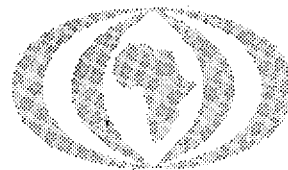


**INTERNATIONAL ATTITUDES ON THE RECOGNITION
OF TRANSKEI**

Deon Geldenhuys

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1. *Introduction*

It is probably fair to say that the hopes held out in both Transkei and South Africa for international recognition of the Republic of Transkei have been disappointed. A few months before independence, Dr. K.D. Matanzima said confidently, "We expect recognition of our independence by the world, particularly by our brothers in the rest of Africa."¹⁾ The OAU was capable of changing its initial hostile attitude towards an independent Transkei, Minister D.S. Koyana said, and he also maintained that Transkei given its "colonial background" was entitled to and might well apply for membership of the Commonwealth.²⁾ South Africa shared the expectations of recognition, particularly with regard to Western powers³⁾, and it was hoped that, ideally speaking, Transkei would become the key to improving South Africa's relations with Africa and consequently the international community generally.⁴⁾

These expectations have not been realised. International recognition of Transkei has not been forthcoming, the OAU has forbidden member states from recognising Transkei and the UN General Assembly has declared its independence invalid.

This paper sets out to examine the reasons for the international community's refusal to recognise Transkei's independence and will hopefully help to explain the difficult international environment with which Transkei has to contend.

2. *Major legal objections to recognition of Transkei*

Although the question of recognition will be approached from a political rather than a legal perspective, the two are clearly so interwoven that they can hardly be separated. It may therefore be useful to restate, briefly, the main legal objections raised against recognition of Transkei.

The concept "recognition", as applied in this paper, refers specifically to the recognition of a state, which is of course different from the recognition of a new government or head of state.⁵⁾ Recognition, according to Fawcett, is an open acknowledgement by the political branch of the government of the establishment in the other country of a new state... an acknowledgement which entails certain political and legal consequences for the relations between the recognising state and the new state...

Although the withholding of recognition avoids these consequences, it "is not to be taken necessarily as the denial of the existence of the new state".⁶⁾ In terms of customary international law, it should be added, it is generally accepted that the granting or withholding of recognition is in principle optional, i.e. there is no duty resting on a state to recognise another.⁷⁾

2.1 *The maintenance of territorial integrity*

The first principle of modern international law which Transkei is allegedly violating, is that of territorial integrity.⁸⁾ In support is cited the UN Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960, which states that

any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the UN.⁹⁾

The OAU has similarly, since its inception in 1963, consistently taken a strong stand against secession, partition and changes to inherited colonial boundaries.¹⁰⁾ The International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973, goes so far as to prohibit measures aimed at dividing the population of South Africa "along racial lines by creation of separate reserves".¹¹⁾

In line with these pronouncements, the UN General Assembly from 1970 onwards began rejecting "Bantustans" as, among other things, "prejudicial to the territorial integrity of the State (i.e. South Africa) and the unity of its people"¹²⁾, and all governments and organisations were called upon not to have any dealings with the "Bantustans" or accord them "any form of recognition".¹³⁾ On the day of Transkei's independence, the General Assembly dutifully declared its independence invalid, *inter alia* on the grounds that the creation of "Bantustans" was designed to "destroy the territorial integrity of the country".¹⁴⁾ A mandatory resolution adopted at the OAU summit in July 1976 forbade member states from recognising Transkei's independence.¹⁵⁾

2.2 *The illegality of racial discrimination*

The second major legal objection to recognition centres on the policy of apartheid.¹⁶⁾ Apartheid has, among other things, been branded "a crime against humanity"¹⁷⁾, "a crime against the conscience and dignity of mankind"¹⁸⁾ and a violation of the UN Charter, Universal Declaration of Human Rights, International Convention on the Elimination of All Forms of Racial Discrimination and the dual International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights. Witkin contends that the condemnation of apartheid has become accepted "as a norm of international law"; apartheid and racial discrimination contravene a "peremptory norm" of international law.¹⁹⁾

The establishment of homelands is seen as inextricably linked with the policy of apartheid which the international community has sought to declare unlawful.²⁰⁾ In short, if the legality of apartheid in international law is contested and if the creation of Transkei is the product of that policy, then "the existence of a separate state must also be illegal".²¹⁾

It should be added that some scholars argue in favour of an additional criterion to the traditional four for statehood (defined territory, permanent population, effective government and independence), viz. that the government of the new entity "shall not be based upon a systematic denial in its territory of certain civil and political rights".²²⁾

2.3 *The right to self-determination*

The principle of self-determination finds its clearest expression in the UN Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960. The Declaration states that "an end must be put to colonialism and all practices of segregation and discrimination associated therewith" and

that "all peoples have the right to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development".²³⁾ In line with the Declaration, Higgins argues that "self-determination refers to the right of the majority within a generally accepted political unit to the exercise of power".²⁴⁾

