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## Engagement without recognition: the limits of diplomatic interaction with contested states

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## **Engagement without Recognition: The Limits of Diplomatic Interaction with Contested States**

### **Abstract**

This article examines the extent to which states are able to interact at an official level with a contested or de facto state – a state that has unilaterally declared independence but is not a member of the United Nations – without being understood to have recognised it. This is an area of increasing interest and relevance to policy makers. As is shown, albeit with some significant provisos, legal theory and historic practice suggest that diplomatic engagement does not constitute recognition if there is no underlying intent to recognise. This means that there is a very high degree of latitude regarding the limits of state engagement with contested states, especially in bilateral contexts. Indeed, the level of engagement can even amount to recognition in all but name.

**Keywords:** recognition, secession, diplomacy, Cyprus, Kosovo, Abkhazia

### **Introduction**

In May 2014, Joe Biden became the first Vice-President of the United States to visit Cyprus in half a century. The trip was designed to support a high-profile US-led initiative to restart peace talks on the island. As part of his schedule, it was decided that he would visit the northern part of the island to meet the Turkish Cypriot leader, Dervis Eroglu. In announcing the move, the US Embassy emphasised that it did not amount to an ‘upgrading’ of the Turkish Cypriot self-proclaimed state.<sup>1</sup> Moreover, upon his arrival, Biden also pointedly stressed that his visit to the north would not constitute recognition of the Turkish Cypriot administration.<sup>2</sup> Nevertheless, his decision to cross the dividing line caused uproar amongst many Greek Cypriots, and was roundly criticised by several of the main political parties. As they saw it, this high level engagement with a senior Turkish Cypriot official necessarily enhanced the status of the Turkish Cypriot ‘pseudo-state’.<sup>3</sup> Although the meetings went ahead as planned, the visit became a notable example of a serious problem policy makers are increasingly facing: just how far is it possible to engage with states that are not recognised? And at what stage does such interaction amount to recognition?

The recognition of states is an area in that has traditionally been understudied in International Relations.<sup>4</sup> While the subject has been extensively analysed and debated in the field of

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<sup>1</sup> ‘Biden’s visit will not ‘upgrade the north’’, *Cyprus Mail*, 21 May 2014.

<sup>2</sup> ‘I look forward to meeting with the leaders of both communities; the leaders of the Greek Cypriot community tomorrow, and with the leader of the Turkish Cypriot community the following day. The United States -- I want to be clear about this -- recognizes only one legitimate government of the Republic of Cyprus, and my visit and meetings throughout the island will not change that. It is my personal position. It’s the position of the United States of America, and it’s the position of the entire world -- save one country.’ ‘Remarks by Vice President Joe Biden to the Press at Larnaca International Airport’, Office of the Press Secretary, White House, May 21, 2014.

<sup>3</sup> ‘Our View: Where Biden meets Eroglu of no real consequence’, *Cyprus Mail*, 21 May 2014.

<sup>4</sup> Pal Kolstø, ‘The Sustainability and Future of Unrecognized Quasi-States’, *Journal of Peace Research*, Volume 43, Number 6, 2006, pp.727. Recognition can refer to a number of different processes in international relations, such as the recognition of states or the recognition of governments. This paper concentrates on the concept of state recognition; that is the practice by which sovereign states chose formally to acknowledge and accept one another as equal entities within the international system. For more on differing forms of recognition, see Hersch Lauterpacht, *Recognition in International Law* (Cambridge: Cambridge University Press, 1947); Satyavrata Ramdas Patel,

international law, few IR scholars have tended to view it as being worthy of examination.<sup>5</sup> This is now starting to change. The question of recognition is becoming an increasingly important and interesting subject topic within the discipline. This is largely due to the growing number of contested states.<sup>6</sup> For example, in the mid-1980s, just one territory had unilaterally seceded and had gained recognition by a member of the United Nations: the 'Turkish Republic of Northern Cyprus' (TRNC), which had been recognised only by Turkey. Today, Kosovo, Abkhazia and South Ossetia have also seceded and subsequently achieved a greater or lesser degree of recognition from the 193 members of the UN.<sup>7</sup> Meanwhile, a number of other territories have declared independence and are actively seeking recognition. These include Transnistria,<sup>8</sup> Nagorno-Karabakh and Somaliland. Looking ahead, one can envisage other cases of contested states emerging in the years to come. One obvious example is the Kurdish Regional Government in northern Iraq.<sup>9</sup>

This has in turn given rise to a number of important practical issues. One of the key questions that has emerged is the extent to which states are able to engage in diplomatic activity with contested states without being understood to have recognised them as full and equal sovereign

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*Recognition in the Law of Nations* (Bombay: N.M. Tripathi, 1959); Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* (Oxford: Clarendon Press, 1998).

<sup>5</sup> As one observer put it, 'students of international relations...commonly regard recognition as a somewhat arid, even tedious, topic that is better left outside of their academic departments.' Mikulas Fabry, *Recognizing States: International Society and the Establishment of New States Since 1776* (Oxford: Oxford University Press, 2009), p.2.

<sup>6</sup> This work has opted to refer to them as 'contested states'. Deon Geldenhuys, *Contested States in World Politics* (Basingstoke: Palgrave Macmillan, 2009). This is favoured because it captures an important ambiguity in their nature. The contestation can refer to their status on the international stage or to whether they are even a state. See James Ker-Lindsay, *The Foreign Policy of Counter Secession: Preventing the Recognition of Contested States* (Oxford: Oxford University Press, 2012). However, many other terms have been adopted. Perhaps the most commonly used term is 'de facto state'. Scott Pegg, *International Society and the De Facto State* (Aldershot: Ashgate, 1999) However, this is rejected by legal theorists. As Crawford states, 'there is no such thing as a de facto state'. James Crawford, *The Creation of States in International Law*, 2<sup>nd</sup> Edition (Oxford: Oxford University Press, 2006), p.464. Likewise, other similar terms, such as 'para-states' and 'pseudo-states', are problematic. So too is 'quasi state', which was used by Pal Kolstø, 'The Sustainability and Future of Unrecognized Quasi-States', *Journal of Peace Research*, Volume 43, Number 6, 2006. In this case, the definitional problem is compounded as this term has been more widely used by scholars, after having first been coined by Robert Jackson, to refer to states that are recognised but have ceased to operate as a state; rather than territories that have the trappings of statehood, but are unrecognised. (As noted, 'The quasi-state is considered legitimate no matter how effective it is. Conversely, the de facto state is illegitimate no matter how effective it is.' Pegg, *International Society and the De Facto State*, p.5.) Another term is 'unrecognised states'. Nina Caspersen and Gareth Stansfield, *Unrecognized States in the International System* (Abingdon: Routledge, 2012). In this case, the term seems a little too imprecise, especially in the case of Kosovo, which has widespread recognition.

<sup>7</sup> These cases may be regarded as representing three key points along the spectrum of international recognition. In the case of the TRNC, only one state has recognised it and it is subject to a UN Security Council resolution that calls on states not to recognise it. With Abkhazia, there is no specific UN Security Council resolution prohibiting recognition, but there is a high degree of international condemnation of its secession and a very low level of recognition. In the case of Kosovo, there is no Security Council condemnation and a very high degree of international recognition.

<sup>8</sup> It has previously been suggested that Transnistria favoured its unrecognised status. (Dov Lynch, *Engaging Eurasia's Separatist States: Unresolved Conflicts and De Facto States* (Washington, DC: US Institute of Peace, 2004), p.89.) However, in April 2014 the Parliament of Transnistria officially asked Russia to recognise it as an independent and sovereign state. 'Moldova's Breakaway Region Asks Putin to Recognize Sovereignty', *Bloomberg*, 16 April 2014.

