COMMENTS

THE PHILIPPINE RECOGNITION OF SOUTH VIETNAM

With the ascendancy of the Philippines to the status of an independent republic, her participation and involvement in international relations have become necessary and inevitable.

The recognition extended to the State of South Vietnam and the Government of Ngo Dinh Diem last July by the Philippine Government was not endorsed locally with unanimous approval. Of late it has become an issue which has generated complications in the arena of current local politics. Since the act of recognition, as will be seen later, is an exercise of an exclusive Executive prerogative, it would at first blush seem that any effort aimed at criticizing or re-examining an already accomplished fact would be even less than academic. Like Caesar who, upon crossing the Rubicon on his return from his Gallic campaigns to defy the challenge of Pompey, many would resignedly say that "the die is cast." [1] The same question—what is the use of contesting a judgment already rendered?—confronted the great mind of Justice Holmes. In the early case of *Northern Securities Co. v. United States,* he believed that it was "useless and undesirable, as a rule, to express dissent." [2]

But dissent and re-appraisal are nonetheless significant, if not necessary. The finality of a decision involving questions of law and fact does not necessarily presuppose its infallibility. Dissent can only be a natural expectation. This is so because the assumption that law is certain and implacable is a fallacy at the least.[3] The international law of recognition, as we shall presently see, is one branch of law wherein fixity of principles is a remote proposition. As Roscoe Pound would put it, decision-making is not a "sort of slot machine . . . in which the facts were put in, the Court [4] pulled in a logical lever, and pulled out the predetermined result." [5] And it was Justice Holmes himself, notwithstanding his earlier utterance, who said that "every opinion tends to become a law." [6] It is therefore submitted that the comments which follow are justified in the light of the foregoing considerations.

I. Brief Sketch Of South Vietnam

The Vietnamese, often portrayed as an Annamite coolie balancing on his shoulder a long pole with two sacks of rice hanging at

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[1] Myers, P. V. N., General History 255-56 (rev. ed. 1906).

[2] 193 U.S. 197, 400 (1903).

[3] Navarro, E. R., *Judicial Affirmance and Reversal,* 30 Phil. L.J. 325, 326 (1955). "Delusive exactness is a source of fallacy throughout the law." Justice Holmes in Traux v. Corrigan, et al., 257 U.S. 312, 343 (1921).

[4] Or the decision-maker.

[5] *A Generation of Improvement of the Administration of Justice,* 22 N.Y.U.L.Q. Rev. 370-71 (1947).

[6] Lochner v. New York, 198 U.S. 45, 74 (1904).

each end, belongs to a land whose annals have been turbulent and foreign-dominated.[7] South Vietnam was inexistent before the Geneva Agreement of July 21, 1954, much less before the outbreak of the Second World War. A brief historico-political account of Vietnam (Land of the South), and of French-Indochina for that matter, explains the emergence of South Vietnam.

Before World War II, there was what was known as the French-Indochina—located in Southeast Asia and bounded on the east by the China Sea, on the north by the mainland of China, and on the west by Burma and Thailand. Although one-third larger than France, it was incorporated into the French Empire by a succession of subtle diplomatic devices and numerous military campaigns. French-Indochina comprised the colony of Cochin China at the southern tip of the peninsula, and the four protectorates of Tongking, Annam, Cambodia, and Laos. It yielded large quantities of rice, rubber, coal and other minerals.

Although France prided herself on her vaunted *mission civilisatrice*, Frenchmen in Indochina were definitely conscious of belonging to a superior or master race.[8] France was completely mercantilist in her policies toward Indochina. The colony existed, and was exploited, for the well-being of the mother-country.[9] Cries for freedom from rigid French colonialism had begun as early as the middle of the 1920's, but it was not only after the Second World War that this long nurtured resentment of a subject population became a solid movement.

Resistance against the Japanese invaders was largely carried on by the Viet Minh League, or League for the Independence of Viet Nam (Tongking, Annam, and Cochin China), under the leadership of one Ho Chi Minh, who had refused to recognize the authority of the puppet "independent" government of Bao Dai, the Emperor of Annam. In September, 1945, after Japan had surrendered to the Allied Powers, the Viet Minh set up a new government under Ho Chi Minh and issued a Declaration of Independence of Viet Nam. These nationalists soon took up arms to prevent the restoration of French rule, resulting in savage guerilla warfare between the French troopers and the "defenders" of the Viet Nam Republic. On March 6, 1946, an agreement was signed by which France recognized the Republic as "a free State within the Indo-Chinese Federation and the French Union." Subsequent negotiations to implement its terms however bogged down to an impasse. The insistence of the Viet-

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[7] For a politico-historical account of Indochina, see, generally: Micaud, C. A., *French Indo-China* in THE NEW WORLD OF SOUTHEAST ASIA 216-45, 384 ff., 408 ff. (Mills ed. 1949); SCHUMAN, INTERNATIONAL POLITICS 556 ff. (4th ed. 1948); THOMPSON, V., FRENCH INDO-CHINA (1937); ENNIS, T., FRENCH POLICY AND DEVELOPMENTS IN INDO-CHINA (1936).

[8] *Les salauds* (these filthy ones) was the term usually applied by the French colonists to the inhabitants of Indochina. Roth, A., *French Tactics in Indo-China*, The Nation, Feb. 28, 1948, p. 237.

[9] Buss, C., *International Relations in Southeast Asia* in THE NEW WORLD OF SOUTHEAST ASIA 384 (Mills ed. 1949).

namese on complete independence remained unheeded.[9a] War was renewed. Saigon, one time called the Paris of the Orient, became a city of shambles. Ho's government was denied recognition by the French.

In June, 1948, France created a puppet government for Vietnam (North Viet Nam, the former protectorate of Tongking; Central Viet Nam, the former protectorate of Annam; and South Viet Nam, the former colony of Cochin China) under the leadership of Bao-Dai, the weak and unpopular ex-emperor of Annam. By 1949, there were in Indochina three "independent associated States within the French Union": Laos, Cambodia, and Vietnam. On June 4, 1954, a treaty of independence was entered into between France and Vietnam.[10]

Meanwhile, Ho's armed struggle for independence was gaining tremendous popular support. Exploiting the Japanese-coined slogan "Asia for the Asiatics," he had many fanatically loyal followers with a strong sense of purpose. The recognition of his own Viet Nam Republic by Russia and the latter's satellites immensely increased Ho's appeal.[11] A Communist by affiliation, he was receiving a good deal of artillery and other military equipments from the Russians and the Chinese Communists of Mao Tse-tung.[12] Several factors indicated Communist victory: the Viet Minh forces were large and well-equipped; French military equipments were inadequate and out of date; the French-sponsored Vietnamese government was a collection of weak personalities led by Bao Dai; the much-hated French colonialism; and Ho Chi Minh's war cry for independence.[13]

French position gradually weakened. Finally, in a nine-nation conference in Geneva which ended last July 21, 1954,[13a] Vietnam (then composed of North, Central and South Vietnam) was divided into two: the land below the 17th parallel was called the South or Free Vietnam, "remaining under the control of the Vietnamese government," while the upper half (North Vietnam) passed under the control of the Communist Viet Minh.[14]

[9a] Micaud, C. A., *supra* note 7, at 232-33.

[10] From the text of the speech of the Undersecretary of Foreign Affairs of the Philippine Republic entitled *"Our Recognition of South Vietnam,"* delivered before the convocation of the student body of the University of the Philippines last July 18, 1955, as officially released by the Department of Foreign Affairs, at p. 2.

[11] Werth, A., *Showdown in Vietnam,* The Nation, May 13, 1950, pp. 445, 446.

[12] Time (Pac. ed.), Jan. 22, 1951, p. 15, col. 3.

[13] Durdin, P., *Why Ho Chi Minh Can Win,* The Nation, Nov. 11, 1950, p. 436. The people were infected with revolt against the French and their weak emperor. (Life [Int'l ed.], Jan. 14, 1952, p. 18). Vietnamese nationalism is ably discussed by Micaud, C. A., *supra* note 7, at 234-39.

[13a] The nine participating nations were: Cambodia, the Democratic Republic of Vietnam (Viet Minh Communists), France, Laos, the Peoples (Communist) Republic of China, the State of Vietnam, the Union of Soviet Socialist Republics, the United Kingdom, and the United States of America.

[14] The Geneva Agreement provides for an all-Vietnam election next July 20, 1956, "with the aim of establishing a unified Government"—either that of the Communist Viet Minh or the democratic South Vietnam. The latter's government, however, has

II. The Situation and the Philippine Position

The American example of granting independence to the Philippines has had repercussions in Southeast Asia. Colonial powers have gradually been surrendering political control of their former dependencies.[15] Only a year ago, Vietnam, as part of French-Indochina, was divided into South and North Vietnam. Southeast Asia is a region of vast dimensions. Its raw materials vitally affect world economics.[16] Its strategic location as part of the chain of the global defense of the free nations has brought to the forefront the importance of this little known region. The Communists have taken keen interest in Southeast Asia.[16a] In areas torn by revolt against Western rule, the Communists have seized upon and aggravated this state of unrest, twisting it so as to realize their own purposes.[17]

French-Indochina has for about a decade now been the focal point of struggle between the Democracies and the Communists.[18] Its strategic importance was shown when the peninsula was used by the Japanese as a springboard for their protracted campaign in the Southwest Pacific. The geographic propinquity of the Philippines to Indochina possibly explains our national concern. As described by the Administration:

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maintained as of date its flat refusal to accede to this procedure on the ground that there can be no guarantee of free elections in Communist North Vietnam. (The Manila Times, July 31, 1955, p. 3, col. 1, and p. 9, col. 4; *id.*, Aug. 10, 1955, p. 5, col. 5). Press reports have it that France and Great Britain are for the proposed all-Vietnam plebiscite, while the United States supports the contention of South Vietnam that free elections are not possible at this time to unite Vietnam in Indochina. (The Manila Times, Aug. 10. 1955, p. 5; *id.*, Sept. 1, 1955, p. 3 col. 1). North Vietnam has in turn warned the South Vietnamese government of Ngo Dinh Diem to sit down to election talks or prepare for another war. (The Manila Times, Sept. 17, 1955, p. 3, col. 1). Whether or not the refusal of South Vietnam to agree on the all-Vietnam elections is validly grounded or not, "it is not to be doubted that disorder on a wide scale would conceivably be the upshot of Diem's firm refusal to hold the elections. The charge that the conditions for a free election leave much to be desired should be investigated by an international group as soon as possible, rather than wait for a costly showdown that might plunge all parties in another bloody conflict." (The Manila Times, *Editorial*. Sept. 2, 1955, p. 4).