On the basis of Higgins' definition, a number of arguments are advanced against recognition of Transkei. First, Transkei does not constitute a "generally accepted political unit" but is the artificial outgrowth of apartheid. Second, the "unit" in question is South Africa as a whole and the "majority" refers to the African population as a whole. Third, the fragmentation of South Africa is unacceptable, the more so when bearing in mind that the African "majority" would in due course in any case achieve self-determination.²⁵⁾ Fourth, the essence of self-determination is freedom of choice and Transkeians were never offered a "real choice" of either equal rights in a unified South Africa or independence and their opinion was never conclusively tested.²⁶⁾

The UN General Assembly has repeatedly given expression to these objections by calling for the exercise of the right of self-determination by the peoples of South Africa as a whole and its insistence that the creation of "Bantustans" contravened this right.²⁷⁾

2.4 *The question of nationality*

The final legal objection to recognition - and the one which attracted most attention in South Africa - concerns the question of Transkeian nationality. On the one hand it is argued that while international law affords South Africa almost unlimited right to decide who its nationals are, international law does not permit South Africa to strip people of their nationality on such "arbitrary" grounds as race - something the Republic is alleged to have done with regard to its Xhosa nationals.²⁸⁾ On the other hand, objections are raised to the "involuntary acquisition" by or "imputation" of Transkeian nationality to people thus affected.²⁹⁾ International law, it is argued, does not permit the mandatory imposition of nationality.³⁰⁾ A further question is whether Transkeian nationals in South Africa will be accorded the rights and privileges which international law requires for aliens - something open to serious doubt.³¹⁾

The nationality question is clearly related to the crux of the entire debate, viz. apartheid. Norman argues:

Transkeian independence must be seen for what it is, part of a plan designed to render Black demands for political and economic equality in South Africa ineffective by removing the legal basis for those demands (i.e. citizenship).³²⁾

If the "artificial expedient" of transforming Africans into homeland citizens were to be extended to all homelands, "(t)he black problem would have been 'solved'", according to Harvey and Dean.³³⁾

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The legal objections discussed are based on what is considered a developing rule of international law, viz. that the product (Transkei) of an "illegal act" (South Africa's) is not entitled to recognition. Transkei is therefore, in Norman's words, "South Africa's illegitimate child".³⁴⁾

3. *Secondary objections to recognition*

First among the secondary objections is the claim that Transkei fails to meet the last of the four traditional criteria for statehood, viz. independence. Independence in this context is commonly defined as "the right to exercise within a given territory 'to the exclusion of any other state, the functions of a State'"³⁵⁾ or "the status of a state which controls its own external relations without dictation from other states".³⁶⁾ Transkei's economic dependence on South Africa, it is argued, could impair its freedom of action internally and externally. It is furthermore asserted that Transkei's independence is to some extent compromised because South Africa controlled its political process during the transition to statehood.³⁷⁾ Transkei "does not possess the independence necessary for the existence of statehood", Witkin contends, and should consequently not be recognised.³⁸⁾ The British (Labour) Government's refusal to recognise Transkei was purportedly based on these grounds. Insisting that it would apply the "traditional criteria" for the recognition of a state in Transkei's case, the British Government concluded that Transkei "is neither internally nor externally independent".³⁹⁾

It should be explained that it is generally accepted, also by the critics of Transkeian independence, that Transkei meets the first three criteria for statehood (defined territory, settled population and a government in effective control), while some of them even concede the fourth criterion (independence) too.⁴⁰⁾ However, the critics maintain that the legal objections outlined above override Transkei's compliance with the traditional criteria for statehood and recognition.

Two further secondary objections, also related to the question of independence, can be mentioned. First, it is claimed that Transkei's leaders were "hand-picked" by South Africa⁴¹⁾, and second, reference is made to the fact that Transkei did not control the entire appellate division of its judicial system.⁴²⁾

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Having listed the main legal objections to recognition of Transkei's independence and a number of additional secondary points of criticism, it must immediately be pointed out that most of these arguments can and have indeed been challenged on the very same legal and political grounds.⁴³⁾ It is, however, outside the scope of this paper to try and assess the merits or demerits of what is a highly complex juristic debate. The inescapable fact is that however sound the counter-arguments advanced by Transkeian leaders and foreign scholars, the international community is still not prepared to abandon its initial refusal to recognise Transkei's independence.

4. *The political environment at the birth of Transkei*

Quite apart from the objections to Transkei's recognition discussed above, it must be admitted that the new state was born in rather inauspicious circumstances. Foremost was the widespread unrest in major urban Black areas, which highlighted deep-seated Black opposition to apartheid. For many outsiders it seemed very odd that a certain group of Blacks should peacefully accept

the "fruits" of separate development while other Blacks were vehemently demonstrating their opposition to the very same policy. South Africa's vigorous attempts at "selling" Transkei's independence abroad probably hindered rather than helped the new state gain international acceptance. The controversy over Transkeian nationality and the fact that Transkei's constitution did not repeal certain infamous pieces of South African legislation (notably Proclamation R400 of 1960 and the Mixed Marriages and Immorality Acts), was readily being interpreted by the international community as evidence of Transkei's subservience to South Africa and that racial discrimination and the suppression of human rights would be perpetuated after independence.⁴⁴⁾ Critics also pointed to the arrest of certain leading Opposition politicians in Transkei prior to independence.

The importance of these factors is that they help explain the fact that, even before independence, the odds were stacked heavily against international recognition of Transkei, making a change in foreign opinion that much more difficult.