<sup>9</sup> For a recent study of this case see Gareth Stansfield, 'The Unravelling of the Post-First World War State System? The Kurdistan Region of Iraq and the Transformation of the Middle East', *International Affairs*, Volume 89, Number 2, 2014, pp.259-282.

actors in the international system?<sup>10</sup> The issue of ‘engagement without recognition’, as it has come to be known,<sup>11</sup> is crucial inasmuch as these contested states cannot simply be ignored. In some cases, there needs to be a process of communication in order to facilitate conflict resolution. In other cases, there may be issues that need to be discussed. Sometimes, a state may wish to have extensive diplomatic interaction with the breakaway territory, but cannot recognise it for certain foreign policy or domestic political reasons; such as the fear of antagonising an international partner or concern about an internal secessionist movement. In all these cases, the question arises as to whether, by engaging in diplomatic activity with the contested state, a state may in some way be seen to have recognised it?

Drawing primarily on the cases of Cyprus and Kosovo, but including insights from Abkhazia, this article will examine a number of forms of diplomatic interaction between a state and a contested state and provide some clarity on the boundaries of engagement without recognition. As will be shown, in those cases that do not involve the ‘parent’ or metropolitan state, as the state from which a territory has seceded is most usually known,<sup>12</sup> there is in fact a very high degree of latitude available to states in terms of their interaction with contested states. Indeed, in many ways states can interact with contested states in a manner that amounts to recognition in all but name.

### **Recognition in international law and politics**

Although it is widely understood by legal scholars that the objective condition of statehood is independent of recognition, the so-called declaratory school of thought on matters of recognition, recognition nevertheless matters. As has been said, recognition has ‘provided the *imprimatur* of statehood to seceding entities for over two hundred years.’<sup>13</sup> Therefore, while recognition does not make a state, it does serve to legitimise the state as a member of the wider international community. But it goes further than this. As Wilde has noted, recognition is not just about how states accept one another, it is also about how they define the entire

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<sup>10</sup> For these purposes, diplomacy is defined as ‘communication between officials designed to promote foreign policy either by formal agreement or tacit adjustment.’ G.R. Berridge, *Diplomacy: Theory and Practice*, fourth edition (Basingstoke: Palgrave Macmillan, 2009), p.1.

<sup>11</sup> The term ‘engagement without recognition’ has been used for at least ten years in the context of contested states. A call for ‘engagement without recognition’ was made at a Council of Europe sponsored conference in 2003. ‘Summary of Conclusions’, ‘Frozen conflicts in Europe, The Approach of Democratic Security: The Case of Transnistria’, Chisinau, 11-12 September 2003. In the aftermath of the 2008 Russian-Georgian War, the EU adopted the ‘Non-Recognition and Engagement Policy’ (NREP), which became widely known as ‘engagement without recognition’. Sabine Fischer, Seminar Report: The EU’s non-recognition and engagement policy towards Abkhazia and South Ossetia’, European Union Institute for Strategic Studies, Brussels, 1-2 December 2010. In the academic literature, the term first came to prominence in an article by Alexander Cooley and Lincoln A. Mitchell, “Engagement without Recognition: A New Strategy toward Abkhazia and Eurasia’s Unrecognized States”, *The Washington Quarterly*, Volume 33, Number 4, 2010.

<sup>12</sup> Although, the conditions referred to in this paper should equally apply to parent states, the situation is complicated by the fact that traditionally parent states have taken many years to recognise formally the independence of a seceding territory. This means that third party states have often taken a decision on whether to recognise a seceding territory on the behaviour, rather than actual statements, of the parent states. Lauterpacht, *The Recognition of States in International Law*. This necessarily creates a rather different interaction dynamic between parent and contested states that must be considered separately.

<sup>13</sup> John Dugard and David Raič, ‘The Role of Recognition in the Law and Practice of Secession’, in Marcelo G. Kohen (editor), *Secession: Internal Law Perspectives* (Cambridge: Cambridge University Press, 2006), p.94.

international system.<sup>14</sup> Perhaps the most important norm that has emerged is that states that have unilaterally seceded should not, as a general rule, be recognised.<sup>15</sup>

In most cases, an attempt at secession will amount to very little. Often it will never progress beyond an armed insurgency that fails to gain a serious foothold, such as the case of the PKK in Turkey. In other cases, a nascent state may emerge, but is subsequently defeated by military means; as happened in the cases of Biafra in Nigeria, the Republic of Serbian Krajina in Croatia, and Tamil Eelam in Sri Lanka. Occasionally, however, a seceding territory may secure its statehood. Sometimes, it may even receive some recognition, if only from an external patron.<sup>16</sup> In such cases, the 'contested state' that emerges cannot be completely ignored. By virtue of having achieved some degree of independent existence, even if largely reliant on a patron state, the contested state nevertheless becomes a formal actor in a process of conflict resolution. Although this process may be aimed at the eventual reunification of the contested state with the parent state, it still means that the existence of the contested state has to be acknowledged by external actors; even if formal recognition is out of the question. In other cases, where the idea of reunification may be perceived to be unrealistic, the unilateral act of secession nevertheless makes an act of formal recognition politically impossible for the state in question. In such cases, a process of legitimisation or 'normalisation' may occur in lieu of recognition.<sup>17</sup> In all such situations, however, the question arises of just how far a state can interact with the contested state without recognising it. Indeed, this is a question that is increasingly on the minds of policy makers.<sup>18</sup> In order to answer this question, one must first examine the nature of state recognition in international politics.

Most usually, the decision to recognise a state will be based on a legal consideration of whether a territory meets the criteria set out in the 1933 Montevideo Convention: namely does the entity in question have a defined territory, settled population, an effective form of governance and an ability to enter into foreign relations?<sup>19</sup> At the same time, the issue of whether the state in question has come about through the illegal use of force, or is truly an independent entity on the international stage, rather than just a puppet regime of another state, will also be taken into account.<sup>20</sup> More recently, other criteria have also started to be applied. For example, the European Union has laid out a number of human and minority rights norms that should be respected by a territory before it is recognised.<sup>21</sup> However, while the decision

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<sup>14</sup> Ralph Wilde, 'Recognition in International Law', Recognition of States: the Consequences of Recognition or Non-Recognition in UK and International Law, Summary of the International Law Discussion Group meeting held at Chatham House on 4 February 2010.

<sup>15</sup> Eiki Berg, 'Re-Examining Sovereignty Claims in Changing Territorialities: Reflections from 'Kosovo Syndrome'', *Geopolitics*, Volume 14, Number 2, 2009, pp.222. For a review of the evolution of recognition practices, see Fabry, *Recognizing States*.

<sup>16</sup> Geldenhuys, *Contested States in World Politics*, pp.25-26.

<sup>17</sup> For more on this see, Eiki Berg and Raul Toomla, 'Forms of Normalisation in the Quest for De Facto Statehood', *The International Spectator*, Volume 44, Number 4, 2009.

<sup>18</sup> This paper in fact arose from numerous discussions with officials who were unclear as to just how far states could interact with contested states.

<sup>19</sup> As Grant has noted, 'Since the Montevideo Convention of 1933, a baseline of prerequisites for statehood has been accepted widely though not unanimously.' Thomas D. Grant, *The Recognition of States: Law and Practice in Debate and Evolution* (Westport: Praeger, 1999), p.121.

<sup>20</sup> However, as Crawford points out, 'a new entity established under occupation might, if able to establish its independence vis-à-vis the occupant, become a State, subject to cessation of hostilities with recognition by the previous sovereign.' Crawford, *The Creation of States in International Law*, p.75.