[15] Aside the Philippines, India, Pakistan, Ceylon, Burma, Indonesia and the three associated states of Laos, Cambodia and Vietnam (now divided into North and South Vietnam) have received their independence.

[16] See generally: Mills, L., *The Situation in Southeast Asia* in The New World of Southeast Asia 1-17 (Mills ed. 1949); Vaile, R., *Southeast Asia in World Economics* in *id.*, at 343-69; Buss, C., *supra* note 9, at 371-433; Regala, R., *The Stakes of the Free World in Southeast Asia*, 28 Phil. L.J. 890-94 (1953).

[16a] "As one of the Southeast Asian nations, South Vietnam is an important link in the regional set-up that provides a bold answer to the challenge of communist aggression in this part of the world." The Manila Times, *Editorial*, Oct. 25, 1955.

[17] Mills, L., *supra* note 16, at 9 ff.

[18] It may remain to be so should the Viet Minh's threat of war be carried out upon failure of South Vietnam to agree to the proposed 1956 unifying election. See note 14 *supra*.

"One need not ask for the disclosure of military secrets to appreciate this situation. One need only look at the map. Manila is only 550 miles from Saigon, less than the distance from Aparri to Jolo. We are only 3 hours and 45 minutes apart by commercial aircraft and considerably closer by modern military planes. The Indo-Chinese peninsula commands the entire left flank of the China Sea. Recall that in December 1941, the Japanese struck that mortal blow at the British Asiatic Fleet by sinking the battleships 'Prince of Wales' and 'Repulse' in the China Sea with planes from a small airport at Soctrang in what is now South Vietnam. Recall that the Japanese jumped from Indo-China to Thailand, thence to Malaya, Borneo, and Indonesia, and caused the loss to the free world of 80% of its supply of natural rubber and half of its tin." [19]

III. PHILIPPINE FOREIGN POLICY

Unlike our other Southeast Asian neighbors, the Philippines has had ample opportunities to prove her dexterity in the sphere of world diplomacy. Gradually we have been moving toward a more definitive foreign policy. As summarized by one of the Republic's leading diplomats,[20] there are three guiding principles of Philippine foreign policy:

"(1) Fullest possible collaboration with the United States on all matters that are essential to their mutual security and vital interests;[21]

"(2) Fullest support of the peoples of Asia and elsewhere in their struggle for freedom and independence;[22] and

"(3) Fullest possible cooperation with the United Nations and its specialized agencies in their efforts to promote the economic, social, and cultural development of mankind and maintain international peace and security."

Our government has supported the defense of Formosa, has recognized the States of Indonesia and South Vietnam, has demonstrated its adherence to the Democratic Bloc in the Bandung Con-

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[19] From the text of the speech of the Undersecretary of Foreign Affairs. See note 10 *supra*. Hereafter, reference to this speech will be deemed the view of the Administration in particular, and the Philippine Republic in general.

[20] Regala, R., *The Philippines in World Affairs*, 29 PHIL. L.J. 468, 474-76 (1954).

[21] *Id.*, at 473: "However, should her vital interests conflict with those of the United States, she should not hesitate to take the opposite stand. An illustration of this point is the fact that the so-called Dulles-sponsored Japanese peace treaty has not been ratified up to now by the Philippines."

[22] *Id.*, at 475: "In a conference held in Baguio, . . . between the President and the leaders of Congress, on April 11, 1954, two important decisions were made which are far-reaching, namely:

"(1) that the Philippines stand on the proposal of the United States Secretary of State for a multi-nation warning on Red China that any further aggression on her part in Indo-China would bring upon her united action by America and her allies; and

"(2) that the Philippines stand, as the corollary proposal with which to back the warning, for the formation of a Southeast Asia Treaty Organization on the NATO pattern."

ference, and has actively participated in the implementation of the SEATO. "These basic pillars of our Republic's foreign policy were a demonstration of an Asian country's determination to oppose further Communist encroachment in Asia." [23]

Together with other countries, the Philippines is a signatory to the Manila Treaty of the SEATO last September 8, 1954.[24] Reiterating our "faith in the purposes and principles set forth in the Charter of the United Nations" and our "desire to live in peace with all peoples and all governments," we have reaffirmed to "uphold the principle of equal rights and self-determination of peoples," and to "earnestly strive by every peaceful means to promote self-government and to secure the indepence of all countries whose peoples desire it and are able to undertake its responsibilities." [25]

In recognizing the State of South Vietnam, the Administration explained its foreign policy-position thus:

> "Our policy of strengthening our freedom impels us to do all that we can to strengthen freedom around us . . . to seek the strengthening of the States around us for our own sake. In recognizing South Vietnam, we are moved by this prime consideration, coupled with our desire . . . to do our share in helping other peoples to enjoy the freedom that, . . . we now possess . . . The people of Vietnam must be assured that their free State is receiving the support particularly of their Asian neighbors . . . We desire that the vital territory of that State be in free and friendly hands, else . . . it would constitute a grave threat to our country . . . The recognition of South Vietnam . . . was accomplished with the same deliberation which we are sure preceded the decision of our fellow nations, Asian, African, European and American . . ." [26]

As a charter member of the United Nations, we have pledged to accept the obligations contained in the Charter, among which, is the duty "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." [27] Under our Constitution, the Philippines adopts the generally accepted principles of international law as a part of the law of the Nation.[28] It is said that nowadays, no state desires to ignore, much less violate, the accepted rules of international law.[29] Under the Constitution and the United Nations Charter, the Philippines is

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[23] From the text of Ambassador Carlos P. Romulo's speech delivered before a joint assembly of Manila's civil organizations last Sept. 16, 1955. (See The Manila Times, Sept. 17, 1955, p. 10, col. 3).

[24] The other countries are Australia, France, New Zealand, Pakistan, United Kingdom of Great Britain and Northern Ireland, and the United States of America. For the texts of the Pacific Charter, the Manila Treaty, and the Protocol of the Southeast Asia Collective Defense Treaty, see 29 PHIL. L.J. 560-63 (1954).

[25] The Manila Treaty, Sept. 8, 1954.

[26] See note 19 *supra*.

[27] Art. 1, par. 2.

[28] Art. II, § 3.

[29] SINCO, V. G., PHILIPPINE POLITICAL LAW 123 (10th ed. 1954).

bound to abide with the generally accepted principles of international law.[30]

IV. The International Law and Practice of Recognition of States and Governments

Before re-examining the Philippine recognition of the State of South Vietnam and of the Diem Government, it is worthwhile to make a resumé of the aspects of the recognition of states and governments in the light of international law and practice.

A. Definition, Function, and Importance.

The act of recognition of states has received various definitions. Briefly, it is "the procedure provided by general international law to ascertain the fact 'state in the sense of internatoinal law' in a concrete case." [31] It signifies that the recognizing state accepts the personality of the other with all the rights and duties determined by international law.[32] By acknowledging the full status of a hitherto

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[30] Under the Statute of the International Court of Justice (Art. 38, par. 1), the sources of international law are the ff.: (1) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (2) international custom, as evidence of a general practice accepted as law; (3) the general principles of law recognized by civilized nations; and (4) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

"Art. 14. Every State has the duty to conduct its relations with other States in accordance with international law and with the principle that sovereignty of each State is subject to the supremacy of international law." Draft Declaration on Rights and Duties of States as proposed by the International Law Commission to the General Assembly of the United Nations. See 27 PHIL. L.J. 475 (1952).

"Art. 4. Relations between States should be governed by the precepts of international law." Declaration of American Principles, Dec. 24, 1938. See SCHUMAN, *op. cit. supra* note 7, at 151 n.10.

[31] KELSEN, H., PRINCIPLES OF INTERNATIONAL LAW 267 (1952). It is the "acknowledgment of a situation with the intention of admitting the legal implications of such a state of affairs." SCHWARZENBERGER, G., A MANUAL OF INTERNATIONAL LAW 27 (1950). "Recognition (is) . . . the assurance given to a new State that it will be permitted to hold its place and rank . . . in the society of nations." I HYDE, C., INTERNATIONAL LAW 148 (2d rev. ed. 1947).

The conflicting schools of thought regarding the exact legal nature of recognition—the *constitutive* and *declaratory*—have necessarily affected the various definitions of recognition. The constitutivists maintain that recognition is indispensable to the state's becoming an international person. The declaratory view, on the other hand, holds that a community attains the status of a state as soon as it exists as a fact, i.e., as soon as it fulfills the conditions of statehood required by international law. Recognition under this view is simply a formal declaration of that fact. For citations of books and materials which discuss and examine these two opposing theories, see 36 MINN. L. REV. 769 n.2 (1952).

[32] Art. 6, Convention of Rights and Duties of States, signed at Montevideo, Dec. 26, 1933, cited in HUDSON, M. O., CASES AND OTHER MATERIALS IN INTERNATIONAL LAW 717 (3d ed. 1951). As of Jan. 1, 1951, this convention was in force among sixteen American republics. To the same effect, see Art. 10, Charter of the Or-

indeterminate community, the recognizing state "makes possible the regularizing of relations between them on the basis of international law." [33] Its importance, as ably stated by one writer, is that—

> "It forms a starting point for the recognizing and the recognized States to enter into closer political and commercial relationships than are required for a policy based on the bare necessities of live and let live . . . . recognition is . . . of great importance from the political, economic and psychological points of view. This importance should not be overlooked, still less ignored, but should be appreciated and given its proper weight in the decisions of States on the question of recognition." [34]

When the government or regime of a state is recognized, the recognizing states "declare that they are ready to negotiate with such individual (a new ruler) as the highest organ of his State." [35]

B. RECOGNITION OF STATES AND OF GOVERNMENTS: RELATION AND DISTINCTIONS; REVOCABILITY AND/OR IRREVOCABILITY.

As will be seen presently, the existence of a government is essential for the existence of a state. Thus, the recognition of a new state, as in the case of South Vietnam, must necessarily involve the recognition of its government.[36] So long as a state admits that another community is a state in the sense of international law, it cannot declare that this state has no government.[37] Although an existing state remains as such, it has nonetheless no means of official

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ganization of American States, signed at Bogota, March 30-May 2, 1948, cited in BRIGGS, H. W., THE LAW OF NATIONS 101 (2d ed. 1952). Also, Art. 1, Institute of International Law (1936).