5. *The politics of international recognition*

Any analysis of international recognition has to consider a very basic fact:

Recognition... or the withholding of recognition, of a new state... is an act of policy... All that can be said is that it is generally best to face the political facts, however unpalatable.⁴⁵⁾

Since recognition is "a political act of government" and "a matter not of duty but of discretion"⁴⁶⁾, it is not surprising that the modern trend is towards using recognition as a political instrument. This means that the declaratory theory of recognition is gaining increasing prominence over the constitutive theory. The former perceives recognition as a political act, "conferred or denied for reasons not necessarily consistent with an objective assessment of the criteria for statehood".⁴⁷⁾ Recognition is merely declaratory of reality and has no international legal effect; legal status derives from meeting the criteria for statehood independent of recognition.⁴⁸⁾ The constitutive theory, by contrast, postulates that a state does not exist in international law until recognised.⁴⁹⁾

In Transkei's case, the "unpalatable" political fact that has to be faced - and which basically explains the withholding of recognition - is the connection between its very creation and the policy of apartheid, even though Transkeian leaders vigorously challenge the assertion of such a linkage. This was forcefully expressed in the EEC statement announcing that the nine member states did not intend recognising Transkei "on the occasion of its purported independence".

False solutions to the problems of apartheid in the Republic of South Africa such as the establishment of homelands or Bantustans presently pursued by the South African Government promote, rather than diminish, racial discrimination.⁵⁰⁾

If it is assumed - as is widely done - that Transkei is the ultimate product of South Africa's racial policy, the fear is that recognition of Transkei's

independence would be construed as legitimising or validating apartheid.⁵¹⁾ The argument can be taken a step further. The creation of Transkei is seen as part of an overall policy - the Grand Design - aimed at giving some 70% of the total population rights to only 13% of the land, thus denying Africans their "birthright", i.e. their rightful claims to the wealth of South Africa as a whole and which they helped create. If Transkei were recognised, so the argument runs, it would serve as an encouragement to the South African Government to proceed with its policy of creating independent homelands.

A further argument focuses on the relative deprivation of Transkei compared with "White" South Africa. In the words of Stultz, "the richest and most industrialised state in Africa has sired one of the world's twenty poorest and least developed countries".⁵²⁾ This, in turn, highlights a very fundamental issue, viz. for whose benefit was the homeland policy, which created Transkei, designed? Dr. Verwoerd, the architect of separate development, in April 1961 admitted that the development of "separate Bantu states" (which may proceed to "full independence") was

a form of fragmentation which we would not have liked if we were able to avoid it. In the light of the pressure being exerted on South Africa there is however no doubt that eventually this will have to be done, thereby buying for the White man his freedom and the right to retain domination in what is his country...⁵³⁾

It has, over the years, been said repeatedly by South African ministers that the creation of homelands was an alternative to power-sharing and ultimate Black rule.⁵⁴⁾ For his part, Dr. Matanzima has in fact stated that the policy of separate development is "a White man's policy", the primary goal being "unashamedly the preservation of a White identity and control by Whites over their own destiny".⁵⁵⁾ The connection between Transkei and the policy of separate development, it should be added, has at times been stated with embarrassing frankness by both South African and Transkeian politicians.⁵⁶⁾

The problem with the linkage argument - which of course also underlies the UN's "collective disapproval" of Transkei's independence⁵⁷⁾ - is that it focuses on South Africa's racial policy and condemns Transkei on the basis of guilt by association. As Transkeians cogently argue, their country is judged and condemned by a yardstick no longer applicable, and not on the basis of the racial policy it pursues domestically - which is basically in line with what the critics of apartheid demand.⁵⁸⁾

In the final analysis, the refusal to recognise Transkei is essentially expressing disapproval of apartheid and is furthermore seen as a means of exerting pressure on South Africa to abandon this policy.

6. *Transkei's politics of independence: does it neutralise the objections to recognition?*

There are several possible ways of looking at the question of international recognition after three years of independence. One is to test the present relevance of the major legal objections raised against recognition.

It can perhaps be argued that Transkei would have been in a better position to overcome the objections that its independence violated the principles of territorial integrity and self-determination, and that it is the product of apartheid and racial discrimination if Transkei's progress through the stages of separate development to independence had been sui generis. The Transkeian contention that it is an accident of history would then also have carried more weight. The fact, however, that Transkei's acceptance of independence was followed by Bophuthatswana and Venda inevitably strengthens the argument that Transkei is as much the product of Grand Apartheid as any other homeland. In short, Transkei's claims to international recognition have in effect been undermined by other homelands also opting for independence. Transkei is therefore, in the eyes of the international community, still seen as the outgrowth - in fact, one among several outgrowths - of a policy which is in conflict with the principles of territorial integrity, self-determination and non-discrimination.

The argument can be taken a step further. International recognition of Transkei, the critics would maintain, will create a dangerous precedent which, if taken to its logical conclusion, could provide international sanction for the fragmentation of South Africa in such a way that some 70% of the population is confined to a mere 13% of the land. It could also set a dangerous precedent for secession elsewhere in Africa.