<sup>21</sup> For example, in 1991, in its 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union', EU member states demanded that new states, inter alia, respect the provisions of the Charter of the United Nations, the Helsinki Final Act and the Charter of Paris, especially regarding the rule of law, democracy and human rights; guarantee the rights of ethnic and national groups and minorities in accordance; respect the inviolability of all frontiers, which can only be changed by peaceful means and by common agreement; accept all relevant commitments to security and regional

by a state to recognise a territory as a state is usually shaped by certain legal considerations, it is nevertheless widely understood that recognition remains a sovereign political decision.<sup>22</sup> Individual states decide who to recognise, when to do it, and for what reasons. Ultimately, the decision to recognise a territory can be made by a state according to any criteria it so wishes. Of course, in certain cases there may be very good reasons not to recognise a territory as a state. For instance, there are times when a decision has been taken by the international community not to recognise the state in question, most obviously through a UN Security Council resolution. A good example of this is the Turkish Republic of Northern Cyprus, which declared independence 1983.<sup>23</sup> However, even under such circumstances, states can still press ahead with recognition if they so wish; as Turkey did in the case of the TRNC. They may face a penalty for doing so, but there is nothing that can be done to force them to reverse or otherwise nullify their decision. An act of collective non-recognition carries moral weight. It cannot actually prevent a state from recognising a territory if it so wishes.

### Forms and methods of recognition

Regarding the actual act of recognition, there are in fact a variety of methods, modes and forms of state recognition.<sup>24</sup> At the more arcane end of the spectrum, there is the concept of recognition by conference. This is where a territory is granted recognition by virtue of a meeting of states to decide on its independence. The creation of the Republic of Cyprus, in 1960, is an example of this.<sup>25</sup> It is, however, extremely unusual in contemporary terms. Another form of recognition is by treaty. This occurs when a state signs an international agreement to which the state to be recognised is also a party. However, it should be stressed that entering into a multilateral treaty does not automatically entail recognition. For example, and this is the most widely cited case, the 1963 Nuclear Non-Proliferation Treaty included, inter alia, the United States and the German Democratic Republic (GDR, East Germany). Upon signing the agreement, the US Administration explicitly stated that this did not amount to recognition.<sup>26</sup> This raises an extremely important point concerning the question of intent, which will be discussed in more detail a little later.

In general, the most usual form of recognition is for a state to signal its decision directly through a bilateral process. This can be done in a number of ways.<sup>27</sup> For instance, and

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stability; and commit themselves to settling disputes by agreement, or through arbitration. Some of these ideas are discussed in Grant, *The Recognition of States*, pp.83-119. A more recent examination of these issues can be found in Jure Vidmar, *Democratic Statehood in International Law: The Emergence of New States in Post-Cold War Practice* (Oxford: Hart Publishing, 2013).

<sup>22</sup> As UN Secretariat legal advisors noted: 'while States may regard it as desirable to follow certain legal principles in according or withholding recognition, the practice of States shows that the act of recognition is still regarded as essentially a political decision, which each State decides in accordance with its own free appreciation of the situation.' Memorandum on the Legal Aspects of the Problem of Representation in the United Nations, Transmitted to the President of the Security Council by the Secretary-General (Lie), March 8, 1950. *United Nations Security Council Document S/1466*. Reprinted in *International Organization*, Volume 4, Issue 2, 1950, pp.356-360.

<sup>23</sup> UN Security Council Resolution 541, which, 'Calls upon all States not to recognize any Cypriot State other than the Republic of Cyprus.' Other prominent cases where calls were made for states to withhold recognition included Southern Rhodesia (UN Security Council Resolution 216), and South African Homeland (UN Security Council Resolutions 402 and 407).

<sup>24</sup> O'Brien and Goebel identify five general modes of recognition, which in turn encompass a range of specific methods of recognition. William V. O'Brien and Ulf H Goebel, 'United States Recognition Policy Towards the New Nations, in William V. O'Brien (editor), *The New Nations in International Law and Diplomacy* (London: Stevens and Sons, 1965), pp.112-113.

<sup>25</sup> Crawford, *The Creation of States in International Law*, p.28.

<sup>26</sup> President John F. Kennedy, News Conference 59, 1 August 1963.

<sup>27</sup> William V. O'Brien and Ulf H Goebel, 'United States Recognition Policy Towards the New Nations, in O'Brien (ed.), *The New Nations in International Law and Diplomacy*, pp.112-113.

commonly, this may take the form of an official statement, or even just a press release, issued by the foreign ministry of the recognising state announcing its decision.<sup>28</sup> Another option is to send a letter to the state being recognised announcing the decision. Related to this, but somewhat more indirectly, an official from the recognising state may write to an official of the territory being recognised using language that clearly indicates that it is now recognised as a state. For example, a letter addressed to the President of the Republic of Kosovo would signal recognition, even if the contents of the letter were on a matter unrelated to the decision to recognise the state. In addition, there are several other methods of bilateral recognition. For instance, the participation of an official delegation at an independence ceremony may be construed as recognition; although, as will be seen, this need not necessarily be the case. Yet another form of bilateral recognition can come in the form of the establishment of formal diplomatic relations. This may either involve the appointment of a resident or non-resident ambassador or a decision to upgrade a diplomatic official or mission. For example, what may have been a regional consulate is re-designated as an embassy.

While the concept of bilateral recognition may appear to be straightforward, the picture is confused by the fact that bilateral recognition can fall into two categories: explicit and implied recognition. The more usual of the two is explicit recognition. This entails some sort of formal act, of the type identified above, that can be definitively understood as recognition. By way of contrast, in the case of implied recognition, no formal declaration of recognition is made. Rather, the way in which a state acts towards a territory suggests whether it recognises or not. In other words, does it treat the territory in question as a state? As might be expected, there is considerable room for confusion to arise. While the decision to open an embassy in the territory in question, for example, would leave little room for doubt about its policy, it may be very difficult to discern whether recognition has occurred if no such obvious step is taken. In cases of contested statehood, it is likely that any interaction, no matter how seemingly insignificant, is likely to give rise to intense speculation. Perhaps fortunately, as an official policy, implied recognition is extremely unusual.<sup>29</sup> Few states have a policy of implied recognition. One of the few that does – or did – is New Zealand. Following Kosovo's declaration of independence, the Prime Minister of New Zealand, Helen Clark, issued the following statement: 'It's never been the New Zealand Government's position to recognise in such circumstances. We will neither recognise nor not recognise. Over time the way in which we deal with those who govern in the territory will I suppose imply whether there is recognition but we are not intending to make a formal statement.'<sup>30</sup> However, in November 2009, New Zealand eventually announced that it had officially recognised Kosovo.<sup>31</sup>

In reality, the distinction between explicit and implied recognition may not be as clear cut as may be supposed. The room for apparent confusion and misinterpretation appears to have grown in light of the tendency of states to conflate the officially separate issues of recognition and the establishment of diplomatic relations.<sup>32</sup> As noted above, one of the forms of

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<sup>28</sup> The most recent example of this was Sweden's decision to recognise the State of Palestine. 'Sweden recognises Palestine and increases aid', Press Release, Ministry of Foreign Affairs, 30 October 2014.

<sup>29</sup> As noted, 'the doctrine of implied recognition has been more conspicuous in the writings of authors than the practice of states.' Lauterpacht, *Recognition in International Law*, p.370.

<sup>30</sup> 'NZ on Fence over Kosovo Independence', *Stuff.co.nz*, 18 February 2008.

<sup>31</sup> New Zealand sent a letter to the Kosovo Foreign Minister informing him of recognition. 'New Zealand Recognises Kosovo', *Balkan Insight*, 9 November 2009. For an analysis of New Zealand's policy, see Stefan Talmon, 'New Zealand's Policy of Implied Recognition of States: One Step Ahead or Falling Behind?', *The New Zealand Yearbook of International Law*, Volume 7, 2009, pp.3-20.