[33] BRIGGS, *op. cit supra* note 32, at 116. "The primary function of recognition is . . . . to declare the recognizing State's readiness to accept the normal consequences of that fact, namely, the usual courtesies of international intercourse." BRIERLY, J. L., THE LAW OF NATIONS 124 (4th ed. 1949).

[34] CHEN, T., THE INTERNATIONAL LAW OF RECOGNITION 78 (1951). According to I HYDE, *op. cit. supra* note 31, at 147: "Such an entity finds itself, nevertheless, unable . . . to enjoy full privileges of intercourse with the several members of the family of nations, and so to live the normal life of a state of international law, until some of them (i.e., the recognizing states) acquiesce and permit it to do so." (Parentheses supplied). See also WHEATON, INTERNATIONAL LAW 39 (2d ed.), as cited in Russian Socialist Federated Soviet Republic v. Cibrario, 235 N.Y. 255, 139 N.E. 259 (1933).

[35] I OPPENHEIM, INTERNATIONAL LAW 342 (3d ed.). States are "concerned to know whether the person or persons with whom they propose to enter relations are in fact a government whose act will be binding in international law upon the state which they profess to represent." BRIERLY, *op. cit. supra* note 33, at 129.

As to the various methods of recognition of states and/or governments, see BRIGGS, *op. cit. supra* note 32, at 106, 117; HUDSON, *op. cit. supra* note 32, at 71 ff.; KELSEN, *op. cit. supra* note 31, at 267-68, 277-79; WILSON, G. G., HANDBOOK OF INTERNATIONAL LAW 21 ff. (2d ed.); OGG AND RAY, INTRODUCTION TO AMERICAN GOVERNMENT 782 ff. (9th ed. 1948).

[36] CHEN, *op. cit. supra* note 34, at 102-3. Also I HACKWORTH, DIGEST OF INTERNATIONAL LAW 167 (1940).

[37] KELSEN, *op. cit. supra* note 31, at 279-80.

contact with outside states in the absence of the recognition of its new government, for states can speak and act only through their governments.[38] As one writer has aptly observed: "It seems that, so far as the exercise of international rights is concerned, a recognized state with an unrecognized government is in no better position than a totally unrecognized state." [39]

Both recognition of states and of governments may be used as an instrument of policy.[40]

If a foreign state refuses to recognize the change in the form or headship of the government of an old state, this latter does not thereby lose its recognition as an international person.[41] The recognition of a state, once given, is irrevocable.[42] In the case of old states, therefore, the granting or withholding of recognition of their governments has nothing to do with the recognition of the states themselves. The identity of a state is not affetced by changes in the form or the persons of its government.[43]

As to whether the recognition of states and of governments is revocable or not, Chen [44] says that the existence of a new state or

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[38] I HYDE, *op. cit. supra* note 31, at 159; SCHUMAN, *op. cit. supra* note 7, at 142-3; BRIGGS, *op. cit. supra* note 32, at 122.

[39] CHEN, *op. cit. supra* note 34, at 103-4. At 129, he says: "Once the effectiveness of the new government is established beyond doubt, a foreign State, although free not to enter into political relations with it, cannot, however, ignore its existence or deny its capacity to represent the State without trenching upon the right of the State itself. 'A State as an international person is entitled to certain inherent rights.' . . . In this sense, recognition is a practical necessity, unless the foreign State can manage to have absolutely nothing to do with the State whose government it does not recognize."

[40] BRIERLY, *op. cit. supra* note 33, at 130. For example, the United States, especially under Pres. W. Wilson, refused to recognize new governments which had been set up by force in Central America. In 1903, Pres. T. Roosevelt recognized the Republic of Panama thereby paving the way for the construction of the Panama canal. Policy considerations kept the United States from recognizing the communist government of USSR for sixteen years (1917-1933). The Philippines recognized in 1950 the United States of Indonesia as an expression, among other things, of the former's support of the right of the Indonesians to independence and self-determination.

[41] Lehigh Valley R.R. v. State of Russia, 21 F.2d 396 (1927); Sokoloff v. National City Bank, 239 N.Y. 158, 145 N.E. 917 (1924). For similar decisions, see documentation in CUEN, *op. cit. supra* note 34, at 98 n.7.

[42] See Convention of Rights and Duties of States, Montevideo, Dec. 26, 1933; I MOORE, DIGEST OF INTERNATIONAL LAW 298 (1906); BRIERLY, *op. cit. supra* note 33, at 130; WILSON, *op. cit. supra* note 35, at 21.

[43] Thus, the State of Russia existed nonetheless in the point of view of the United States of America even if the latter had refused to recognize the new Communist regime.

[44] *Op. cit. supra* note 34, at 259-64.

government "once acknowledged is acknowledged; there is nothing to withdraw, unless, perhaps, the acknowledgment is a mistake of fact." The disappearance of any or all of the essential requirements of a state or government—

> "terminates the existence of the state or government. But such termination of existence is neither the cause nor the result of the termination of recognition. Taking notice of the non-existence of the formerly existing entity by a foreign state is a fresh act of acknowledgment of a new fact, and not the withdrawal of the previous recognition." [44a]

C. ASCERTAINMENT OF STATE EXISTENCE.

The present practice of recognition is decentralized in nature.[45] This means that since international law provides no organ competent to ascertain and authoritatively to declare the existence of a new state or government, states already established are the ones to determine this question for themselves.[46]

Recognition of a new state or government is uniformly regarded as an act reserved to the department of government charged with the conduct of foreign affairs.[47] In the United States, for example, the President is considered as the sole organ of the nation in foreign relations,[48] and his decision in this field, including the act of recogni-

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[44a] *Ibid.* However, authorities *a contrario* exist. For example, I OPPENHEIM, INTERNATIONAL LAW 145 (7th ed. 1948): "Recognition is a declaration, on the part of the recognizing State, that a foreign community or authority is in possession of the necessary qualifications of statehood, of governmental capacity, or of belligerency. These qualifications are not necessarily enduring for all time. A State may lose its independence; a government may cease to be effective; a belligerent party in a civil war may be defeated. In all these cases withdrawal of recognition is both permissible and indicated." LAUTERPACHT, RECOGNITION IN INTERNATIONAL LAW 349 (1947), regards withdrawal of recognition as a feature of the practice of states, by implying a revocation of recognition whenever a new authority is recognized in place of an extinct state or government.

[45] See Briggs, *Recognition of States: Some Reflections on Doctrine and Practice*, 43 AM. J. INT'L L. 113-21 (1949).

[46] LAUTERPACHT, *op. cit. supra* note 44a, at 6. Also, BRIERLY, *op. cit. supra* note 33, at 122; KELSEN, *op. cit. supra* note 31, at 265-67, 269.

[47] WILSON, *op. cit. supra* note 35, at 19-20; I HACKWORTH, *op. cit. supra* note 36, at 161-2; I HYDE, *op. cit. supra* note 31, at 157. CHEN, *op. cit. supra* note 34, at 224-55, discusses this matter exhaustively.

"Recognition emanates from the authority competent, according to the public law of the State, to represent it in foreign relations." Institute of International Law (1936), cited in HUDSON, *op. cit. supra* note 32, at 76.

[48] Youngtown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952); United States v. Curtiss-Wright, 299 U.S. 304 (1936).

tion, is binding on all the departments of the government.[49] This principle is equally well-settled in England.[50]

Since, under our Constitution, the President occupies a position similar to that of the President of the United States with respect to foreign affairs, the foregoing rules apply to our Chief of State.[51]

D. RECOGNITION IN THE LIGHT OF NATIONAL POLICY AND INTERNATIONAL LAW.

As has been previously mentioned, the Philippines adopts the generally accepted principles of international law as part of our law. We are therefore bound to fulfill our comitments and obligations under the Charter of the United Nations.[52]

Although some writers would consider the act of recognition as a matter of policy which involves the recognizing state's discreton,[53] it is to be admitted that states administer the law of nations when recognizing new states or governments. This signifies, as Lauterpacht puts it, that "in granting or withholding recognition, States do not claim and are not entitled to serve exclusively the interests of their national policy and convenience regardless of the

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[49] *E.g.*, Chicago & Southern Airlines v. Waterman S.S. Corp., 333 U.S. 103 (1948); United States v. Pink, 315 U.S. 203 (1942); Jones v. United States, 137 U.S. 202 (1890); United States v. Lynde, 11 Wall. 632 (U.S. 1870); United States v. Yorba, 1 Wall. 412 (U.S. 1863); Garcia v. Lee, 12 Pet. 511 (U.S. 1838); Foster v. Neilson, 2 Pet. 253 (U.S. 1829); and The Divina Pastora, 4 Wheat. 52 (U.S. 1819).

The United States Congress has exhibited little inclination to contest the prerogative of the Executive to accord or withhold recognition at his discretion, although attempts have been made on a number of occasions through resolutions to determine the action to be taken with respect to certain governments. I HACKWORTH, *op. cit. supra* note 36, at 161-2. In the case of the Spanish-American republics of Texas, Haiti, and of Liberia, the President, before recognizing the new States, invoked the judgment and cooperation of Congress; and in each of these cases provision was made for the appointment of a minister, which, when made in due form, constitutes, according to the rules of international law, a formal recognition. I MOORE, *op. cit. supra* note 42, at 243-4.

Courts of the United States take judicial notice of Executive recognition of states or governments. United States v. Belmont, et al., 301 U.S. 324 (1937).

[50] *E.g.*, Duff Development Co. v. Gov't of Kelantan, A.C. 797 (1924); Aksionairnoye Obschestvo A. M. Luther v. James Sagor & Co., 3 K.B. 532 (1921); Republic of Peru v. Dreyfus, 38 Ch. D. 348, 356, 369 (1888); Republic of Peru v. Peruvian Guano Co., 36 Ch. D. 489, 497 (1886); Emperor of Austria v. Day, 3 De G., F. & J. 217, 221, 233 (1861); The Pelican, Edw. Adm. appx. D. (1809).