It has to be conceded that the fact of South African parentage counts against Transkei. If Transkei had been the product of post-war British colonial policy, its claims to independence and recognition would have been acknowledged internationally. Harvey and Dean have a point when they argue, admittedly cynically, that only one norm appears to validate the assertion of self-determination in an African context, viz. "the definition of a territorial unit, with its included people, by a European colonial power".⁵⁹⁾

The other main legal objection concerned the question of nationality. South Africa and Transkei have, judging by public statements, apparently agreed to differ on this issue, Transkei maintaining that it would not accept South African Blacks as citizens unless they voluntarily applied and met Transkei's requirements for citizenship. The difficulty for Transkei is that such a position conflicts with the provisions of Article 57(a)(iii) of its Constitution Act of 1976. Nonetheless, after two years of independence, only 57 of the estimated 1,25 million "Transkeian" Xhosas permanently resident in South Africa had thus applied.⁶⁰⁾ From an external perspective, Transkei's would seem a reasonable standpoint and far more acceptable than South Africa's attempts at involuntarily stripping Xhosas of their South African nationality. The problem, however, is that Transkei's bona fides on the issue are further undermined by the South African determination to denationalise Blacks - in the same way in which Transkei's commitment to a non-racial society is hampered abroad by South Africa's pursuit of apartheid. Transkei will, in the final instance, still not be judged primarily on its own merits but instead on South Africa's demerits. Put in another way, the international community is clearly more preoccupied with what it sees as South Africa's male fides than with Transkei's bona fides.

Turning to the secondary objections against recognition identified earlier, they essentially hinge on doubts about Transkei's internal and external

independence from South Africa. On the domestic side, there seems little reason to doubt the Transkei Government's independence. The acceptance of substantial South African aid⁶¹⁾ and the presence of seconded South African officials can hardly be taken as evidence of South African control; foreign aid of this nature is a common Third World phenomenon. Suspicions on this score should, moreover, have been allayed by Transkei's rupture of diplomatic ties in April 1978 and its subsequent termination of the non-aggression treaty with South Africa. There are also other actions of Transkei which, whether by design or not, tend to underline its independence from South Africa, e.g. the extension of a hand of friendship to the ANC and PAC (on condition that they acknowledge the authority of Transkei's Government)⁶²⁾, increasingly critical statements on South Africa's domestic policy, a pronounced willingness to accept communist aid and even to receive a Cuban diplomatic mission.⁶³⁾

A second - and admittedly rather hazardous - way of looking at the question of recognition is to focus on Transkei's performance since independence measured against the country's expectations and the advantages it envisaged would result from independence.⁶⁴⁾ They can be summarised as follows:

- (i) independence would enable Transkei to introduce freedom of movement in its territory;
- (ii) independence would allow Transkeians to plan their future as they pleased and not directed by Pretoria;
- (iii) an independent Transkei would abolish racial discrimination and serve as a liberalising influence on South Africa⁶⁵⁾;
- (iv) Transkei would regulate the employment of its citizens in South Africa through a treaty and it expects that the lives of Transkeians in South Africa will be made "at least as acceptable as those of foreigners of European extraction living and working in the Republic"⁶⁶⁾;
- (v) Transkei will enter into monetary and customs agreements with South Africa on the same basis as Botswana, Lesotho and Swaziland;
- (vi) Transkei expects international recognition, especially from African states.

While Transkei has indeed succeeded in realising the domestic aspirations set out above, the external expectations present a rather mixed picture. First, Transkei has no control over its citizens living in South Africa and who are still subjected to racial discrimination. Second, it is questionable whether Transkei has had any more of a liberalising influence on South Africa's racial policy than Botswana, Lesotho or Swaziland have had. It is worth bearing in mind that Britain had long regarded its three former High Commission Territories as agents of change in their White neighbour's racial policy. What probably sets further bounds to Transkei's liberalising endeavours is that its independence is widely opposed by urban Blacks and also by some dependent homelands.⁶⁷⁾ Third, Transkei has entered into monetary and customs agreements with South Africa but since Transkei is not recognised by the BLS states, it cannot attend the full meetings of the Customs Union or Rand Monetary Area as an equal member. Finally, the expected international recognition has failed to materialise.

It has been argued that if Transkei wanted to achieve international recognition, it would have to introduce certain domestic reforms to demonstrate its independence from South Africa and its commitment to human rights and non-discrimination.⁶⁸⁾ Externally, Transkei would have to provide clear evidence that it is playing its part in the "high politics" of Southern Africa and is not merely acting as a glorified local government.⁶⁹⁾ (The problem with this argument is of course that non-recognition is a serious handicap to playing a part in regional "high politics".) The Times (London) succinctly described the crux of the matter: "To prove its independence of South Africa the Transkei will necessarily have to be seen to do things inimical to South Africa".⁷⁰⁾

Paradoxically, domestic reform in Transkei has even been advocated by those who are implacably opposed to international recognition and make a legal case against it and go so far as to suggest collective action "to put an end to the homeland process".⁷¹⁾ Non-recognition, it is argued, would teach other homeland leaders not to opt for independence. This begs several questions: Do such critics wish South Africa to reassert its control over Transkei?⁷²⁾ Should Transkeians again be subjected to the apartheid the critics so vehemently condemn? And will this really contribute towards a solution of South Africa's racial problems? The response to such questions is provided in a UN publication: non-recognition of Transkei's and other homelands' independence "would directly threaten the survival of the Bantustan policy itself, and with it the whole apartheid system."⁷³⁾ Another of the "unpalatable" political facts that Transkei has to face is that this kind of argument holds sway over arguments setting out either the benefits of independence or the disadvantages of non-recognition. It also helps to explain why domestic reform in Transkei seems to meet with so little international applause and why Transkei's assertion of its independence vis-à-vis South Africa apparently fails to impress the critics.