<sup>32</sup> 'It is common, though not universal practice, for the government of a State to issue a formal statement on recognizing another—usually newly established—State and such a statement may offer to establish diplomatic relations with the new State or be followed shortly by such an offer. Sometimes however the stages are merged so that the offer to establish relations, or a jointly released statement by both States of their intention to establish relations, in effect constitutes implied recognition by the old State of the new one. In earlier centuries it was common for States to conclude a treaty formally setting

recognition is the establishment of an embassy. In those instances where a decision is made to establish a formal diplomatic presence, in the form of an embassy and a resident ambassador, in the territory in question there is no room for confusion. However, states often choose not to establish formal diplomatic presences on the ground in many states. In such instances, diplomatic relations may be conducted in a variety of other ways, such as, ‘diplomatic contacts in the capital of a third State or in the margins of international organizations—in particular the United Nations; [or] occasional missions sent to discuss specific issues of mutual interest.’<sup>33</sup> This would appear to give rise to questions as to whether interactions between officials from a state and contested state, where there is no formal diplomatic presence on the ground, could be indicative of recognition. If the establishment of an embassy is indicative of recognition, then one could ask whether the interaction of officials, where no embassy exists, could also potentially be read as indicating recognition.

Aside from bilateral recognition, the other major form of recognition is collective recognition. There are two types of this. Again, one is relatively straightforward. The other is not. In the first instance there is what might be called ‘direct collective recognition’. Most usually, this occurs when a group of states, perhaps acting within the bounds of an existing international body, take a joint decision to recognise a state. Importantly, it must be stressed that it is not the organisation that recognises the state. According to international law, only states can recognise states. An international organisation, such as the United Nations, cannot recognise a state;<sup>34</sup> even if membership of an international organisation can greatly enhance the wider acceptance of a territory’s claim to statehood. In such cases, a group of states may issue a joint announcement indicating that they have all recognised the territory as an independent state. The most recent example of this was the European Union’s statement concerning South Sudan, in May 2011. In such cases, there is little room for ambiguity. A state agrees to the process of collective recognition, and then makes it clear that it has done so, or it does not agree and this is made known. This can clearly be seen by contrasting the EU statement on South Sudan, which made individual statements of recognition by the 27 members unnecessary (although, as noted already, some states did take extra steps that could be read as recognition), with Kosovo where a joint statement was released that signalled that there was no uniform opinion and that each state would have to make up its own mind, thereby necessitating individual statements or acts of recognition from members. However, such processes of direct collective recognition still tend to be quite unusual and can be considered to be relatively underdeveloped in international law.<sup>35</sup>

A second method of collective recognition can occur when a territory is admitted into an organisation that is composed of states. This is a process that has been termed ‘indirect collective recognition’.<sup>36</sup> In such cases, admission into the organisation is necessarily viewed as recognition of its statehood by the other members.<sup>37</sup> This method of recognition has

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out the right to send and receive diplomatic mission, but this practice is now obsolete.’ ‘Recognition of States and Establishment of Diplomatic Relations’, Sir Ivor Roberts (editor), *Satow’s Diplomatic Practice* (sixth edition) (Oxford: Oxford University Press, 2009), p.72.

<sup>33</sup> ‘Where Permanent Missions are not Established between Two States’, Roberts, *Satow’s Diplomatic Practice*, p.76.

<sup>34</sup> As one former UN official stated, ‘as a matter of international law, neither the UN nor any other international organization can give legal validity to the creation of a state. The UN is not in the recognition business; only states can recognise states.’ Alvaro de Soto cited by Bernard Avishai, ‘What The UN Vote Means – And Does Not’, *Talking Points Memo*, 11 July 2011.

<sup>35</sup> Although, as Grant notes, ‘the litany of failed efforts at collective response raises doubts whether collectivization and institutionalization are more than embryonic features of recognition.’ Thomas D. Grant, *The Recognition of States*, p.133.

<sup>36</sup> John Dugard and David Raič, ‘The Role of Recognition in the Law and Practice of Secession’, in Marcelo G. Kohen (editor), *Secession: Internal Law Perspectives* (Cambridge: Cambridge University Press, 2006), p.97.

<sup>37</sup> Crawford, *The Creation of States in International Law*, p.545.



become increasingly significant. There are now a whole host of state based regional and international organisations that a territory can aspire to join – each of which can, in turn, confer legitimacy and thus help it to gain recognition more widely.<sup>38</sup> But even here there is room for confusion. There are times when states have been admitted into organisations even though some members may not recognise them.<sup>39</sup> This has occurred on numerous occasions in the case of the United Nations.<sup>40</sup> However, one could argue that it is not just admittance into an organisation of states that could be construed as recognition. Even participation in meetings could be seen in such terms in circumstances where the matter of debate is within the realm of interstate issues, rather than a meeting to discuss the specifics of the situation of the contested state. As will be seen, this is also an important factor, more so than bilateral interaction, in the debate concerning engagement without recognition.

### **The importance of intent in recognition**

In surveying the question of recognition, it would therefore appear that there is ample room for confusion when it comes to understanding whether a state has recognised a territory. In addition to there being several different methods of recognition, such as bilateral recognition and collective recognition, there are numerous ways in which recognition can be announced. In some cases, the chance of misreading the situation is very limited. For example, recognition by conference is not only exceedingly rare, it also requires acceptance on the part of the state in question of the end goal. If it does not accept the end outcome, then it needs to make its position absolutely clear or else be seen to have endorsed the outcome of the conference. There is little room for confusion. Similarly, traditional collective recognition presents opportunity for ambiguity inasmuch as there is a joint statement of recognition, or an action that clarifies that a particular state is not a party to the decision. Again, the possibility of a misread signal is minimal. On the other hand, there are areas where the situation is less clear cut. Certainly, while most states may have a policy of explicit recognition, and will thus openly signal their decision to recognise a state at some point, one can nevertheless identify forms of bilateral diplomatic engagement that may, under certain circumstances, be construed as recognition by external actors. Moreover, given the apparent ambiguity that exists between explicit and implied recognition, and the increasing move to conflate recognition and the establishment of diplomatic relations, it may well appear as if there is considerable room for misunderstandings when it comes to understanding whether a state has or has not recognised a contested territory. Likewise, in a multilateral environment, the acceptance by a state of the membership or participation of a contested state in an organisation that is usually understood to be reserved for states might also be read by outside parties as signalling recognition.

This brings us to perhaps the most important element of all when it comes to matters of recognition: the question of intent. As the eminent legal scholar, Sir Hersch Lauterpacht noted, ‘recognition is primarily and essentially a matter of intention. Intention cannot be replaced by questionable inferences from conduct. Such inferences are particularly inappropriate when the general attitude of the state in question points to its continued determination to deny recognition.’<sup>41</sup> This view has been echoed by states themselves. For example, as President Kennedy stated, again referring to the 1963 Nuclear Test Ban Treaty,

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<sup>38</sup> An African Union official noted that, although recognition is ultimately up to individual states, a decision to admit a state into the organisation will, ‘almost certainly impact on the position of its members.’ Letter from Ben M. Kioko, Head of Legal Division of the Organisation of African Unity (OAU), cited in Grant, *The Recognition of States*, p.24.

<sup>39</sup> Crawford, *The Creation of States in International Law*, p.545.

<sup>40</sup> For an overview of the evolution of admission procedures to the UN, see Thomas D. Grant, *Admission to the United Nations: Charter 4 and the Rise of Universal Organization* (Leiden: Martinus Hijhoff, 2009).

<sup>41</sup> Lauterpacht, *Recognition in International Law*, p.371.