[51] See PHIL. CONST. Art. VII, § 10, par. 7; SINCO, *op. cit. supra* note 29, at 299, 306.

[52] See discussion re Philippine Foreign Policy, *supra*.

[53] SCHUMAN, *op. cit. supra* note 7, at 141; BRIGGS, *op. cit. supra* note 32, at 117. Also SMITH, H. A., GREAT BRITAIN AND THE LAW OF NATIONS 168 (1932).

principles of international law on that matter." [54] It is evident, therefore, that when a state grants recognition, the expression and maintainance of the recognizer's national policies should be achieved without derogation to international law.

E. INTERNATIONAL LAW LAYS DOWN CONDITIONS FOR STATEHOOD.

It is now generally held that international law determines the conditions under which a political community has to be considered a state.[55] Strangely, however, these conditions for statehood are far from definite, and differences as to the precise character of these requirements, as we shall later realize, have been confounded by various international conventions, by heterogeneous practices of states, and by publicists of international law.[56] It is in this instance where the proposition that law is inexact and uncertain, as adverted to at the beginning of these comments, is best illustrated. Consequently, the raging local controversy over the Philippine recognition of South Vietnam is a result that is only to be expected.

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[54] *Op. cit. supra* note 44a, at 6. Art. 4 of the Declaration of American Principles, Dec. 24, 1938, provides: "Relations between States should be governed by the precepts of international law." See note 30 *supra*.

Art. 14 of the Draft Declaration on Rights and Duties of States as proposed by the International Law Commission to the General Assembly of the United Nations provides that "Every State has the duty to conduct its relations with other States in accordance with international law and with the principle that the sovereignty of each State is subject to the supremacy of international law." Text of the Draft reprinted in 27 PHIL. L. J. 475 (1952).

[55] CHEN, *op. cit. supra* note 34, at 55; LAUTERPACHT, *op. cit. supra* note 44a, at 6; KELSEN, *op. cit. supra* note 31, at 264-5, 269.

Other writers, however, hold that recognizing states are free to determine those conditions for themselves. See I LORIMER, INSTITUTES OF THE LAW OF NATIONS 107 (1883); LE NORMAND, LA RECONNAISSANCE INTERNATIONALE ET SES DIVERSES APPLICATIONS 60-1 (1889); I SMITH, *op. cit. supra* note 53.

[56] For example, BRIGGS, *op. cit. supra* note 32, at 115-6, says that a "study of the practice of states . . . reveals that considerations which have been weighed by Foreign Offices in determining whether to recognize a new state or to defer or withhold recognition" include the ff.: (1) the freedom of the new state from external control; (2) the stability and effectiveness of its government, and perhaps an estimate of its permanence as indicated by popular support; (3) the ability and perhaps the willingness of the new state to fulfill its obligations under international law; (4) whether its existence responds to political exigencies in a region such as Europe or the Asiatic or in the world community; (5) the extent to which it commands international support, i.e., whether it has been recognized by other states; (6) the extent to which its establishment affronts principles of dynamic or constitutional legitimacy; (7) whether recognition would offend an ally or be otherwise premature; (8) whether its recognition would not go far to support legitimate enterprise of the recognizing state or be politically advantageous; and (9) the use of non-recognition as sanction of national policy or international law.

See also differing enumerations of these requirements in the ff.: HALL, W. E., A TREATISE ON INTERNATIONAL LAW 18 (1924); I FAUCHILLE, TRAITE DE DROIT INTERNATIONAL PUBLIC 224 (1921); ERICH, R., LA NAISSANCE ET LA RECONNAISSANCE DES ETATS 474-6 (1926); I LORIMER, *op. cit. supra* note 55, at 109; LAUTERPACHT, *op. cit. supra* note 44a, at 26-30. See also note 57 *infra*.

F. CONDITIONS FOR STATEHOOD.

1. Conditions Uniformly Accepted.

There is general agreement [57] on the proposition that for a community to be considered a state in the sense of international law, it must have: (1) people, sufficient in number to maintain and perpetuate itself; (2) territory, definite or indefinite;[58] and (3) government, whether effective, stable, de facto, or legitimate.[59]

The territory of South Vietnam covers about 60,000 square miles as fixed by the Geneva Agreement of July 21, 1954, ranging from the 17th parallel on its northern boundary down to the southern tip of the peninsula. It has a population of about 11,000,000, one million of which are refugees from North Vietnam.[60] There is no question then that South Vietnam sufficiently answers the requirements of people and territory. The succeeding comments will deal mainly on the controversial tests of statehood.

2. Controverted Conditions for Statehood.

a. *Independence.*

This condition, sometimes referred to by publicists as "sovereignty," has been an unsettled matter in the international law of recognition. One writer, speaking of the very meaning of the term, admits that "in a contemporary study of the constitutions of a num-

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[57] See Art. 1, Convention of Rights and Duties of States, signed at Montevideo, Dec. 26, 1933, in force as of Jan. 1, 1951 between sixteen American republics; Art. 1, Institute of International Law (1936). Implied in Arts. 3 and 4(1) of the Charter of the United Nations (see notes 79 and 80 *infra*); in Art. 1(2) of the Covenant of the League of Nations (see note 78 *infra*).

See also SCHWARZENBERGER, POWER POLITICS 102-3 (1951); BRIERLY, *op. cit. supra* note 33, at 122; I HYDE, *op. cit. supra* note 31, at 22-3; CHEN, *op. cit. supra* note 34, at 55-8; KELSEN, *op. cit. supra* note 31, at 258-9, 265; WILSON, *op. cit. supra* note 35, at 16-7.

[58] While some international conventions and some publicists require the territory to be fixed and definite, practice has shown that the frontiers of a new state need not be precisely delimited before statehood could be acquired. CHEN, *op. cit. supra* note 34, at 56 says: "Most of the new States which arose after the First World War were recognized before their frontiers were finally settled. Similarly, after the General Assembly of the United Nations resolved, on November 29, 1947, to partition Palestine (Resolution 181 (2), U.N. Doc./A. 519) and within one year of the termination of the mandate in May, 1948, the State of Israel had been admitted to the United Nations and recognized either de facto or de jure by more than forty States, despite the non-demarcation of its frontiers." In this regard, see Jessup, P. C., in advocating admission of Israel to the United Nations, U.N., S.C.O.R., 3d year, No. 128 (383rd meeting, Dec. 2, 1948), 9.

Albania's frontiers were not yet defined when admitted to the League of Nations. BRIGGS, *op. cit. supra* note 32, at 66.

[59] See discussion on "Government" as a condition for statehood, *infra*.

[60] Data taken from the official text of the speech of the Undersecretary of Foreign Affairs. See note 10 *supra*.

ber of different States, the task has so far proved practically impossible . . ." [61] Nonetheless, a few definitions may be cited:

> (1) "'Independence' is . . . the status of a state which controls its own external relations without dictation from other states . . ." [62]
>
> (2) "Sovereignty implies independence, . . . not only of the parent State but also of all other States. The sovereign State must possess a power, autonomous, undelegated, and distinct from all external powers." [63]
>
> (3) "Sovereignty in the relations between states signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other state, the functions of a state . . ." [64]
>
> (4) "A government is independent if it is not legally under the influence of the government of another state . . ." [65]

International conventions, state practices, and international law writers are in sheer conflict as to whether "independence" is a prerequisite for statehood. The Institute of International Law of 1936, for instance, requires an "independent government." [66] During the early part of last year, the Philippines had kept withholding the recognition of the three associated States of Indochina (Laos, Cambodia, and Vietnam) on the ground that they were not fully independent.[67] Manchukuo, although detached from China, was not recognized by the Allied Powers as it was subjected to the dominant

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[61] MATTERN, J., CONCEPTS OF STATE, SOVEREIGNTY AND INTERNATIONAL LAW xvii (1928).

[62] BRIERLY, *op. cit. supra* note 33, at 114. At 115 he says: ". . . 'independence' does . . . mean . . . freedom from control by other states."

[63] CHEN, *op. cit. supra* note 34, at 58.

[64] Palmas Case (1928) between the Netherlands and the United States of America, cited in SCHWARZENBERGER, *op. cit. supra* note 57, at 90-1.

[65] KELSEN, *op. cit. supra* note 31, at 259. Independence implies the right of internal political supremacy, the control over territory and population, and the regulation of relations with other states. Underhill v. Hernandez, 168 U.S. 250 (1897).

I WESTLAKE, J., INTERNATIONAL LAW 20 (2d ed.), defines independence as "freedom from control, and a state . . . is independent because it is free from all control either over its internal government or over its foreign relations."

[66] Art. 1. Independence, as a test for statehood, may also be implied from Art. 1 of the Draft Declaration on Rights and Duties of States (see note 54 *supra*) which provides: "Every State has the right to independence and hence to exercise freely, without dictation by any other State, all its legal powers, including the choice of its form of government."

[67] Regala, R., *supra* note 20, at 473. Although these associated States were recognized by Great Britain and the United States, CHEN, *op. cit. supra* note 34, at 58, is of the opinion that "at the time of recognition, it could not be said that these states had 'sovereign Governments' . . . . For there were 'considerable restrictions on the power of all three States to control their own relations with the outside world.'"

Writing in 1952, KELSEN, *op. cit. supra* note 31, at 263 says: "The Western and Eastern German Republics are two new states, provided they are true states in the sense of international law. This is doubtful, since the governments they have under their constitutions are legally not independent of the governments of the occupant powers."

control of Japan.[68] Writers on international law and diplomacy such as Brierly,[69] Wilson,[70] Schuman,[71] Chen,[72] Kelsen,[73] and Schwarzenberger[74] concur in considering independence as an essential requirement for statehood. Older legal philosophers like Bodin, Hegel, and Austin also hold that independence in an indispensable attribute of statehood.[75]

Authorities for the proposition that independence is dispensable are not wanting, on the other hand. The Montevideo Convention[76] does not mention independence as a qualification of a state as a person in international law. The doctrine asserting the state character of a body politic regardless of independence in international law was "synchronized by the establishment of a League of Nations."[77] For under its Covenant, even dominions and colonies could become members of the League and of the family of nations.[78] Under the Charter of the United Nations, the provisions on membership which may be taken to mean that independence is inessential are as follows:

> "The original members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or have previously signed the declaration of the United Nations of January 1, 1942, sign the present charter and ratify it in accordance with Article 110;[79] and
>
> "Membership in the United Nations is open to all other peace loving states which accept the obligations contained in the present charter and which, in the judgment of the organization, are able and willing to carry out these obligations."[80]

Interpreting these provisions, Professor A. Ross[81] says that doubt may be conceived as regards the degree of "independence" or "sovereignty" required for the country to be regarded as a state. While "it would presumably be a natural requirement that there should be self-government in all the fields in which obligations may be incurred under the Charter . . ." yet, Professor Ross goes on to say, "in practice this would mean the exclusion of members of federal states and vassal states. This interpretation is hardly possible, however, seeing that among the original members (quite evidently regarded

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[68] CHEN, *op. cit. supra* note 34, at 58. At 299: "Such puppet 'governments' are nothing but organs of the occupant."

