't State 1932) 784. See also the statement of the British Foreign Secretary, The Times, Jan. 31, 1918, p. 5, col. 4.

¹¹ See, recently, Jiménez de Aréchaga, "Reconocimiento de Gobiernos" (1947)

¹² See, Kunz, Critical Remarks of Lauterpacht's "Recognition in International Law", Vol. 44 The American Journal of International Law (October 1950) p. 719.

¹³ Jessup, "A Modern Law of Nations", p. 44.

¹⁴ Lauterpacht, "Oppenheim's International Law, Vol. 1 (seventh edition 1948), p. 123.

Philippine State Practice:

It was only after July 4, 1946 that Philippine state practice on recognition may be said to have commenced for it was only then that the Philippines attained statehood. The files of the Records Division in the Department of Foreign Affairs show that so far she has recognized only six states: Korea, Ceylon, Siam, India, Indonesia and Israel.

She can extend recognition only to the states which have come into existence after the attainment of her own statehood. There was no need on her part to recognize the old states which were in prior existence but on the contrary it is the privilege of the latter states to accord or refuse recognition depending upon their own determination as to the propriety or impropriety of the act.

As was stated before, the Philippines could not accord recognition prior to her independence. This accounted for the non-transmittal of the letter of the late and then Senate President Roxas addressed to Soekarno, Provisional President of the Republic of Indonesia, containing the Senate Resolution expressing the sympathy of the Filipino people to the Indonesian cause.¹⁴ Because the Philippines could not then deal directly with foreign governments, the letter was coursed through the State Department of the United States. General Romulo in answer to the inquiry of Commissioner Sinco regarding the letter stated that it could not be transmitted inasmuch as the United States had not yet recognized Indonesia, and for this reason it would not be proper to send any official communication which might be construed as a gesture of recognition.¹⁵

A study of Philippine state practice on recognition involves a treatment of the factors and considerations which enter into the act of recognition. The rule that the states should extend recognition provided the state so requesting possesses all the distinguishing characteristic of statehood¹⁷ is followed in Philippine practice. This is reflected in a memorandum submitted by Mr. Provideo of the Department of Foreign Affairs on June 7, 1948 wherein he recommended the withholding of recognition until the Jewish state is a *fact accompli* and in the memorandum of the then Under-secretary Neri to President Quirino on March 15, 1949 wherein he recommended the granting of recognition and giving as one of the reasons the fact that the Jewish state is now a *fact accompli*.¹⁸ It was only on April 1, 1949, almost a year after the United States recognition of Israel, that the Philippines recognized the state of Israel.¹⁹

¹⁴ File No. 007.01—Indonesia, Records Division, Dept. of Foreign Affairs, Republic of the Philippines (Letter of the late and then Senate President Roxas to Soekarno; dated December 29, 1945).

¹⁵ File No. 007.01—Indonesia, Records Division, Dept. of For. Affairs, Rep. of the Philippines (Answer of Resident Commissioner Romulo to Commissioner Sinco received by pouch on February 18, 1945).

¹⁷ Garcia, Questions and Problems in International Law, p. 83.

¹⁸ File No. 007.01—Israel, Records Division, Dept. of For. Affairs, Rep. of the Phil. (Memo submitted by Mr. Provideo dated June 7, 1948) Also (Memo for Pres. Quirino, dated March 15, 1949, by Undersecretary Felino Neri.)

¹⁹ File No. 007.01—Israel, Records Division, Dept. of For. Affairs, Rep. of the Phil. (Radiogram received by Undersecretary Neri from Director

The same rule is applied in the recognition of governments. It must not only have actual control of the reins of government but it must give promise of stability. Thus in recommending the recognition of the Songgram government in Siam, Mr. Mabilangan, counsel in the Division of Asiatic Affairs, based his conclusion upon the ability of said government to maintain its stability in spite of two unsuccessful coups to oust it.²⁰

Red China presented a different story. In spite of President Quirino's early statement that recognition will be eventually accorded to it as soon as it receives the support of the majority of the Chinese people, the Philippine government has openly fought communism as an enemy of democracy. Future events will tell which of the two ideologies will survive.