The fact of the matter is that we signed a part of a multilateral treaty on Laos which the Red Chinese also signed, but we do not recognize the Red Chinese regime. This is a matter of intent. Diplomatic procedure, custom, and law provides that recognition is a matter of intent. We do not intend to recognize the East German regime and, therefore, the language which is in the treaty was part of the treaty when it was tabled more than a year ago, and it has been before us for a year and it does not provide for recognition of East Germany and we will not recognize it.<sup>42</sup>

Both in theoretical terms as much as in practical terms, therefore, recognition is understood to have occurred only when a state openly signals that it has occurred. More to the point, if at any stage a state signals that it maintains a policy of not having recognised a contested state then it must be understood that recognition has not taken place. (Crucially, this does not apply to situations where a state has already recognised a territory as sovereign and independent. In such cases, a wholly different set of factors arises that are beyond the scope of this article.) As will be seen, this crucial element of intent has important consequences when it comes to the interaction of states with contested states, both at a bilateral and at a multilateral level.

### **Diplomatic engagement with contested states**

Perhaps the most important question relating to diplomatic engagement without recognition concerns the interaction between officials. In reality, this is in fact an area where there is generally seen to be a very high degree of latitude. While states may often wish to avoid contacts with officials from a contested state for fear of giving the wrong impression about their position regarding the territory in question, a degree of interaction is sometimes necessary or useful. For example, some engagement may take place in order to facilitate a negotiation process between two sides. In this case, there is little reason for a visit to be read as recognition. Indeed, it seems to be widely accepted – though seemingly never formally enunciated – that meetings with officials of a contested state, no matter how senior, in the framework of a peace process does not amount to recognition. Nevertheless, steps are often taken to ensure that there is no room for ambiguity. One obvious method is to avoid the use of any titles that could suggest recognition. For example, in the case of engagement with Northern Cyprus, the title President of the TRNC is officially avoided. If it is used, it is always done within quotation marks: “Prime Minister of the TRNC”.<sup>43</sup> Most commonly, the incumbent is referred to as the leader of the Turkish Cypriot community.<sup>44</sup>

Another method is to avoid meeting with an official at a location that is indicative of statehood – such as the prime minister’s office or at a presidential palace. Instead, meetings are often held at other venues, such as the headquarters of a political party.<sup>45</sup> Having said this, some meetings have occurred at official premises. A good case in point was the 2007 meeting between the British Foreign Secretary, Jack Straw, and the Mehmet Ali Talat, the Turkish Cypriot leader, at the Presidential Palace in the northern part of Nicosia. This decision was strongly condemned by the Cypriot Government, which said that, ‘Mr Straw should not meet

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<sup>42</sup> President John F. Kennedy, News Conference 59, 1 August 1963.

<sup>43</sup> Scott Pegg and Eiki Berg, ‘Lost and Found: The WikiLeaks of De Facto State–Great Power Relations’, *International Studies Perspectives*, 2014 [Early view].

<sup>44</sup> See, for example, ‘Foreign Minister Alexander Stubb to meet the leader of the Turkish Cypriot community Mehmet Ali Talat’, Press release 165/2009, Ministry of Foreign Affairs of Finland, 16 June 2009; ‘Foreign Minister Rupel meets with the leader of the Turkish Cypriot community, Mehmet Ali Talat’, Ministry of Foreign Affairs, Republic of Slovenia, 27 May 2008;

<sup>45</sup> For example, when member of the UK House of Commons Foreign Affairs Committee met with Ferdi Soyer, ‘Prime Minister of the Turkish Republic of Northern Cyprus’, in 2009, they did so at the CTP (Republican Turkish Party) headquarters. ‘Appendix: Visit programme’, ‘Visit to Cyprus’, House of Commons Foreign Affairs Committee, Third Report, Session 2008–2009, 6 February 2009.

Mr Talat in buildings which had the “trappings of state”<sup>46</sup> and criticised any steps to ‘upgrade’ the Turkish Cypriot administration or change the ‘practice of previous years’.<sup>47</sup> As a result, the then President of Cyprus, Tassos Papadopoulos, refused to meet Straw.<sup>48</sup> However, the Foreign and Commonwealth Office emphasised that the meeting was being held at the ‘office of the Turkish Cypriot leader’.<sup>49</sup>

A greater problem relates to any decision to meet with an official from a contested state abroad or welcome them to their country. While such meetings may also be part of a general process of conflict resolution, in some cases they can be altogether more symbolic. A good example was the meeting between Mehmet Ali Talat, the President of the TRNC, and the US Secretary of State, Colin Powell, at the United Nations in New York soon after the 2004 reunification referendum in Cyprus.<sup>50</sup> In the days before the meeting, the State Department clearly noted that Talat was being met as leader of the Turkish Cypriots;<sup>51</sup> rather than as President of the TRNC. Nevertheless, coming so soon after the Turkish Cypriots had voted in favour of the UN plan for reunification, it was naturally seen as some form of reward for the Turkish Cypriots and as a punishment for the Greek Cypriots, who had voted against the Plan. For this reason, the meeting was strongly opposed by the Cyprus Government, which saw it as important step in terms of upgrading the status of the Turkish Cypriots.<sup>52</sup> No one, however, interpreted the meeting as indicative of recognition. Again, the meetings were seen to have occurred within the broader context reunification efforts.

While meeting with the most senior leaders of a contested state often poses few problems as this can be read in terms of a peace process, although obviously discussions on other matters could be potentially problematic, contacts between lower level officials may actually cause greater problems. For the most part, contacts with other officials with responsibility for administering areas that are deemed properly to fall under the competence of the parent state are avoided. Thus, for example, in the case of Cyprus, the fact that there is only recognised state, and one recognised administration, means that meetings with the Turkish Cypriot ‘Minister of Agriculture’ are generally avoided. Although on some issues where there is a perceived need to interact with a contested state for security reasons – such as combating organised crime or terrorism – meetings do take place, sometimes on a regular basis.<sup>53</sup> Nevertheless, in some instances, such meetings raise no specific problems. Kosovo is a case in point. Under UN Resolution 1244, which established a UN Administration in Kosovo and the Provisional Institutions of Self-Government (PISG), a wide range of ministerial portfolios were created. Although the Government of Kosovo claims that these PISG posts became obsolete with the declaration of independence, in February 2008, Serbia still maintains that they are in force and frames any meetings with such officials in this context.<sup>54</sup> In such instances, the venue of the meeting and even the use of titles, is unproblematic. Even

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<sup>46</sup> ‘Protests mar Straw Cyprus visit’, *BBC News*, 25 January 2006.

<sup>47</sup> ‘Recent Developments: 2006’ Press and Information Office, Republic of Cyprus. <  
<http://www.moi.gov.cy/moi/pio/pio.nsf/6645bc8e70e73e2cc2257076004d01c1/5f2c3c733a27182dc2257838003bae7d?OpenDocument>> (Last accessed 21 May 2013)

<sup>48</sup> ‘Protests mar Straw Cyprus visit’, *BBC News*, 25 January 2006.

<sup>49</sup> ‘Straw chooses Talat over Tassos’, *Cyprus Mail*, 19 January 2006.

<sup>50</sup> ‘Powell to Meet with Turkish Cypriot Leader’, *Associated Press*, 1 May 2004.

<sup>51</sup> ‘Secretary Powell to Meet Mehmet Ali Talat (Taken Question’, Taken Questions, Office of the Spokesman, State Department, Washington, DC, April 30, 2004.

<sup>52</sup> ‘Talat hails ‘positive’ US response’, *Cyprus Mail*, 5 May 2004. Matters were not helped by the fact that, during the meeting, the Turkish Cypriot leader was assured that the US would be looking to reward the Turkish Cypriots with measures to ‘limit their isolation’.

<sup>53</sup> Turkish Cypriot official, comments to the author, June 2013. Former British diplomat, comments to the author, July 2013. Scott Pegg and Eiki Berg, ‘Lost and Found: The WikiLeaks of De Facto State–Great Power Relations’, *International Studies Perspectives*, 2014 [Early view], p.15.

<sup>54</sup> In official communication, the Serbian Government still refers to the Provisional Institutions of Self-Government in Kosovo.