[69] *Op. cit. supra* note 33, at 122.

[70] *Op. cit. supra* note 35, at 16-7, 66.

[71] *Op. cit. supra* note 7, at 141, 148-9.

[72] *Op. cit. supra* note 34, at 58-9.

[73] *Op. cit. supra* note 31, at 258-9, 265.

[74] *Op. cit. supra* note 57, at 102-3.

[75] MATTERN, *op. cit. supra* note 61, at 2, 39, 47-8.

[76] Art. 1. See note 32 *supra*.

[77] MATTERN, *op. cit. supra* note 61, at 189.

[78] Art. 1(2).

[79] Art. 3.

[80] Art. 4(1).

[81] CONSTITUTION OF THE UNITED NATIONS 43 (1950).

as states) there are two member states with, indeed, strictly limited self-government (White Russia and Ukraine)." [82]

Similarly, Professor Hyde is of the opinion that mere capacity to enter into relations with the outside world is all that is needed. Thus, he says that "the management of foreign affairs may . . . be lodged in any appropriate quarter, and even confided to a state that is other than, and foreign to, the country that professes to be one . . . Independence is not essential." [83] He explains further:

> ". . . In a word, the existence of statehood is not dependent upon the possession by a country of a right to maintain contracts with others through agencies of its own choice, or within its own control, or exercising their functions from a place within its own territory. The requisite personality, in an international sense, is seen when the entity claiming to be a state has in fact its own distinctive association with the members of the international society, as by treaties, which, howsoever concluded in its behalf, mark the existence of definite relationships between itself and other contracting parties. It is the possession and enjoyment of this capacity, with or without restriction, and regardless of the instrumentality through which it is utilized, which distinguishes the state of international law from a large number of political entities also given that name, and yet which do not appear to be endowed with it . . ." [83a]

Westlake,[84] Moore,[85] and the German School [86] likewise deem independence inessential for state personality in international law.[87]

In this welter of conflicting positions, Prof. Willoughby has suggested the abandonment of "the effort to give scientific precision to the term State and to obtain accuracy of expression by qualifying it when necessary, with such adjectives as sovereign, non-sovereign, and the like." [88] Although he considers it wise to refuse to designate as states those political entities in which sovereignty (hence, independence) does not inhere, yet he concedes that "as it is, with a wide but less precise usage practically universal, such a restriction is not practicable . . ." [89]

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[82] Note also that the Philippine Commonwealth, then still not an independent country, was one of the original fifty-one state signatories of the Charter. "Various entities not fully independent have acquired capacity under international law (*e.g.*, the British Dominions prior to 1939; the Philippine Commonwealth prior to 1946)." BRIGGS, *op. cit. supra* note 32, at 69-71

[83] *Op. cit. supra* note 31, at 22-3.

[83a] *Ibid.*

[84] *Op. cit. supra* note 65, at 21.

[85] *Op. cit. supra* note 42, at 18.

[86] MATTERN, *op. cit. supra* note 61, at 140, 145-6, 148-53, 175-8.

[87] In Duff Development Co. v. Gov't of Kelantan, A.C. 797, 814 (1924), Lord Finlay said: "It is not in the least necessary that for sovereignty there should be complete independence."

[88] FUNDAMENTAL CONCEPTS OF PUBLIC LAW 269-70 (1924), quoted in MATTERN, *op. cit. supra* note 61, at 172.

[89] *Ibid.*

b. *Government.*

That a new state to be recognized as such must have a government is not doubted. The evidence demonstrates that among the considerations weighed by states in deciding whether to grant or withhold recognition, the effectiveness of the new government and its ability to fulfill the international obligations of its state are frequently preeminent.[90] The United States has generally accorded recognition on the basis of effectiveness of the particular government,[91] when it appears that it is in "possession of the machinery of the State, administering the government with the assent of the people thereof and without substantial resistance to its authority, and that it is in a position to fulfill the international obligations and responsibilities incumbent upon a sovereign State under treaties and international law." [92]

There is, however, a division of opinion on the matter of the legitimacy of title of the government in a given case.

The adherents to the so-called "doctrine of legitimacy" maintain that the authority of the government must not depend upon a mere de facto control, but must have been established in compliance with the accepted legal order of that country. This being so, where a person or group of persons achieve control in defiance of the internal law, by sheer force of arms, by *coup d' état,* or by usurpation, recognition should be withheld. Historically, this doctrine originally took the form of "dynastic legitimism." [93] This doctrine has found supporters even in modern diplomatic history. In 1907, Dr. Tobar of Ecuador advanced the theory that governments which had risen to power through extra-constitutional means ought not to be recognized. Two important treaties embodied this principle.[94] President

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[90] BRIGGS, *op. cit. supra* note 32, at 122-3, citing among others, LAUTERPACHT, *op. cit. supra* note 44a, at 87-174; I MOORE, *op. cit. supra* note 42, at 119-154; I HACKWORTH, *op. cit. supra* note 36, at 127 ff., 174-192, 222-318; I HYDE, *op. cit. supra* note 31, at 158-182; I SMITH, *op. cit. supra* note 53, at 77 ff.; and FENWICK, C. G., INTERNATIONAL LAW 157-173 (3d ed. 1948).

[91] See instructions sent to the American Minister of Colombia by the Sec. of State, cited in I MOORE, *op. cit. supra* note 42, at 139. See also Notes, *The Legal Effects of Non-Recognition of Governments,* 36 MINN. L. REV. 769-70 (1952).

[92] Sec. Hull in the course of a communication to Rep. Tinkham, May 16, 1936, as cited in I HACKWORTH, *op. cit. supra* note 36, at 174. Also, I HACKWORTH, *id.*, §§ 33 and 48 and the documents therein cited.

[93] CHEN, *op. cit. supra* note 34, at 105.

[94] Treaty of Peace and Amity between five Central American republics, signed at Washington, Sept. 17, 1907. A subsequent Central American Treaty of Peace and Amity signed at Guatemala City, Feb. 7, 1923, enunciated the same principle. It provided that ". . . the Governments of the Contracting Parties will not recognize any other Government which may come into power in any of the five Republics through a *coup d'état* or a revolution against a recognized Government, so long as the freely elected representatives of the people thereof have not constitutionally reorganized the country . . ." (Art. 2, second par.) This treaty was more drastic that its earlier counterpart for it also provided that the new government ought not to be recognized if the choice of headship fell upon persons connected with the *coup d'état*

Woodrow Wilson likewise inaugurated his policy of "constitutional legitimism" with reference particularly to certain American republics. He declared that "we can have no sympathy with those who seek to seize the power of government to advance their own personal interests or ambition." [95] The administration of President Hoover, however, abandoned this test, except in Central America.[96]

The justification of this doctrine of legitimacy is that it discourages revolutions and use of violence as an instrument of politics. The excesses and terrors of the French Revolution and the recurrent political upheavals in Latin America were causes which made other states adopt this policy.[97]

This doctrine or test has been severely criticized, however.[98] The objections may be restated thus:

It is an elementary principle of international law that a state has the right to choose its own rulers, free from external influence.[99] To examine the constitutional legality of the government of another state constitutes an intervention of the domestic affairs of that state.[100] This principle is embodied in the Atlantic Charter [101] and endorsed by the United Nations in their Declaration of January 1, 1942.[102] The doctrine of legitimacy, observes one writer, "virtually removes an internal question into the international arena . . . . What-

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or revolution. In later years, however, this treaty lost much of its authority. See HUDSON, *op. cit. supra* note 32, at 82 n.14.

[95] See I HYDE, *op. cit. supra* note 31, at 166. Governments should come into power in accordance with constitutional procedures. I HACKWORTH, *op. cit. supra* note 36, at 174. Thus, Pres. Wilson withheld recognition of the regime of Gen. Huerta in Mexico (1913-14) and also the Tinoco regime in Costa Rica (1917).

[96] As soon as it was reported that the respective parties in power in Bolivia, Peru, Argentina, Brazil and Panama were in control of the administrative machinery of the State, with apparent general acquiescence of the people and were willing to discharge their international obligations, they were recognized. See I HACKWORTH, *op. cit. supra* note 36, at 185.

The abandonment of this test was probably because it was liable to involve dynastic or constitutional questions hardly within the competence of the United States to adjudicate. See I HACKWORTH, *id.*, at 175-6.

[97] CHEN, *op. cit. supra* note 34, at 110-1.

[98] For a comprehensive discussion of this subject, see CHEN, *id.*, at 111-16.

[99] HALL, *op. cit. supra* note 56, at 21; I LORIMER, *op. cit. supra* note 55, at 231-2; LE NORMAND, *op. cit. supra* note 55, at 184-5, 267; I OPPENHEIM, *op. cit. supra* note 35, at 129.

[100] See I HYDE, *op. cit. supra* note 31, at 160 n.6. CHEN, *op. cit. supra* note 34, at 111 says that "non-recognition on the ground of illegitimacy is not a postulate of international law."

[101] Aug. 14, 1941. Joint Declaration of Franklin Delano Roosevelt and Winston S. Churchill: "Third, that they respect the right of all peoples to choose the form of government under which they will live . . . ."