A realistic approach of the subject of recognition requires other considerations aside from the above-stated rule. While in theory the Philippines has discretion to grant or refuse recognition free from the dictates of other states,²¹ yet being an infant state and desirous of keeping the goodwill of the other states, she has no alternative but to exercise the privilege with caution.

Any recognition accorded prior to recognition by the parent state is likely to cause protest for the reason that the act may be considered not only as an unfriendly gesture but as an act of intervention by such state. Although the opinion has long persisted in the United States that the propriety of extending recognition is not necessarily dependent upon the approval of such a state,²² still this does not warrant the antagonizing of the parent state or the taking of sides in the issues unless there are strong reasons for the act. For this reason, the Philippine government in order to avoid differences with the Netherlands government accorded recognition to Indonesia to the same extent that the Netherlands government extended recognition to it in accordance with the Lingjapahit Agreement, that is, *de facto* recognition.²³ It was only after the receipt of identical invitations from the Netherlands Legation and the Consul General of Indonesia of the ceremonies for the formal transfer of sovereignty from the Netherlands to the Republic of Indonesia that the Philippines accorded *de jure* recognition.²⁴ It is indeed a

General Walter Eytan, dated April 3, 1949, acknowledging receipt of cable 1101 of April first conveying Philippine decision to recognize Israel).

²⁰ File No. 007.01—Siam, Records Division, Dept. of For. Affairs, Rep. of the Phil. (Memo prepared by Counselor Mabilangan for Under-Secretary Neri on April 21, 1949—Subject, "Political Stability of Siam").

²¹ Note: Considerable number of writers consider recognition a political act. Sec. Kunz, "Critical Remarks of Lauterpacht's "Recognition in International Law", 44 The American Journal of International Law.

²² Hyde, International Law, Volume 1 p. 152.

²³ File No. 007.01—Indonesia, Records Division, Dept. of For. Affairs, Rep. of the Philippines (letter of Phil. Delegate to UNO to the vice-pres. and concurrently Sec. of For. Affairs Quirino dated Nov. 29, 1947).

²⁴ File No. 007.01—Indonesia, Records Division, Dept. of For. Affairs, Rep. of the Phil. (Identical formal invitations received on Dec. 22, 1949 from the Netherlands Legation and Consulate General of Indonesia, plus the communication transmitted by Consul Pastrana to the Indonesia government).

good policy to avoid direct unfriendly gestures or acts likely to cause provocations.

It is the practice of the Department of Foreign Affairs to instruct Philippine representatives abroad to inquire as to what states have already extended recognition to a new state. Even without such instruction, Philippine representatives in line with their duty of observation make such report to the department.²⁵

There is a disposition on the part of the Philippine government to extend recognition whenever a majority of the members of the UNO has extended the same. This is but natural. The Philippines is a member of that body and she can not be oblivious to the prevailing sentiment or opinion in that body. If a majority of the members have accorded recognition, this should incline the scale towards or in favor of recognition unless there are strong reasons against it. The according of recognition after a state has been admitted in the UNO would be less appreciated and consequently would be of less value. By following suit, the Philippines, in effect, is merely supporting the rule of the majority which after all is the rule in accordance with democratic principles. Moreover, being a young and weak nation she cannot afford to be like Russia, a perennial dissenter. It is not surprising, therefore, to note that one of the reasons advanced in favor of according recognition to Israel is the fact that forty members of the UNO have recognized her, and her membership in that body is a certainty.²⁶

It has been repeated and contended that the Philippine independence is not real, that the Philippines is tagging behind the United States in her foreign policy. This was especially true when the Philippines voted for the partition of Pakistan reversing an earlier decision of Ambassador Romulo following American action. While it can not be denied that the Philippines can not afford to antagonize the United States for economic and financial reasons, still it is without justification. It should be borne in mind that legally the Philippines has a right to extend or withhold recognition without dictation from without, yet she can not be blind from the realities or actualities of the moment. The right of according recognition never warranted the incurring of the displeasure of other states without cause and with more reason that of the United States. Thus any request made by said government upon the Philippines to follow suit in certain actions taken by it will be complied with, unless such compliance is impossible or there are good reasons against it. The letter received from the American Embassy requesting the release of press statements along the same lines as those made by the United States State Department in order to advance the Korean cause before the