7. *Options for the international community*

There are a number of possible courses of action other states could pursue with regard to Transkei.⁷⁴⁾

First, the international community could prefer to ignore Transkei's independence and insist on the dismantling of Transkei and other similar "products of apartheid". While it could be argued that this is choosing the easy option and one which wishes the problem away, the fact is that this is the prevalent international attitude. It is, however, considered not merely a negative stand (from other states' point of view) but a contribution towards eliminating apartheid.

Second, Transkei (and other independent homelands) can be viewed as being in a transition stage before re-entering the South African state as units in a federation. Dr. Matanzima has given support to this view:

I am of the opinion that future political developments in South Africa might include a federation in which Blacks and Whites would be equal partners... A federation of the whole of South Africa cannot be ruled out.⁷⁵⁾

If Transkei would in due course rejoin South Africa in a federal arrangement - as some Western states perhaps hope - this probably undermines the chances of and even lessens the need for international recognition.

Third, states can adopt a "wait and see" attitude while at the same time maintaining or extending limited contacts with Transkei. "Wait and see" essentially relates to the position of African states on recognition for it is highly unlikely that non-African states would act independently of African countries on this score. And it is precisely from Africa that the strongest opposition to recognition emanates, with few signs of a more conciliatory approach.⁷⁶⁾ There have been suggestions in Transkei that if the West continued to ignore it, Transkei could look towards the socialist bloc.⁷⁷⁾ This, ironically, is also the kind of implied threat which South Africa has from time to time used in its own relations with the West - with little or no effect. In Transkei's case, it is hardly conceivable that socialist bloc countries would recognise it against the wishes of Africa. In the meantime, limited foreign contacts with Transkei will probably remain and expand⁷⁸⁾, but their significance with regard to recognition should not be exaggerated. As Sanders cautions,

a particular form of conduct can only signify recognition if it indicates the intention to recognise, and in modern international practice it is hard to find a form of conduct which necessarily carries the implication of such an intention.⁷⁹⁾

Fourth, states can opt for outright recognition of Transkei. This could be done on various grounds. Transkei's independence, it could be argued, is an established fact which cannot be wished away and Transkei has moreover proved its bona fides beyond any doubt. Alternatively, other states - particularly African - could see in the recognition of Transkei extra leverage in undermining White rule in South Africa. This option is, however, a complex one. On the one hand, it could be argued that the "leverage option" would be particularly attractive once the situation in South Africa has become very fluid or unstable (whether due to civil unrest, violence or whatever); Transkei could then be used as a base from which the process of transformation in South Africa can be accelerated. On the other hand, the question is whether other states would need Transkei in this way if White South Africa's collapse is seen as inevitable and "true" self-determination for all the Blacks of the country is at hand. In short, outright recognition - for whatever purpose - seems very unlikely. Prime Minister G.M. Matanzima's statement that "recognition of Transkei by the international community is not priority number one"⁸⁰⁾, probably reflects an acknowledgement of this state of affairs.

8. *Transkei and a constellation of states: back into the South African fold?*

Although Dr. Matanzima said in October 1978 that Transkei "will never join a community of southern states of Africa while South Africa keeps for its White section of the population the largest and very extensive area of land"⁸¹⁾, the Transkeian Government is apparently ready to reconsider this stand. Prime Minister P.W. Botha's idea of a constellation of states has met with a notably positive response from Umtata.⁸²⁾

The proposal of a constellation of states, although still very vague, raises several important questions. This paper will not attempt to answer them, but rather suggest them as matters for further study and discussion. Transkei, and other prospective members of the constellation, however, need to consider these questions.

First, it is hardly conceivable that independent member states in a constellation have no diplomatic links. Restoration of Transkei's diplomatic ties with South Africa may therefore be a prerequisite for membership. Would Transkei accept this? Second, South Africa envisages also military co-operation in its constellation, at least in the form of non-aggression pacts. Would Transkei be willing to revive its abrogated non-aggression treaty with South Africa? Third, would joining an association with South Africa at the core not draw Transkei back into the South African fold in a more formalised way than ever and would it not be viewed from the outside as compromising its independence? Would this not particularly be the case if the only other members (besides South Africa) were other independent former homelands and dependent homelands? A further vitally important consideration is external, particularly African, perceptions of such a constellation. It has to be said that it can easily be construed as a South African contrivement to extend the frontiers of the "White garrison" in order, in the first place, to protect White South Africa's power. Finally, if the BLS states refuse to join (as is likely), would the constellation then not be a club of international outcasts in the South African orbit?

In the final analysis, Transkei seems to be in a "double bind" on the question of recognition: if it moves away from South Africa, it is not rewarded; if it were to move closer, it will be seen as even less worthy of recognition.

When all is said, a basic truth remains: "The worth of a State in the long run is the worth of the individuals composing it."