Belgrade seems happy to use the terms Prime Minister and President, albeit officially framed as Prime Minister of the Provisional Institutions of Self-Government, when referring to officials from Kosovo.<sup>55</sup> This in turn allows other countries to follow suit. As a result, even states that do not recognise Kosovo are left with few difficulties in terms of meeting senior political figures and officials, and using official titles. For example, pictures of Miroslav Lajcak, the Foreign Minister of Slovakia having discussions with Hashim Thaci, the Prime Minister of Kosovo, on the sidelines of an international security conference organised in Slovenia, in September 2012, did not raise any particular questions.<sup>56</sup>

The one official post that presents a problem in almost all cases is the foreign minister. This is because a minister of foreign affairs, and by extension officials attached to a ministry of foreign affairs, is specifically entrusted with ‘responsibility for the conduct of the government of the State’s diplomatic activities; representation of that government on interstate negotiations and intergovernmental meetings’.<sup>57</sup> Thus there is often a reluctance to engage with anyone attached to a foreign ministry. However, such contacts have been known to occur. In the case of Cyprus, there has traditionally been very little contact between foreign officials and the foreign minister. And yet this reticence appears to have eased following the appointment of Ozdil Nami, a known moderate and long-standing supporter of reunification, to the post in September 2013. For example, in January 2014, an ambassador of a Nordic state tweeted a photo of himself and two other Nordic ambassadors meeting with Nami.<sup>58</sup> In March 2014, Nami travelled to Washington, where he had meetings with State Department and White House officials, the first Turkish Cypriot foreign minister to do so.<sup>59</sup> However, by mid-2014 it was clear that the Cypriot Government was starting to become concerned about such meetings. Following a lunch between Nami and seven EU ambassadors, the Cypriot Government issued a stern message calling on diplomats based in Cyprus to, ‘exercise extreme caution so that their contacts do not legitimise the breakaway state in the north.’<sup>60</sup> Nicosia was also highly critical of a ‘private meeting’ that took place between Nami and the British Minister for Europe, David Lidington, at the House of Commons, in September 2014; even though the Foreign Office issued a statement emphasising that, ‘We do not recognise the so-called ‘Turkish Republic of Northern Cyprus’. As such, we do not recognise the title of ‘minister’ other than for members of the government of the Republic of Cyprus.’<sup>61</sup>

In the case of Kosovo, there are also many examples of engagement without recognition in the case of the foreign minister. This is seen particularly in the case of four of the five EU members that do not recognise Kosovo.<sup>62</sup> For example, in December 2012, Kosovo Foreign

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<sup>55</sup> For example, a press release covering the visit by the political director of the Foreign Ministry to Pristina for talks with Kosovo Albanian officials, notes that he met with, ‘Kosovo Deputy Prime Minister Hajredin Kuci.’ ‘Resolution of concrete problems priority of Belgrade, Pristina talks’, Official Website, Serbian Government, 11 May 2011.

<sup>56</sup> ‘PM Thaci with FM Lajcak at [#BledStrategicForum2012 #Kosovo #Slovakia pic.twitter.com/naa4qmpZ](#)’, Tweet by @heroinatbp (Heroína Telaku, Official serving at the Kosovo Ministry of Foreign Affairs), 3 September 2012. (Last accessed 17 April 2014)

<sup>57</sup> ‘The Minister of Foreign Affairs’, Sir Ivor Roberts (editor), *Satow’s Diplomatic Practice* (sixth edition) (Oxford: Oxford University Press, 2009), p.184.

<sup>58</sup> ‘Nordic lunch & an always excellent & honest discussion w Mr [@NamiOzdil](#). [#CyProb @FinlandinCyprus @SwedeninCyprus pic.twitter.com/7VsQJDggEx](#)’, Tweet by @caskly (Casper Klynge, Ambassador of Denmark to Cyprus), 18 January 2014. (Last accessed 17 April 2014.)

<sup>59</sup> ‘FM Özdil Nami is continuing his contacts, Washington’, KP Daily News, 13 March 2014.

<sup>60</sup> ‘State Reprimand for Errant Ambassadors’, *Cyprus Mail*, 1 July 2014.

<sup>61</sup> ‘Foreign Ministry Slams Britain over Nami Contacts’, *Cyprus Mail*, 9 September 2014.

<sup>62</sup> For more on the positions of the five EU non-recognisers see Kosovo Foundation for Open Society and British Council, ‘Kosovo Calling: International Conference to Launch Position Papers on Kosovo’s Relation with EU and Regional Non-recognising Countries, April 2012. See also Katarina Lezova, ‘The Notion of Kosovo as a Precedent and the Impact of the Hungarian Minority Issue on Slovakia’s

Minister, Enver Hoxhaj, was invited to speak by two of Slovakia's leading think tanks.<sup>63</sup> Although officials from the Slovak Ministry of Foreign Affairs were present,<sup>64</sup> the trip raised no questions about the country's position concerning the recognition of Kosovo as the Foreign Ministry insisted that it was a 'private visit'. Even a private dinner between Hoxhaj and Lajcak was not deemed problematic as it took place outside of the Foreign Ministry.<sup>65</sup> As the Ministry noted, Lajcak, 'has privately met representatives of Kosovo many times'.<sup>66</sup> But without doubt the most significant example of engagement without recognition relates to the behaviour of Greece, which has in fact maintained very cordial relations with the authorities in Pristina ever since Kosovo declared independence.<sup>67</sup> In March 2013, Hoxhaj travelled to Athens where he met with the Greek Foreign Minister, Dimitris Avramopoulos, at the Foreign Ministry. Although the press release issued at the time of the meeting insisted that Greece maintained its position regarding the non-recognition of Kosovo, it nevertheless referred to the minister by his official title: Foreign Minister of Kosovo.<sup>68</sup> (Since then, the Greek Foreign Ministry routinely refers to Hoxhaj by his official title.<sup>69</sup>) Indeed, this could perhaps represent the very limit of diplomatic engagement without recognition. It is hard to see how much further a country could go without actually recognising a contested state.

If the case of Greek engagement with the Kosovo foreign minister represents the furthest extent of engagement without recognition, perhaps the most unexpected example came in September 2013, when Ioannis Cassoulides, the foreign minister of the Cyprus, was pictured having breakfast with Hoxhaj and Prime Minister Thaci of Kosovo on the margins of the UN General Assembly meeting in New York.<sup>70</sup> It was later confirmed to the author that the photograph had been taken with the permission of the Cypriot Government and that this was part of a new policy whereby, while Cyprus would not recognise Kosovo, it would not stand in the way of its EU integration.<sup>71</sup> This decision is perhaps even more extraordinary when one

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Policy towards Kosovo's Independence', *Europe-Asia Studies*, Volume 65, Issue 5, 2013, pp.965-991; Spyros Economides and James Ker-Lindsay, 'Forging EU Foreign Policy Unity from Diversity: The 'Unique Case' of the Kosovo Status Talks', *European Foreign Affairs Review*, Volume 15, Number 4, 2010, pp.495-510.

<sup>63</sup> 'Kosovo's foreign minister to unofficially visit Slovakia', *The Slovak Spectator*, 4 December 2012.

<sup>64</sup> This was confirmed to the author by a representative of CEPI, June 2013.

<sup>65</sup> This was confirmed to the author by a representative of CEPI, June 2013.

<sup>66</sup> 'Kosovo's foreign minister to unofficially visit Slovakia', *The Slovak Spectator*, 4 December 2012.

<sup>67</sup> As a former senior official from Greece explained to the author, in October 2011, while Athens refuses to recognise Kosovo, it has decided to engage as much as possible with Pristina. The Greek representative in Pristina meets with government officials on a regular basis. Although Belgrade does not like this, it accepts it. Officials in Pristina also note that the two enjoy 'very good relations', even though there is no recognition. 'Push for Diplomatic Recognition Creates Tricky Precedents, Strange Bedfellows', *The Washington Diplomat*, 22 November 2010.