[102] Signed by 26 governments at Washington, D.C. The said Declaration "subscribed to the common program of purposes and principles embodied in the joint declaration of the President of the United States of America and the Prime Minister of the United Kingdom of Great Britain and Northern Ireland dated Aug. 14, 1941." See also note 66 *supra*.

ever the concern other States may have over the choice of government of a particular State, that choice must . . . be left to the people of that State themselves." [103] To maintain this doctrine would mean to contest the right of every existing government to rule.[104] Another well-grounded objection is that the task of deciding foreign questions would prove impossible as the complexities of local politics necessarily make them more than mere questions of law.[105]

At the opposite pole are the proponents of the "de facto doctrine" who hold that the existence of a government within a state is a question of fact. "The fact that a person or a group of persons govern is the decisive test of the existence of the government and its right to rule." [106] The recognizing state should "not pass judgment upon the form or origin of that government," [107] and that it should concern itself with no more than the fact that a particular party is in control. This doctrine has been applied by the United States since the time of Jefferson, interrupted only by the short-lived application of the Wilsonian position.[108] As Schuman would put it: "In a world of hard and inescapable realities, which the champions of legal rectitude have neither the desire nor the power to change, Jefferson's *de facto* theory of recognition has much to commend it." [108a] British practice has generally followed this de facto test.[109] States, in their practice, are generally agreed that the de facto doctrine of recognition is most consistent with justice and common sense.[110] And many writers in international law support this de factoist view.[111]

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[103] CHEN, *op. cit. supra* note 34, at 111. At 114, he says that this doctrine has often been used as a pretext for political bargaining—affording ample room for arbitrary judgment. In the Huerta case (1913), refusal to recognize his government had nothing to do with the legitimacy of his government, but because he refused to comply with American demands.

The same may be said of the Théodore regime in Haiti (1914), and of the Obregón regime of Mexico (1921). See I HACKWORTH, *op. cit. supra* note 36, at 250-1. 161-3.

[104] BATY, CANONS OF INTERNATIONAL LAW 228 (1930). CHEN, *op. cit. supra* note 34, at 112-3 says: " . . . legitimism is based upon the assumption that a form of government or set of rulers once decided upon ought to be fixed and immutable . . . Such a supposition has absolutely no support in fact. No government on earth today (with the doubtful exception of Japan) can claim that it has descended from an unbroken line of legitimate governments. Every government now existing must at one time or another have derived its authority through extra-constitutional means . . . ."

[105] CHEN, *id.*, at 114. That was the reason why the Wilsonian constitutionalism was abandoned by the Hoover Administration. See note 96 *supra*.

[106] CHEN, *id.*, at 117.

[107] *Ibid.*

[108] I HYDE, *op. cit. supra* note 31, at 161-2. See relevant documents in I MOORE, *op. cit. supra* note 42, at 124 *et seq.*

[108a] *Op. cit. supra* note 7, at 145.

[109] See note 106 *supra*.

[110] CHEN, *op. cit. supra* note 34, at 118.

[111] BATY, *op. cit. supra* note 104, at 204, 208; I OPPENHEIM, *op. cit. supra* note 35, at 127-8; I HYDE, INTERNATIONAL LAW 66-7 (1st ed.); LE NORMAND, *op. cit. supra* note 55, at 286; I SCELLE, PRECIS DE DROIT DES GENS 101 (1932); GOEBEL, RECOGNITION POLICY OF THE UNITED STATES 66 (1915); I ANZILOTTI, COURS DE DROIT

3. Other Conditions for Statehood.

Professor Hyde [112] would also require the inhabitants to have attained "a degree of civilization" as to enable them to observe with respect to the outside world those principles of law deemed to govern members of the international society in their relations with each other. But in the words of Chen:

> "The introduction of extraneous requirements . . . such as the degree of civilization, the legitimacy of origin, the religious creed and the political system of the new community, would shift the basis of recognition from the objective test of state existence to nebulous, intractable considerations . . . contrary to both fact and principle." [113]

The American practice of taking into consideration the ability of a new government to respond to the international obligations of its state has been criticized as a mere "theoretical superfluity," for this "no longer involves a question of the fulfillment of obligations according to international law, but a question of fulfillment of obligations according to the wish of the recognizing state." [114]

V. The Philippine Recognition of the State of South Vietnam

From the time our Government recognized the new State of South Vietnam and its government under President Ngo Dinh Diem last July 15 of this year, closer mutual friendliness and intercourse between these two countries have been gradually underscored.[115] The special and sympathetic attention that our Government has paid to this nascent Southeast Asian neighbor has not been received with little appreciation. The South Vietnamese consider the Philippines as their "best friend" in Asia.[116] Reciprocal diplomatic representations are almost completely formalized.[117] Our Government has

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INTERNATIONAL 258 (1929). See also Art. 1, Institute of International Law (1936), cited in HUDSON, *op. cit. supra* note 32, at 76.

[112] See note 83 *supra*.

[113] *Op. cit. supra* note 34, at 60. LE NORMAND, *op. cit. supra* note 55, at 63, calls these tests as "inexact and uncertain." LAUTERPACHT, *op. cit. supra* note 44a, at 31, holds that they only lead to "arbitrariness and extortion." Strupp, K., *Regles Generales du Droit de la Paix*, 47 HAGUE RECUEIL 263, 425 (1934), thinks that "civilization" is not a term of international law.

[114] CHEN, *op. cit. supra* note 34, at 124-7. At 269, he considers this practice of exacting special privileges from nascent states of governments as "political blackmail . . . for it pollutes from the very outset the atmosphere of international friendship, which it is the avowed purpose of recognition to build and consecrate."

[115] Composite teams of Filipino doctors, nurses and dentists under the so called "Operations Brotherhood" are at present in South Vietnam helping the inhabitants curb mortality and disease.

[116] Statement of President Ngo Dinh Diem, reported in The Manila Times, Sept. 12, 1955, p. 6, col. 2. As of last month, a direct tele-communication system was inaugurated between the Philippines and South Vietnam.

[117] The Philippines last month had named veteran foreign service officer Mariano Erpeleta as minister for South Vietnam, and the South Vietnamese government has

sent a team of constitutional experts to assist in the drafting of South Vietnam's fundamental law.[118] Our Vice-President, in his concurrent capacity as Secretary of Foreign Affairs, has likewise expressed the Government's invitation to South Vietnam to accede to the Southeast Asia Collective Defense Treaty.[119]

Behind all these salutary signs of nation-to-nation goodwill, however, local controversy as to the validity and propriety of South Vietnam's recognition by the Philippines remains at its peak. Opposition to the action of the Administration, although now an accomplished fact, is led by Senator Claro M. Recto, a statesman and a jurist of no mean stature.[120]

As shown earlier, there is no doubt that South Vietnam possesses the elements of people and territory.[121] The focal point of the dispute concerns two principal questions: (1) Is South Vietnam a state in the sense of international law? (2) Does the Diem regime deserve recognition in the light of international law and practice?[122]

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named Cao Thai Bao, currently its commissioner for political and administrative affairs, as its first envoy to the Philippines subject to our Government's approval. The Manila Times, Sept. 23, 1955, pp. 1, 5, cols. 5, 3, respectively.

The Philippine legation for the Indochinese states of Vietnam, Cambodia and Laos was opened last Oct. 20 in Saigon after Charge D'Affaires Delfin R. Garcia had presented his letters of credence to acting Foreign Minister Vuc Yoc Thong. Pending arrival of Minister Espeleta, who is still in Mexico City, Charge D'Affaires Garcia will act as Philippine minister. The Manila Times, Oct. 21, 1955, p. 1, col. 3.

[118] Vietnamese officials, with the help of Filipino specialists were today drawing up a democratic constitution for the country, which will follow the "formula of the Philippine and American constitutions" and will be presented to the public in a referendum scheduled next November. The Manila Times, Oct. 16, 1955, p. 3, col. 1.

[119] The Manila Times, Sept. 22, 1955, p. 20, col. 5. Article VII of the Manila Treaty provides: "Any other State in a position to further the objectives of this Treaty and to contribute to the security of the area may, by unanimous agreement of the Parties, be invited to accede to this Treaty. Any State so invited may become a Party to the Treaty by depositing its instrument of accession with the Government of the Republic of the Philippines. The Government of . . . the Philippines shall inform each of the Parties of the deposit of each such instrument of accession."

[120] The main arguments of the Oppositionists are, for the purposes of these comments, those advanced by Sen. Recto and declared by him in his address before the Philippine Senate last July 22, 1955, and reprinted in full in The Manila Times, July 23, 1955, pp. 8 and 15. For purposes of these comments, Sen. Recto and the segment of the nation sharing his views will be collectively denominated the "Opposition." Quotations advancing or supporting the arguments of the Opposition are taken freely from said speech of Sen. Recto, unless otherwise indicated.

[121] See note 60 *supra*.

[122] Other considerations which the Philippine Government also took into account in granting recognition to South Vietnam, whether proper or erroneous, will be dealt with later. For the moment, the discussion will concern mainly the international law (and practice) aspect of the matter.

It may be stressed at this juncture that the discussion in these comments deals only with the validity and propriety of the recognition of South Vietnam and the

The Opposition claims that South Vietnam does not possess the attributes of sovereignty (i.e., it is not an independent state), because "its destiny as a nation is controlled by foreign powers which dictate their policies to a puppet regime for their execution and implementation." South Vietnam does not deserve to be recognized because, in the opinion of the Opposition:

> ". . . *Free* Vietnam is anything but free and therefore, is not sovereign. It is being ruled by the United States and France, and to a minor extent, by Britain. Diem is just a puppet of the United States whose decisions are made unilaterally or in concurrence with France and he is merely told or 'persuaded' to carry out . . . .
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> "About the middle of last May, shortly after the furious street fighting in Saigon which almost cost Diem his regime, the Big Three—Dulles, Faure or Pinay, and MacMillan—met in Paris to decide what to do with South Vietnam and with Diem and Emperor Bao Dai. As was expected neither Bao Dai nor Diem was present at the confab. It does not appear that both or either of them had been invited. At the said conference an agreement was reached between France and the United States and Premier Diem of 'free'. . . Vietnam was 'persuaded' to comply with its terms." [123]

Before the Geneva Agreement last July 21, 1954, the Philippines had hitherto refused to recognize the three associated states of Indochina (Laos, Cambodia, and Vietnam) on the ground that the

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government of Premier Ngo Dinh Diem by the Philippine Government which was extended last July 15, 1955. The discussion. therefore, is not meant to be taken in the light of recent political developments in South Vietnam. By "recent political developments," we refer to the proclamation of the Republic of South Vietnam by Pres. Diem last Oct. 26, 1955. In a referendum held last Oct. 23, 1955, five million South Vietnamese voters were given the privilege of deciding as to whether they wanted Emperor Bao Dai to continue his reign or whether he should be replaced by Premier Diem. Ngo Dinh Diem received more than 95 per cent of the votes. (The Manila Times, Oct. 27, 1955, p. 3, col. 1). The popular disgust with Bao Dai can be measured by the returns from the city of Tourane where Premier Diem received 47,712 votes and Bao Dai got five. (The Manila Times, Oct. 25, 1955, p. 1, col. 2). Earlier, Bao Dai had informed France, Great Britain, the United States, Russia, and India that he had completely broken ties with Diem (The Manila Times, Oct. 15, 1955, p. 2, col. 8; *id.*, Oct. 19, 1955, p. 5, col. 1), an act. however, which the South Vietnamese government of Diem considered to have had the "sole aim of sabotaging the referendum . . . and above all to escape from the popular verdict of next Oct. 23." (The Manila Times, Oct. 21, p. 5, col. 8).