²⁵ File No. 007.01—Israel, Records Div. Dept. of For. Affairs, Rep. of the Phil. (Cable sent by Ambassador Romulo to Sec. Neri, dated June 15, 1948). Also, File No. 007.01—Siam, Records Division, (Instruction of Sec. Neri to Minister Ramos sent in code on Feb. 28, 1948)

²⁶ File No. 007.01—Israel, Records Div. Dept. of For. Affairs, Rep. of the Phil. (Memo for President Quirino, dated March 15, 1949, submitted by Sec. Neri.)

General Assembly is a typical example of such request.²⁷ The United States is interested in advancing the cause of democracy and so is the Philippines and there is no reason therefore why a press release along the lines may not be given.

The case of Israel, however, presented a striking contrast. The delay in extending recognition to it may be traced to the desire on the part of the Philippines to remove the stigma that the Philippine action on Israel follows United States patterns. This was one of the reasons advanced by Counselor Provideo of the Department in his memorandum for the impropriety of according recognition just then.²⁸ It is important that the Philippine Government should refrain from acts which tends to create such an impression if only for the maintenance of her national integrity and honor.

Economic considerations have also entered Philippine state practice on recognition. Being fully aware of the great influence that the Jews have in the United States, the Philippines decided in favor of the recognition of Israel in spite of some opposition expressed by the Mohammedan Filipinos in order not to jeopardize American economic and financial assistance.²⁹

Local political pressure may also be utilized by interested groups in order to grant or withhold recognition. Thus, the reluctance of the Philippine government in according immediate recognition to the new state of Israel may be explained by the opposition voiced by Mohammedan Filipinos. The Arabs being Mohammedans, it is but natural that their brothers of the faith rallied to their support.³⁰ The case of Indonesia, on the other hand, is vice-versa. It being a Malay nation, Philippine public opinion is very strong in her favor. In fact there was open sympathy not only of the people but by the government itself as evidenced by the uncommunicated letter of the late President Roxas to President Soekarno.³¹

While Philippine state practice on recognition has traversed but a few years, yet an observation can be made that it has closely followed United States practice. Actually, aside from the UNO it is generally through the State Department in Washington that the Philippine Department of Foreign Affairs secures information which will serve as basis for the determination by the political

²⁷ File No. 007.01—Korea, Records Division, Dept. of For. Affairs, Rep. of the Phil. (Note of the then Acting Secretary Neri to the United States Charg'd Affairs on August 14, 1948).

²⁸ File No. 007.01—Israel, Records Division, Dept. of For. Affairs, Rep. of the Phil. (Memo prepared by Mr. Provideo on the recognition of Israel dated June 7, 1948)

²⁹ File No. 007.01—Israel, Records Division, Dept. of For. Affairs, Rep. of the Phil. (Memo for President Quirino, dated March 15, 1949, submitted by Sec. Neri).

³⁰ File No. 007.01—Israel, Records Div., Dept. of For. Affairs, Rep. of the Philippines (Memo submitted by Mr. Provideo dated June 7, 1948).

³¹ File No. 007.01—Indonesia, Record Div. Dept. of For. Affairs, Rep. of the Philippines (Letter of the late and then President of the Senate Roxas to Dr. Achmed Soekarno, President of the Republic of Indonesia on Dec. 29, 1945).

branch of the government of the propriety or impropriety of according recognition to a new state or government. This may perhaps be due to the fact that the United States is a leader in World Affairs and also that the seat of the United Nations is there. The reason, however, may lie deeper—the feeling of gratitude as well as the economic and financial dependence of the country on the United States naturally engenders a desire on the part of the former not to antagonize the latter.

On the whole, the Philippines has proved herself a worthy member of the family of nations. While her actions are not free from criticism, still so far she has committed nothing derogatory to her national integrity and honor. Political, economic, as well as social forces will logically bear upon her acts of recognition. It is hoped that the future will not witness an abuse of the privilege on her part and that in due time she will realize that national interest is not the sole consideration in granting or refusing recognition but that at times it has to give in to international interest.