<sup>68</sup> 'Statements of Foreign Minister Avramopoulos and E. Hoxhaj, the Foreign Minister of Kosovo, following their meeting', Hellenic Republic, Ministry of Foreign Affairs, 8 March 2013. < <http://www.mfa.gr/en/current-affairs/top-story/statements-of-foreign-minister-avramopoulos-and-hoxhaj-the-foreign-minister-of-kosovo-following-their-meeting.html> > (Last accessed 9 September 2013)

<sup>69</sup> For example, 'Deputy Prime Minister and Foreign Minister Venizelos meets with Kosovo Foreign Minister E. Hoxhaj', Ministry of Foreign Affairs, Hellenic Republic, 10 February 2014.

<sup>70</sup> 'PM Thaci is having a breakfast with MFA of Cyprus, Kasoulides #UN #NYC @pmkosovo @Enver\_Hoxhaj pic.twitter.com/Hx9EoB1BSH', Tweet by @AbelardTahiri (Abelard Tahiri, Chief of Staff to Prime Minister Thaci), 24 September 2013 (Last accessed, 17 April 2014).

<sup>71</sup> Cypriot official, comments to the author, January 2014. The official explained that the decision had been made in reflection of the reality of Kosovo's growing recognition on the international stage and the wish on the part of Nicosia not to be seen to be 'difficult' over Kosovo given that 23 of the 28 members of the EU had recognised Kosovo and that, apart from Spain, the other non-recognisers – Greece, Romania and Slovakia – were all adopting increasingly moderate positions.

considers that it may well undermine the ability of Cyprus in future to call upon other states not to meet with Turkish Cypriot officials.<sup>72</sup>

While contacts between officials from a state and a contested state have tended to be the focus of most attention, other issues also need to be considered. For instance, there is also the question of the significance of the establishment of a permanent diplomatic mission in a contested state. As already noted, the establishment of an embassy, or the appointment of an ambassador, either resident or non-resident, is understood to constitute recognition. However, there are other ways in which formal contacts can be maintained. As has been noted, states have increasingly utilised the concept of the representative or liaison office to conduct business with a state or territory that they are either unwilling or unable to recognise.<sup>73</sup> In some cases, such as the liaison offices established between the United States and the People's Republic of China in the early 1970s before the US switched its recognition away from Taiwan, these can amount to embassies in all but name.<sup>74</sup>

In the case of Abkhazia, no country, apart from those that have recognised it, maintains an informal presence on the territory. Almost all diplomatic interaction is handled from the embassies in Tblisi or via missions travelling from Georgia into Abkhazia. For the most part, the same situation exists in the TRNC. However, a number of countries, including the United States, Britain and Germany, maintain offices, sometimes termed 'information offices' in north Nicosia. In all cases, these are formally attached to the accredited embassies to the Republic of Cyprus and do not have official interaction with the TRNC authorities. Instead, their tasks tend to be limited to providing consular services to Turkish Cypriots and to their own nationals living in the TRNC.<sup>75</sup> Having said this, officials from the embassies, including the ambassador, will meet with Turkish Cypriot officials. Meanwhile, contested states will often seek to establish their own liaison offices in foreign capitals. For instance, the TRNC maintains an office in London as well as various other capitals.<sup>76</sup> However, these are purely informal missions. They are not recognised by the country concerned and the members of staff serving in the office do not hold diplomatic status, unless holding it by virtue of being accredited to an embassy of a recognised state, such as Turkey.

Yet again, the situation is rather different in the case of Kosovo, where a number of countries have established formal diplomatic presences. Under the period of UN administration (1999-2008) such missions posed relatively little problem as Kosovo was still officially regarded as being a part of Yugoslavia, and then Serbia, but was under UN administration, which required separate diplomatic representation. However, following the declaration of independence, the situation changed. In many cases, the missions were converted to embassies following a decision on the part of the state in question to recognise Kosovo's statehood. However, a number of countries that did not recognise Kosovo maintained a formal diplomatic presence in Pristina. In such cases, the ongoing presence of a mission is certainly not indicative of recognition, but merely serves as a mechanism for observing the situation on the ground. For example, Russia maintains a liaison office, and a liaison officer, in Pristina. In other cases, the mission serves as an embassy in all but name. Again, Greece is a good example. Its representative in Pristina maintains exceptionally close relations with officials within the

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<sup>72</sup> James Ker-Lindsay, 'There is a good case to be made for Cyprus pressing ahead with full recognition of Kosovo's independence', *Europp Blog*, London School of Economics and Political Science, 3 October 2013.

<sup>73</sup> G.R.Berridge, *Diplomacy: Theory and Practice*, fourth edition (Basingstoke: Palgrave Macmillan, 2009), pp.218-219)

<sup>74</sup> Berridge, *Diplomacy*, p.219.

<sup>75</sup> See for example, the booklet on the Turkish Cypriot legal system: 'Information for British Nationals Imprisoned and Detained in the North of Cyprus', British High Commission, October 2011.

<sup>76</sup> The most recent such office to be opened was in Budapest, Hungary, in October 2014. 'TRNC Representative Office opens in Hungary', Ministry of Foreign Affairs, Turkish Republic of Northern Cyprus, 17 October 2014.



government. At the same time, the Greek Government has also taken the step of allowing Pristina to establish an official trade office in Athens.<sup>77</sup>

One last area to consider in terms of bilateral recognition is the presence of officials at ceremonies that are indicative of statehood. While attendance at an independence ceremony is understood to be one method of indicating recognition, it need not always be the case that it is. For example, the decision to terminate the international supervision of Kosovo's independence, in October 2012, was accompanied by a ceremony at the Kosovo Parliament. Attending the event was the Russian diplomatic representative in Pristina. This led some to speculate whether Russia's position on Kosovo's statehood might in fact be changing.<sup>78</sup> However, the Russian Ministry of Foreign Affairs insisted that there had been no change in its position.<sup>79</sup> The representative had been there to observe a specific political development of considerable significance. Again, this was sufficient to put to rest claims that participation in an official event linked with independence could be construed as recognition as there was clearly no intent to recognise Kosovo.

Finally, it is important to consider the question of diplomatic engagement in multilateral contexts. While meetings with officials from contested states can be justified within the context of a wider peace process, and thus can be relatively easily presented as not constituting recognition, a much greater problem relates to the interaction of officials at external multilateral events. This is due to the fact that such meetings are generally understood to be indicative of statehood. As noted earlier, indirect collective recognition is emerging as a major source of potential confusion in international politics. Such events range from high-level summits between heads of state through to relatively low level meetings of officials. In such instances, there is a real concern amongst non-recognising states that a decision to participate could be construed as recognition of the contested state, or at the very least an unacceptable degree of legitimisation. In some circumstances, where the legality of the state is fundamentally opposed by the international community, as in the case of the TRNC, the question of engagement without recognition in a multilateral context never arises. Collectively, states do not want to confer any formal sovereignty on a contested state by including them in an event that is indicative of statehood. This therefore saves individual states from having to make a decision. For example a very high level meeting between the European Union and the Organisation of the Islamic Conference (OIC), as it was then known, was cancelled after the host country, Turkey, attempted to ensure the participation of the

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<sup>77</sup> Senior Greek diplomat, comment to the author, November 2012. This was officially announced in March 2013, when Kosovo Foreign Minister Enver Hoxhaj visited Athens. As the Greek Foreign Minister noted: 'In order to strengthen the economic and trade relations between Athens and Pristina, we decided on the opening of a Kosovo Commercial Affairs Office in Greece. This decision does not impact Greece's position on the status, but it sends a clear message that development is a key tool and catalyst, I would say, for peace.' 'Statements of Foreign Minister Avramopoulos and E. Hoxhaj, the Foreign Minister of Kosovo, following their meeting', Hellenic Republic, Ministry of Foreign Affairs, 8 March 2013. < <http://www.mfa.gr/en/current-affairs/top-story/statements-of-foreign-minister-avramopoulos-and-hoxhaj-the-foreign-minister-of-kosovo-following-their-meeting.html> >

<sup>78</sup> As *The Economist* noted, 'Russia's top diplomat in Kosovo, who because Russia does not recognise Kosovo's independence, never sets foot in Kosovo government buildings was in parliament yesterday, along with others, for the speeches celebrating the end of "supervised independence". Odd.' 'Kosovo and Independence: Another step', *The Economist*, 13 September 2012.