[123] The main points of the Franco-American compromise were that: "M. Diem shall be advised and persuaded to broaden his government and therefore increase his authority by including in it men who are more representative of diverent interests and tendencies . . . . to desist from his anti-French attitude and propaganda . . . . the the representatives of the powers in Saigon shall help to devise some form of popular consultation in South Vietnam, in order that the government and regime shall be based to the greatest practicable degree upon popular consent . . . . the French will not withdraw the expeditionary corps at a rate faster than it can be replaced by the Vietnam army . . . . Emperor Bao Dai's position as legal head of the State will remain unaltered." Quoted from Sen. Recto's speech, *supra* note 120, at p. 8, col. 2.

Philippines felt that they were not fully independent.[124] Upon the partition of Vietnam last year, it was provided that its southern half would remain "under the control of the Vietnamese government," [125] the upper half passing under the control of the Viet Minh. In recognizing the State of South Vietnam, the Administration holds that it is a sovereign state. Thus:

> ". . . Sovereignty was transferred by the French republic in a series of agreements. On June 5, 1948, in a joint declaration known as the Second Boie d'Along Agreement, France recognized the independence of Vietnam, while the latter proclaimed her association with France within the framework of the French Union. This arrangement was further formalized on June 4, 1954 in the treaty of Independence between both countries . . ." [126]

In answer to the Opposition's claim that decisions for South Vietnam are not made in Saigon but in big power conferences between the United States, France and Great Britain, the Administration points out that "such talks . . . have been entered into to determine how each power might help in strengthening Vietnam against Communism," [127] and not to reduce South Vietnam to subordination and dependency. Besides, upon the conclusion of the 1954 Geneva Conference, the nine nations [128] which took part in the talks issued a general declaration [129] to the effect that:

> "7. The conference declares that, so far as Vietnam is concerned, the settlement of political problems, effected on the basis of respect for the principles of independence, unity and territorial integrity, shall permit the Vietnamese people to enjoy the fundamental freedoms, guaranteed by democratic institutions established as a result of free general elections by secret ballot.
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> "11. The conference takes note of the declaration of the French government to the effect that for the settlement of all the problems connected with the re-establishment and consolidation of peace in Cambodia, Laos and Vietnam, the French government will proceed from the principle of respect for the independence and sovereignty, unity and territorial integrity of Cambodia, Laos and Vietnam.
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> "12. In their relations with Cambodia, Laos and Vietnam, each member of the Geneva conference undertakes to respect the sovereignty, the independence, the unity and the territorial integrity of the above-mentioned states, and to refrain from any interference in their internal affairs."

Another evidence that South Vietnam is not subservient to the Big Powers is the fact that despite the avowed desire of France and

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[124] Regala, R., *supra* note 20, at 473. See also note 67 *supra*.

[125] Meaning, the government of South or Free Vietnam.

[126] From the official text of the speech of the Undersecretary of Foreign Affairs, *supra* note 10.

[127] From the official text of the speech of the Undersecretary of Foreign Affairs, delivered before the Cagayan de Oro City Lions Club, July 30, 1955.

[128] See note 13a *supra*.

[129] See complete text of the General Declaration in the United States Information Service Report, July 22, 1954.

Great Britain to see that the South Vietnamese government agree with the Viet Minh on the 1956 all-Vietnam elections, the government of South Vietnam has adamantly taken the opposite stand.[130]

The test in international law as to whether a state is independent or not is found in the "relation between the State which can legally impose its will and the State which is legally compelled to submit to that will." [131] The Opposition has so far failed to show any such "relation" between the Big Powers and South Vietnam. Under this test, and considering the facts mentioned above, it is difficult to see just how the Opposition can hold its ground. It is therefore submitted that South Vietnam is a state in the sense of international law, and that it is not subordinate to or legally subject to external control.[132]

We now come to the second controversial point, *viz.*: Is the Philippine recognition of the Diem government, in the light of the attending circumstances, sanctioned by international law and practice? The objections of the Opposition in this regard may be grouped into two main points: (1) that Ngo Dinh Diem's authority is illegitimate, and (2) that his regime is unstable and unsupported by popular assent.

With respect to the first point, the Opposition has this to say:

> "The only lawful, constitutional . . . authority in South Vietnam is . . . that of Emperor Bao Dai. He is the legitimate Chief of State having been so proclaimed and acknowledged since 1949 as a result of an agreement signed between him and France whereby Vietnam's 'independence' was recognized within the French Union. Diem is merely his Prime Minister with no authority of his own . . . . if his regime is . . . based on usurped power . . . it is not entitled to recognition . . .
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> "The general election . . . in South Vietnam will have for its purpose not only to ascertain if there is popular support to Diem's regime, but also to elect a constituent assembly which will draft a constitution for South Vietnam. Before this constituent assembly could be elected and the constitution adopted, we extended recognition. That is against precedents."

And as to the second point, the Opposition claims that the Diem government—

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[130] See note 14 *supra*.

[131] Judge Anzilotti, in the Austro-German Customs Union Case, Permanent Court of International Justice, Sept. 5, 1931, P.C.I.J., Ser. A/B, No. 41, p. 57. I HYDE, *op. cit. supra* note 31, at 44, states: "Whether a particular state is dependent or otherwise may always be determined by ascertaining whether in fact it is by any process habitually subject to any external restraints in the control of its domestic or foreign affairs, from which the states acknowledged to possess the largest measure of political independence are free." See also notes 62-66 *supra*, and the discussion related thereto.

[132] Even assuming, for the sake of argument, that South Vietnam is not independent, still, the Administration's recognition of South Vietnam as a state would be valid in the light of the school of thought which believes that independence is not an essential element of a state in the sense of international law. See notes 76-87 *supra*, and the discussion thereto appertaining.

> ". . . . lacks popular assent . . . Not only has Diem's regime met strong armed resistance of dissident groups like the Binh Xuyen, the Cao Dai and Hoa Hao, but lately it has been openly challenged by his own Revolutionary Junta . . . . the South Vietnamese Catholics, although not vocal because Diem is a Catholic, are among the oppositors of Diem's regime . . . The civil struggle in South Vietnam between the regime of Diem and the 'sects' may have withdrawn from Saigon and its vicinity but they are still roaming the countryside and engaging Diem's army from time to time . . . . Under such circumstances there is 'substantial resistance to his authority' and to grant him recognition may amount to participating in the conflict . . . . 'Ngo Dinh Diem's new Government . . . is made up mostly of his friends and relations and of high officials . . . .' The administration is falling everywhere, and the country becoming increasingly disorganized . . . In other words, the situation in South Vietnam might be picturesquely described as a 'Niagara' of confusion, a 'Gettysburg' of fratricidal war . . ." [133]

It is submitted that this two-pronged objection does not find favor in international law and in the general practice of states. The forceful and valid criticisms against the doctrine of "legitimism" or "constitutionalism," as noted earlier, clearly repudiate the contention of the Opposition.[134] Our Government, in adopting the de factoist view, has only abided with the current practice of states and the dicta of many international law writers.[135] This was precisely the Philippine attitude when she recognized the State of Indonesia in 1950, notwithstanding the fact that the Indonesian government was not popularly elected nor was it functioning under a national constitution.

The view of the Opposition to wait till after a constituent assembly will have been elected and which will have drafted the constitution of South Vietnam, is, as the Administration calls it, "misleading," because "it will take some time before the assembly is convened, months before the constitution is approved, and months before the constitutional government is elected and established." [136] In the case of the governments of Bolivia, Peru, Argentina, Brazil and Panama, the United States recognized them as soon as they were found to be in actual control of the machinery of the said states, regardless of the insurrections that preceded their establishment and their lack of constitutional basis.[137]

Although the Diem regime was established by *coup d' état*,[138] even France, the former mother country, refers to his government

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[133] See also Open Letter of Dr. Phan Quang Dan (Former Minister of Information of Vietnam), in The Manila Times, Sept. 2, 1955, p. 4, col. 4.

[134] See notes 98-105 *supra*.

[135] See notes 108-111 *supra*.

[136] From the official text of the speech of the Undersecretary of Foreign Affairs, *supra* note 10, at p. 3 thereof.

[137] See note 96 *supra*.

[138] Two months before the conclusion of the Geneva conference last year, Emperor Bao Dai of Vietnam, who was then vacationing in France, was deposed *in absentia* by Diem and his Revolutionary Junta.

as the government of Vietnam.[139] It may be noted at this juncture that while Bao Dai formerly ruled as emperor of the whole erstwhile State of Vietnam, Diem's claim of authority does not go beyond the northern side of the 17th parallel.