————— John Stuart Mill

NOTES

- 1) Matanzima, K.D., "The Transkei's road to sovereignty", in Prinsloo, D.S., (ed), Transkei: birth of a state (Foreign Affairs Association, Pretoria, 1976), p. 19. See also Sunday Times, 11/4/1976 and To the Point, 8/10/1976.
- 2) Koyana, D.S., "Transkei and Africa: the development of relations with African states and organisations", Paper presented at the SAIIA conference on the International Implications of the Independence of Transkei, Umtata, 24-27 November 1976, pp. 3 & 8.
- 3) See Die Transvaler, 29/10/1976.
- 4) See Olivier, G.C., "South Africa, the Transkei and the politics of Africa", Paper presented at the SAIIA conference, op.cit., p. 6.
- 5) See Starke, J.G., An Introduction to International Law, Sixth Edition (Butterworths, London, 1967), pp. 124-154.
- 6) Fawcett, J.E.S., The Law of Nations (Allen Lane, London, 1968), p. 41.
- 7) Sanders, A.J.G.M., "A Southern African exercise in non-recognition?", Comparative and International Law Journal of Southern Africa, vol. 9, 1976, pp. 362 & 363.
- 8) See Norman, G.E., "The Transkei: South Africa's Illegitimate Child", New England Law Review, vol. 12, no. 3, Winter 1977, pp. 614 et seq.
- 9) Quoted ibid., p. 614.
- 10) A resolution on "Border disputes between African States", adopted at the OAU's 1964 Cairo summit, validated existing colonial and state boundaries. The 1975 Dar Es Salaam Declaration inter alia stated:
The Council of Ministers of the OAU resolutely reaffirms free Africa's total rejection of apartheid and all its ramifications, including any so-called independent homelands within South Africa.
(Quoted by Ansprenger, F., "Independent Transkei and the Organisation of African Unity", Paper presented at the SAIIA conference, op.cit., p. 3)
- 11) Quoted by Norman, G.E., op.cit., p. 630.
- 12) Resolutions of the General Assembly, Twenty-fifth session, 15 September to 17 December 1970, p. 34 and Resolutions... Thirtieth session, 16 September to 17 December 1975, p. 37.
- 13) General Assembly resolution, 20/10/1975, quoted by Norman, G.E., op.cit., p. 615.
- 14) Resolutions and Decisions adopted by General Assembly during its Thirty-first session (Vol. 1), 21 September to 22 December 1976, p. 10.
- 15) Barratt, C.J.A., "Transkei: the question of recognition", SAIIA Newsletter, Vol. 8, No. 3, 1976, p. 49.

- 16) See Norman, G.E., op.cit., pp. 624-629 and Witkin, M.F., "Transkei: an analysis of the practice of recognition - political or legal?", Harvard International Law Journal, Vol. 18, No. 3, Summer 1977, pp. 621-626.
- 17) See Booyesen, H., "Convention on the crime of Apartheid", South African Yearbook of International Law, Vol. 2, 1976, pp. 56-96, who analyses the UN's International Convention on the Suppression and Punishment of the Crime of Apartheid, of 1976.
- 18) See Norman, G.E., op.cit., p. 625.
- 19) Witkin, M.F., op.cit., pp. 624-626.
- 20) See Norman, G.E., op.cit., p. 626.
- 21) Witkin, M.F., op.cit., p. 621.
- 22) Fawcett, J.E.S., British Year Book of International Law, 1965-66, pp. 112 & 113, quoted by Dugard, C.J.R., "Transkei and International Recognition", Race Relations News, Vol. 38, No. 10, October 1976, p. 2.
- 23) Quoted by Norman, G.E., op.cit., pp. 629 & 630.
Reference should be made to the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States, accepted by the UN General Assembly in 1970. The Declaration, which amounts to an interpretation of the UN Charter, makes it plain that for the majority of members, a colonial situation justifies a domestic revolt and outside assistance from friendly states and the UN. Colonialism is considered taking on either of two forms: an "external" colony ruled from a metropole or an "internal" colony where one race oppresses another. (Doxey, M.P., "Sanctions revisited", International Journal, Vol. 31, Winter 1975-76, pp. 61 & 62.)
- 24) Higgins, R., The Development of International Law through the Political Organs of the United Nations, p. 104, quoted by Spence, J.E., "Detente in Southern Africa: an interim judgement", International Affairs, Vol. 53, No. 1, January 1977, p. 15.
It should be explained that the right to self-determination may in practice be circumscribed by the principles of territorial integrity and non-discrimination. (See Witkin, M.F., op.cit., p. 619 and Spence, J.E., "New States and international recognition: the concept of national self-determination", in Prinsloo, D.S., op.cit., p. 24.)
- 25) Spence, J.E., "Detente", op.cit., p. 15.
- 26) Norman, G.E., op.cit., pp. 630 & 631. See also Witkin, M.F., op.cit., pp. 505 & 613 and Harvey, W.B. & Dean, W.H.B., "The independence of Transkei - a largely constitutional inquiry", The Journal of Modern African Studies, Vol. 16, No. 2, 1978, p. 195.
- 27) Norman, G.E., op.cit., p. 630.
- 28) Ibid., p. 641. See also Witkin, M.F., op.cit., p. 622.
- 29) Harvey, W.B. & Dean, W.H.B., op.cit., p. 207-213.