<sup>79</sup> As the Russian Foreign Ministry noted: 'The so-called International Steering Group (ISG) was formed by states who recognized the self-proclaimed "Republic of Kosovo" to promote the implementation of the "Ahtisaari Plan" containing proposals for the settlement of the Kosovo problem formulated by the former Finnish President, not approved by the UN Security Council. As ISG does not have an official status we still believe that regardless of its decision Kosovo remains a quasi-state without international legal capacity.' Russian MFA comments on the completion of the "supervised independence" period of Kosovo by decision of International Steering Group, 11 September 2012.

Turkish Republic of Northern Cyprus.<sup>80</sup> Likewise, in the case of Abkhazia, no efforts have been made to include it in any international meetings, and Georgian officials do not believe that such initiatives, even if they were to be attempted, would succeed.<sup>81</sup>

Kosovo, on the other hand, has proven to be rather more troublesome. In the first few years following the declaration of independence, the non-recognising states tended to avoid contacts with Kosovo. This began to change when an invitation was sent by Poland to Kosovo to participate in a summit of Central and South East European heads of state, which would also be attended by US President Barack Obama. In response, Serbia, Romania and Slovakia all announced that they would not participate.<sup>82</sup> However, in the end the Romanian and Slovakian presidents attended after they were assured that there would be no symbols of statehood, such as flags on display and that there would not be a final communiqué signed by the various participants. Since then, a solution has been found in the case of Kosovo which avoids such problems. Following EU-brokered discussions between Belgrade and Pristina,<sup>83</sup> it was agreed that at regional meetings it is designated as Kosovo\*; the asterisk referring to the following footnote: 'This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence'.<sup>84</sup> This has generally been sufficient to allow even Serbia to participate in meetings where representatives from Kosovo are present. Indeed, in October 2014, the Kosovo Foreign Minister, Enver Hoxhaj, even attended an informal meeting of South East European foreign ministers in Belgrade with the full acceptance of the Serbian Government.<sup>85</sup>

## Conclusion

Just as the question of contested states is becoming increasingly interesting as a field of study for academics, the issue of how to manage diplomatic engagement with these territories is becoming ever more important for policy makers. This article has sought to identify the limits of this engagement by analysing the academic literature on recognition and relating this to contemporary foreign policy practice. In general terms, diplomatic engagement without recognition should be thought of in terms of a spectrum of activity. At the one end, states may opt to avoid all types of contact with a contested state. There will be no meetings between officials, either in a bilateral or a multilateral setting. In such circumstances, the state in question signals a complete rejection of the contested state. Where the problems arise is towards the other end of the spectrum, where the level of interaction is extensive. This creates ample room for ambiguity. This is especially so in those cases where there is a tradition of implied recognition on the part of the state in question. In such circumstances, one would also assume that the state in question would be aware of this and would act accordingly. If it does not want to signal its recognition of the contested state, one would expect that it would not take steps that could be read in this way. Indeed, in such a case, the level of scrutiny might be such that the state in question actually abandons its policy of implied recognition and opts to make a formal declaration, thereby dispelling speculation. The most obvious example of this occurred in the case of New Zealand's decision to announce that it had recognised Kosovo.

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<sup>80</sup> 'Ankara cancels EU, OIC meeting: Row over Turkish Cypriots', *AFP*, 1 October 2004.

<sup>81</sup> Georgian officials, comments to the author, December 2011.

<sup>82</sup> 'Serbia, Slovakia and Romania to miss summit with Obama over Kosovo', *DPA*, 24 May 2011.

<sup>83</sup> 'Kosovo and Serbia Reach Key Deal', *New York Times*, 24 February 2012.

<sup>84</sup> James Ker-Lindsay, 'The Significance of Kosovo\*', *E-International Relations*, 3 March 2012.

<sup>85</sup> 'Kosovo minister Enver Hoxhaj makes historic Serbia visit', *BBC News*, 23 October 2014. The presence of the Kosovo Foreign Minister at the meeting was also openly acknowledged, and seemingly welcomed, by the Serbian Prime Minister, Aleksandar Vučić, in conversation with the author, 27 October 2014.



Even where a state has a policy of explicit recognition, as is most usually the case, there would still appear to be room for confusion. Various acts could well be misinterpreted as recognition. However, in such instances, intent is crucial. To put it crudely, there cannot be accidental recognition. As long as a state insists that it does not recognise a territory as independent, and does not take steps that obviously amount to recognition – such as the establishment of formal diplomatic relations through the appointment of an ambassador or the establishment of an embassy – then it does not do so. It is this principle that provides the necessary legal cover states need to engage with contested states while maintaining a policy of non-recognition. Of course, this can lead to situations where the notion that the state does not in actual fact recognise the territory in question as independent is almost absurd. In such cases, the decision not to recognise will usually be the result of certain internal or external factors that make it politically difficult, if not impossible, to formally recognise the territory. To this extent, the contested state is treated as independent in all but name. At the bilateral level, therefore, there is in fact an enormously high degree of latitude when it comes to diplomatic engagement without recognition.

Where problems tend to emerge is in the realm of multilateral engagement. By participating in a forum that is indicative of statehood, a state may be signalling some form of indirect collective recognition. This is especially confusing given the growing importance that indirect collective recognition is playing in state recognition practices. This type of engagement is rendered all the more problematic inasmuch as it cannot be justified on the grounds that it is part of a dialogue centred on a peace process. However, as can also be seen, these examples are in fact very rare. The only contested state where this does present a problem at this stage is Kosovo. But even here there is considerable room for manoeuvre if the various parties are willing to cooperate and maintain a political pretence. Most usually this will be done by the removal of all symbols of statehood, such as flags, or by avoiding the issuing of joint communiqués. This can often be sufficient to allay concerns. Nevertheless, as can be seen, diplomatic engagement in multilateral contexts requires much more caution on the part of the state than engagement without recognition at a bilateral level. Nevertheless, as long as the state in questions maintains the position that the engagement entered into does not constitute recognition, and that recognition cannot be construed from any particular form of interaction, then a wide range of actions and initiatives can be undertaken.

As Talmon has noted, ‘the question of what kind of cooperation is excluded by non-recognition cannot be answered in general. It depends on what type of recognition is to be avoided: recognition as an (independent, sovereign) state, as the government of a recognized state, as a belligerent, de facto recognition, de jure recognition or some other variant.’<sup>86</sup> As has been shown in this article, if a state wishes to enter into an extensive relationship with a contested state, but cannot recognise it for whatever reason, it can choose to set the threshold for engagement without recognition extremely high. Indeed, as long as it does not establish full diplomatic relations, which would necessarily constitute recognition, evidence suggests that, as long as it keeps insisting that it has not in fact recognised it, a state can even go so far as to interact with a contested state as though it were recognised in all but name.

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<sup>86</sup> Stefan Talmon, ‘The Cyprus Question before the European Court of Justice’, *European Journal of International Law*, Volume 12, Number 4, 2001, pp.748-749.