Conformably to the general international practice of the recognition of governments,[140] the Philippines is of the view that the Diem regime, having as it does the effective control of the machinery of the state and receiving the general acquiescence of the people, is legally entitled to our recognition. The Administration's appraisal of the stability and local popularity of Diem's government is stated in this wise:

> "Our first hand reports establish the fact that the overwhelming majority of the people in the territory of South Vietnam support the incumbent government. Popular response particularly in recent months, is not merely affirmative—it is enthusiastic and articulate. Even in areas of Central Vietnam formerly under Communist control and turned over by the Geneva Agreement to the Government of the South, such as Tuy Hoa, Ona Nghai and Qui Nhon, the people have come out in warm and open support of the government in Saigon. The local resistance of the Binh Xuyen and Hoa Hao sects has been destroyed, while the Cao Dai group is now in full cooperation with the government. The entire army of 150,000 men is loyal and only last April two juntas—one made up of governors and mayors and the other of councilors, both voted confidence in the premier. These reports, from qualified informants who have gone out to every corner of the State, have left no doubt in the thinking of the Department about the general and enthusiastic and overwhelming support which the Saigon government is receiving from the Vietnamese people." [141]

Ngo Dinh Diem heads the national government of South Vietnam as President with a council of twelve ministers.[142] The follow-

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[139] In the official text of the July 18, 1955 speech of the Undersecretary of Foreign Affairs, *supra* note 10, he declared: "I will quote, not from British newspapers, not even from French newspapers, but from the official publication of the Overseas Ministry of France.

"Under the title 'Le Nouveau Gouvernement Vietnamien' on page 80 of its issue of June, 1955, the publication 'Chroniques D'Outre-Mer' lists the members of the new Vietnamese Government beginning as follows:

" 'Following the revamp effected by President Ngo Dinh Diem on May 10, 1955 the new Government of Vietnam presents the following composition—

" 'President of the Council and Minister of National Defense—Ngo Dinh Diem.' "

[140] See notes 90-92 *supra*.

[141] Official text of the speech of the Undersecretary of Foreign Affairs, *supra* note 10, at p. 2 thereof. In his speech last July 30, 1955, *supra* note 127, the Undersecretary, in answer to the claim of the Opposition that the Diem regime is reported by British newspapers to be unpopular and disorganized, asked: "In deciding our national policies, are we to prefer the reports of foreign newspapers representing as they do the thinking and tendencies peculiar to each such foreign country, to the personal testimony of our own fellow countrymen?"

[142] The ministries are: information, interior national defense, foreign affairs, justice, finance and economic affairs, public works, agriculture, agrarian reforms, education, social action and public health, general commissariat for refugees, and labor.

ing political parties are reported to be represented in his government: (1) Movement for National Revolution; (2) Movement for Struggle for Freedom; (3) National Front for Resistance (formed by the Cao Dai sect); (4) Movement for National Restoration (likewise formed by the Cao Dai sect); and the (5) Vietnamese Movement for Rallying the People.[143]

Taking therefore all the above facts and principles together, it is evident that the Diem government merits recognition.

VI. A Few More Observations on the Philippine Recognition of South Vietnam

In the foregoing discussion, we have found that the extension of recognition to the State of South Vietnam and its incumbent government has not contravened international law and practice. It is surprising then how the Administration could still admit that by extending such a recognition, it was "overriding the technicalities of law and procedure."[144] It is precisely on account of this gratuitous and unwarranted statement that opposition to the action of the Administration has been unnecessarily fomented.[144a]

On the other hand, the fear of the Opposition that the Philippines might be placed "in the uneviably embarrassing predicament of having recognized a Communist State," should the Viet Minh eventually win in the 1956 all-Vietnam plebiscite, is likewise groundless and empty. In the first place, this argument loses its meaning when

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The facts here given are taken from Abadilla, D., *Report From South Vietnam* (3rd Ser.), The Manila Times, Sept. 14, 1955, p. 8, cols. 3-4.

[143] *Ibid.* "The parties not represented in the Council are the Socialist Democrats, Socialist Party and Labor Party. The opposition is composed of the Greater Vietnam Movement (Dai-Viet) by North Vietnamese but which has no popular following in South Vietnam, and the Vietnam Koumintang, which is now represented in the cabinet in the person of the assistant defense minister.

"The opposition parties were reported to have no intention of overthrowing the Diem government . . . ." *Id.*

[144] From the official text of the speech of the Undersecretary of Foreign Affairs, *supra* note 10, at p. 5 thereof.

[144a] As a consequence of the overwhelming popular support given to Premier Diem by the South Vietnamese in the referendum held last Oct. 23, 1955 (see note 122 *supra*), our Undersecretary of Foreign Affairs made a similarly unnecessary statement to the effect that recognition by the Philippine Government of the Republic of South Vietnam under Ngo Dinh Diem will be studied by the Department of Foreign Affairs. (The Manila Times, Oct. 30, 1955, p. 2, col. 5). Although he expressed the view that there is no need for such action, he also added that "If the Philippines has to recognize South Vietnam anew, it would only be because of a technicality." (*Ibid.*) It may therefore be worth asking just what the Department of Foreign Affairs persistently considers a "technicality," a technicality which seems to require the recognition of South Vietnam "anew." Statements of this sort, coming as they do from the Department of Foreign Affairs, could only lead to an inference that the Administration itself has doubted its stand as to the recognition it extended to South Vietnam and the government of Diem last July 15, 1955.

we realize the fact that even the Democratic Powers have found no cause for embarrassment in having recognized the USSR, the leading Communist state and government in current power politics. Furthermore, international law does not at all draw into any valid recognition of a state such a term as "embarrassment." Besides, the Viet Minh may not even have any chance to sweep the whole of Vietnam in 1956. As the trend of affairs in South Vietnam indicates, the Diem government, in the absence of satisfactory guarantees by the Viet Minh that the sanctity of the ballot would be preserved, has adamantly refused to submit to the 1956 unifying election.

Even on the supposition that the South Vietnamese may someday be engulfed by the Communist tide and thus assume or be forced to adopt a position contrary to the Philippine democratic ideology, there could possibly be no embarrassment since all that our Government would do, if it would so choose, would be to refuse to acknowledge that new fact. Unfortunately, the Administration has chosen to refute the Opposition's contention by making the erroneous claim that the Philippines "could withdraw its recognition therefrom either from the government or even from the state itself." International law, as we have noted earlier, does not sanction such a move, particularly with reference to state recognition. In the words of Chen, the existence of a new state or government "once acknowledged is acknowledged; there is nothing to withdraw." [145]

Since the Philippine recognition of South Vietnam, of itself, is valid under international law and practice, it was not necessary for the Administration either to claim that we are in company with over forty other nations in this direction.[146] Such an attempt to justify the act of the Administration is not persuasive, because the recognition extended by these other nations might, if put into the crucible of inquiry, yet turn out to be unjustified and valid. Such a species of reasoning only tends to mislead, because many of the nations referred to extended recognition not to South Vietnam but to the pre-1954 State of Vietnam under Emperor Bao Dai.[147] Consider the relevant statement of the Opposition in this respect:

> "As to the alleged recognition of South Vietnam by 47 states . . . . the important thing to consider is not the number of recognizing states, but the circumstances under which the different recognitions were granted . . . . The alleged recognition . . . of Vietnam by 47 foreign countries cannot be involved as a valid precedent."

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[145] See relevant discussion of this matter in connection with notes 41-44 *supra*. However, see note 44a *supra*, for authorities *a contrario*.

[146] See enumeration in the text of the speech of the Undersecretary of Foreign Affairs, *supra* note 10, at p. 5 thereof.

[147] In Asia, only Thailand, Japan and Pakistan has extended recognition to South Vietnam. Indonesia has granted only a de facto recognition. India, Burma and Ceylon have not recognized South Vietnam. Nor is there any report of a positive action by Laos, Cambodia and Formosa. See also note 67 *supra*. (Note, however, that the discussion here does not refer to the recognition of South Vietnam and the Diem government by other States after Oct. 23, 1955.)

Again, in the overly enthusiastic attempt of the Administration to further justify the already valid recognition given to the State of South Vietnam, it made another unfounded claim that the recognition is in fulfillment of our commitments under the Southeast Asian Collective Defense Treaty. This is unsupported by the facts. We quote the Opposition:

> "Nothing in the treaty itself or in its accompanying protocol can be found that says so, directly or inferentially. We may have committed ourselves to defend the treaty area within which South Vietnam is comprised against Red armed aggression under the terms of (the) SEATO, but our commitment did not include its recognition as a sovereign state, or of its regime as one that in international law deserves recognition . . .[148] Note that (the) SEATO speaks of defense not only of states but also of territories in the treaty area. Note also that South Vietnam was not a party but only a beneficiary of the treaty. Questions, therefore, of sovereignty and kinds of regime, or recognition, were not involved in the stipulations."

While it is heartening to note the active sympathy and interest of the Philippines in the struggle of her Asian neighbors for independence and self-government, and while it has also been shown that the recognition accorded to the State of South Vietnam and its government is valid in the light of international law and practice, it is to be remembered that the power of recognition, if employed indiscreetly, may only result to our own national prejudice in the long run. This is particularly true when the interests of stronger nations are adversely affected by such grant of recognition. While this power may be used to express our national and foreign policies, care should be observed not to employ it as a "handmaiden of intervention," or as a means of injudiciously interfering with the domestic affairs of another state.[149] Premature recognition is void, and it constitutes an act of intervention and an international delinquency.[150] In this respect, it would not be remiss to heed the following advice:

> "Time and again, I have consistently opposed dangerous and provocative entanglements, . . . because they distract our attention from our local problems, which are of the gravest and most urgent, because they dissipate our already limited strength and energy which we need so much to establish our political, social, and economic security, and because we ex-

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[148] See Art. IV, pars. 1-3 of the Manila Treaty in connection with the second paragraph of the Protocol to the Southeast Asia Collective Defense Treaty. (The texts are reprinted in 29 PHIL. L.J. 561, 563 [1954]).

[149] Thus, Japan's recognition of the puppet Manchuria State under Henri Pu Yi in Sept., 1932 was a violation of the territorial integrity of China.

[150] CHEN, *op. cit. supra* note 34, at 54, 85-6; LAUTERPACHT, *op. cit. supra* note 44a, at 94-5. The recognition of the United States by France in 1778, and that of Greece and Belgium by the Great Powers in 1827 and 1931 have been considered acts of intervention. See 1 PHILLIMORE, COMMENTARIES UPON INTERNATIONAL LAW 553 *et seq.* (1879).

pose thereby our people to the fearful consequences of another war, a war which will be fought on Asian soil with only expendable and bewildered Asians for sacrificial victims on the altar of power politics and international intrigue." [181]

SOTERO B. BALMACEDA *

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[181] Concluding paragraph of Sen. Recto's speech delivered before the Philippine Senate last July 22, 1955, *supra* note 120.

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