- 30) See Norman, G.E., op.cit., p. 642.
- 31) Harvey, W.B. & Dean, W.H.B., op.cit., p. 210.
- 32) Norman, G.E., op.cit., p. 644.
- 33) Harvey, W.B. & Dean, W.H.B., op.cit., p. 213.
- 34) Norman, G.E., op.cit., pp. 585, 622 & 623.
- 35) Permanent Court of Arbitration, 1928, quoted by Witkin, M.F., op.cit., p. 611.
- 36) Brierly, J.L., The Law of Nations (Oxford University Press, London, 1973), p. 129.
- 37) See Witkin, M.F., op.cit., pp. 612-615 and Hahn, L., "Transkei: what should the U.S. do?", Africa Report, Vol. 21, No. 3, May-June 1976, pp. 8 & 9. Pachai terms South Africa's homeland policy one of "prescriptive decolonization", which placed its "domestic decolonization plans" in a "rigid cast of inflexibility". (Pachai, B., "Transkei and issues in the decolonization of Africa", Paper presented at the SAILA conference, op.cit., p. 7.)
- 38) Witkin, M.F., op.cit., p. 615.
- 39) Mr. Ted Rowlands, Minister of State at the Foreign and Commonwealth Office, quoted by Hill, C.R., "British attitudes to Transkei independence", Paper presented at the SAILA conference, op.cit., pp. 5 & 7.
- 40) See Norman, G.E., op.cit., pp. 619 & 620 and Witkin, M.F., op.cit., pp. 609-615.
- 41) Norman, G.E., op.cit., p. 619.
- 42) Witkin, M.F., op.cit., p. 615. South African judges were seconded to Transkei and the Appellate Division of the South African Supreme Court could hear appeals from the Transkei Supreme Court. (See Harvey, W.B. & Dean, W.H.B., op.cit., p. 203.)
- 43) Probably the most comprehensive rebuttal of the legal objections is contained in the article of De Kieffer, D.E. & Hartquist, D.A., "Transkei: a legitimate birth", New England Law Review, Vol. 13, No. 3, Winter 1978, pp. 428-452. On the issue of self-determination, see also Harvey, W.B. & Dean, W.H.B., op.cit., pp. 218 & 219; on citizenship, see especially Olivier, W.H., "Aspects of Transkeian citizenship and nationality", Politikon, Vol. 3, No. 2, October 1976, pp. 75-83 and Olivier, W.H., "Statelessness and Transkeian nationality", South African Yearbook of International Law, Vol. 2, 1976, pp. 143-154. On the issue of independence, see Olivier, G.C., op.cit., p. 2. An argument which is used particularly by Transkeians is that Transkei is a product of history (and British colonial policy in particular) and not of apartheid. See in this respect Koyana, D.S., op.cit., p. 2 and Letlaka, T., "The development of relations with countries outside Africa", Paper presented at the SAILA conference, op.cit., p. 3. The historical

argument is challenged by Hill, C.R., op.cit., p. 8, while the British Foreign Office has made it plain that "(w)e do not accept any special obligation toward the Transkei based on past history". (Daily Dispatch, 12/4/1978.)

- 44) See Dugard, C.J.R., op.cit., p. 2; Hill, C.R., op.cit., p. 9; Booysen, H., Wiechers, M., Van Wyk, D.H. & Breytenbach, W.J., "Comments on the independence and constitution of Transkei", South African Yearbook of International Law, Vol. 2, 1976, p. 2 and Matanzima, K.D., Independence My Way (Foreign Affairs Association, Pretoria, 1976), p. 103.
- 45) Fawcett, J.E.S., op.cit., p. 47.
- 46) Ibid., p. 41.
- 47) Witkin, M.F., op.cit., p. 607.
- 48) Ibid. and Norman, G.E., op.cit., p. 621.
- 49) Norman, G.E., op.cit., p. 621. See also Sanders, A.J.G.M., op.cit., pp. 361 & 362.
- 50) Quoted by Norman, G.E., op.cit., pp. 616 & 617.
- 51) See Harvey, W.B. & Dean, W.H.B., op.cit., p. 216.
- 52) Stultz, N.M., "Why is Transkei still portrayed as stooge?", The Star, 27/7/1979.
- 53) House of Assembly Debates, Vol. 107, 1961, col. 4191.
- 54) See Scholtz, G.D., Dr. Hendrik Frensch Verwoerd.1901-1966, Vol. II (Perskor, Johannesburg, 1974), pp. 134-140 and Pachai, B., op.cit., p. 7
- 55) Matanzima, K.D., Independence, op.cit., p. 80.
- 56) See ibid., pp. 75-80, 88 & 97 and Nel, D.J.L., "The issue of independence and the politics of South Africa", Paper presented at the SAIIA conference, op.cit., pp. 1-8. (Mr. Nel was at the time a National Party M.P.)
- 57) See Norman, G.E., op.cit., p. 621. On the implications of "collective nonrecognition" (by the UN) for a state, see De Kieffer, D.E. & Hartquist, D.A., op.cit., pp. 432 & 433 and Witkin, M.F., op.cit., p. 608.
- 58) See Matanzima, G.M., Welcoming Address at the SAIIA conference, op.cit., p. 3 and Koyana, D.S., op.cit., p. 218.
- 59) Harvey, W.B. & Dean, W.H.B., op.cit., p. 218.
- 60) The Star, 15/11/1978. See also Transkei, Dept. of Foreign Affairs, Transkei's Challenge, Umtata, June 1979, pp. 6 & 7. On the nationality provisions of the Transkei constitution, see Olivier, W.H., "Transkeian citizenship", Paper delivered at the Conference on Transkeian Law, Umtata, 19 September 1979, pp. 6-13.

- 61) In Transkei's 1978 budget, it was announced that aid from South Africa amounted to R113,5 million and revenue from customs and excise totalled R60 million. (Daily Dispatch, 19/4/1978.)
- 62) Rand Daily Mail, 4/1/1979.
- 63) The Citizen, 22/1/1979.
- 64) See Matanzima, K.D., Independence, op.cit., pp. 82-85 and Dr. Matanzima (1974) quoted by Norman, G.E., op.cit., pp. 609 & 610.
- 65) This is a frequently used argument, both by Transkeians and foreigners. See Prof. M. Njisane, quoted by Barratt, C.J.A., op.cit., p. 52; Letlaka, T., op.cit., p. 3; Hahn, L., "The development of relations with African states and organisations", Paper presented at the SAIIA conference, op.cit., p. 5; Basson, J.D. du P., "The issues of independence and the politics of South Africa", Paper presented at the SAIIA conference, op.cit., pp. 2, 3 & 5 and Von der Ropp, K., "The Transkei within the African framework", in Prinsloo, D.S., op.cit., p. 125.
- 66) Matanzima, K.D., Independence, op.cit., p. 85.
- 67) See Race Relations News, Vol. 38, No. 7, July 1976, p. 4 and Mkele, N., "Transkei independence and political change", Paper presented at the SAIIA conference, op.cit., pp. 1-10.
- 68) Dugard, C.J.R., op.cit., p. 2, has suggested that, to obtain recognition, Transkei should initiate the following action immediately after independence:
1. Abolition of all racial laws inherited from South Africa.
 2. Abolition of all the repressive security laws inherited from South Africa and the introduction of Security Laws which more closely comply with accepted standards of justice.
 3. The introduction of a Bill of Rights in order to indicate the Transkei's commitment to the protection of human rights.
 4. The abolition of the South African Court as the highest Court of Appeal and the creation of a special Transkeian Court of Appeals.
 5. Refusal to act as a dumping-ground for unwanted Africans from the Republic.
 6. Refusal to accept as Transkeian nationals persons who have no genuine link with the Transkei - that is those thousands of Xhosa-speaking urban Africans who have never lived in the Transkei and who have never visited the Transkei."
- 69) Spence, J.E., "Detente", op.cit., p. 16.
- 70) The Times, 25/10/1976, quoted by Hill, C.R., op.cit., p. 1.
- 71) Norman, G.E., op.cit., pp. 624 & 645.
- 72) Although the South African Status of the Transkei Act, 1976, theoretically speaking cannot bind Parliament and could therefore be repealed, the principle that "power once conferred cannot be revoked" means that Parliament is no longer able to pass legislation for Transkei. (Booyesen, H., Wiechers, M. et al, op.cit., p. 1.)

- 73) Kirby, A., South African Bantustans: What "Independence" for the Transkei? (UN Centre against Apartheid, October 1976), p. 1.
- 74) See De Kieffer, D.E. & Hartquist, D.A., op.cit., pp. 451 & 452.
- 75) Matanzima, K.D., Independence, op.cit., p. 104.
- 76) It should be mentioned that there have been suggestions that Transkei has made progress towards recognition in Africa and that Nigeria was in the vanguard of a "new" approach to Transkei. Significantly, claims to this effect were made by two disgraced Britons in Transkei's official employment, viz. Mr. James Skinner (Rapport, 25/2/1979) and Mr. Humphry Berkeley (The Star, 31/8/1979).
- 77) See Letlaka, T., op.cit., p. 5. Reference can also be made to Mr. Koyana's reported statement that Transkei would be happy to accept a Cuban embassy if Cuba wanted to establish one. (Daily Dispatch, 8/6/1978.)
- 78) These contacts include trade, investment and foreign visits. Transkeians, using their country's passports, have been allowed entry into, among others, the United States, Britain, Switzerland, Taiwan, Turkey and states in the Middle and Far East. Botswana, Lesotho and Gabon are among the states which have refused to permit holders of Transkeian passports.
- 79) Sanders, A.J.G.M., op.cit., p. 364. This also raises the question of de facto and de jure recognition. According to Sanders, p. 361, the distinction between the two has, in contemporary international practice, lost its juridical basis and is a matter of "political form" only. De jure recognition amounts to "definite" recognition whereas de facto recognition is recognition "with reservation".
- 80) Quoted in Transkei's Challenge, op.cit., p. 15.
- 81) The Citizen, 23/10/1978.
- 82) See Nuus oor Afrika, No. 4, 19/5/1977 (Instituut vir Afrikanistiek, Potchefstroom University), p. 13.