

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

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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. It was decided that, as part of his schedule, he would visit the northern part of the island to meet the Turkish Cypriot leader, Dervis Eroglu. In announcing the move, the US Embassy emphasized that it did not amount to an 'upgrading' of the Turkish Cypriot self-proclaimed state.¹ Moreover, upon his arrival, Biden also pointedly stressed that his visit to the north would not constitute recognition of the Turkish Cypriot administration.² Nevertheless, his decision to cross the dividing line caused uproar among many Greek Cypriots, and was roundly criticized 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'.³ 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 recognized? And at what stage does such interaction amount to recognition?

The recognition of states is an area in that has traditionally been under-studied in International Relations (IR).⁴ While the subject has been extensively analysed and debated in the field of international law, few IR scholars have deemed it worthy of examination.⁵ This is now starting to change. The question of recognition is

¹ 'Biden's visit will not "upgrade the north"', *Cyprus Mail*, 21 May 2014.

² '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, 21 May 2014.

³ 'Our view: where Biden meets Eroglu of no real consequence', *Cyprus Mail*, 21 May 2014.

⁴ Pal Kolsto, 'The sustainability and future of unrecognized quasi-states', *Journal of Peace Research* 43: 6, 2006, p. 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 article concentrates on the concept of state recognition: that is, the practice by which sovereign states choose 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, *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).

⁵ As one observer put it: 'Students of international relations ... commonly regard recognition as a somewhat

becoming an increasingly important and interesting topic within the discipline. This is largely due to the growing number of contested states.⁶ 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 recognized only by Turkey. Today, Kosovo, Abkhazia and South Ossetia have also seceded and subsequently achieved a greater or lesser degree of recognition among the 193 members of the UN.⁷ Meanwhile, a number of other territories have declared independence and are actively seeking recognition. These include Transnistria,⁸ 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.⁹

This trend 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 recognized them as full and equal sovereign actors in the international system.¹⁰ The issue of 'engagement without recognition', as it has come to be

arid, even tedious, topic that is better left outside of their academic departments.' See Mikulas Fabry, *Recognizing states: international society and the establishment of new states since 1776* (Oxford: Oxford University Press, 2009), p. 2.

⁶ The term 'contested states' (see Deon Geldenhuys, *Contested states in world politics*, Basingstoke: Palgrave Macmillan, 2009) is favoured here because it captures an important ambiguity in the nature of these entities. The contestation can refer to their status on the international stage or to whether they are states at all. 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. James Crawford insists: 'There is no such thing as a de facto state' (*The creation of states in international law*, 2nd edn, Oxford: Oxford University Press, 2006, p. 464). Other similar terms, such as 'para-state' and 'pseudo-state', are also problematic. So too is 'quasi-state' (e.g. Kolstø, 'The sustainability and future of unrecognized quasi-states'). In this case, the definitional problem is compounded by the term's having been more widely used by scholars, after its first coinage by Robert Jackson, to refer to states that are recognized but have ceased to operate as states, rather than to territories that have the trappings of statehood but are unrecognized. As Pegg has 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' (*International society and the de facto state*, p. 5). Another term is 'unrecognized states' (e.g. Nina Caspersen and Gareth Stansfield, *Unrecognized states in the international system*, Abingdon: Routledge, 2012). In this case, the term seems a little too sweeping, especially as regards Kosovo, which has widespread recognition.

⁷ 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 recognized it and it is subject to a UN Security Council resolution that calls on states not to recognize 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.

⁸ It has previously been suggested that Transnistria favoured its unrecognized 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 recognize it as an independent and sovereign state: 'Moldova's breakaway region asks Putin to recognize sovereignty', Bloomberg, 16 April 2014.

⁹ 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* 89: 2, March 2014, pp. 259–82.

¹⁰ 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*, 4th edn (Basingstoke: Palgrave Macmillan, 2009), p. 1.

known,¹¹ 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 recognize it for foreign policy or domestic political reasons, such as the fear of antagonizing an international partner or concern about an internal secessionist movement. In all these cases, the question arises whether, by engaging in diplomatic activity with the contested state, a state may in some way be seen to have recognized 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,¹² there is in fact a very high degree of latitude available to states in 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'.¹³ Therefore, while recognition does not *make* a state, it does serve to legitimize 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 international system.¹⁴ Perhaps the most important norm that

¹¹ 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 conference sponsored by the Council of Europe in 2003: see 'Summary of conclusions', 'Frozen conflicts in Europe, the approach of democratic security: the case of Transnistria', Chisinau, 11–12 Sept. 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'. See Sabine Fischer, 'The EU's non-recognition and engagement policy towards Abkhazia and South Ossetia', seminar report (Brussels: European Union Institute for Strategic Studies, 1–2 Dec. 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', *Washington Quarterly* 33: 4, 2010, pp. 59–73.

¹² Although the conditions referred to in this article should equally apply to parent states, the situation is complicated by the fact that traditionally parent states have taken many years to recognize formally the independence of a seceding territory. This means that third party states have often taken a decision on whether to recognize a seceding territory on the basis of the behaviour, rather than the actual statements, of parent states (see Lauterpacht, *Recognition in international law*, pp. 9–10). This necessarily creates a rather different interaction dynamic between parent and contested states that must be considered separately.

¹³ John Dugard and David Raič, 'The role of recognition in the law and practice of secession', in Marcelo G. Köhen, ed., *Secession: internal law perspectives* (Cambridge: Cambridge University Press, 2006), p. 94.

¹⁴ Ralph Wilde, 'Recognition in international law', summary of the International Law discussion group on 'Recognition of states: the consequences of recognition or non-recognition in UK and international law' held at Chatham House, London, 4 Feb. 2010.

has emerged is that states that have unilaterally seceded should not, as a general rule, be recognized.¹⁵

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, as in the case of the Kurdistan Workers' Party (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.¹⁶ In such cases, the 'contested state' that emerges cannot be completely ignored. By virtue of having achieved some degree of independent existence, even if it remains 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 as 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 legitimization or 'normalization' may occur in lieu of recognition.¹⁷ In all such situations, however, the question arises of just how far a state can interact with the contested state without recognizing it. Indeed, this is a question that is increasingly on the minds of policy-makers.¹⁸ In order to answer this question, one must first examine the nature of state recognition in international politics.

Most usually, the decision to recognize 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, a settled population, an effective form of governance and an ability to enter into foreign relations?¹⁹ At the same time, other factors will also be taken into account. These include whether the state in question has come about through the illegal use of force and whether it is truly an independent entity on the international stage, rather than just a puppet regime of another state.²⁰ More recently, some further criteria have also started to be applied by some states. For example, the European Union (EU) has laid out a number of human and minority rights norms

¹⁵ Eiki Berg, 'Re-examining sovereignty claims in changing territorialities: reflections from "Kosovo syndrome"', *Geopolitics* 14: 2, 2009, p. 222. For a review of the evolution of recognition practices, see Fabry, *Recognizing states*.

¹⁶ Geldenhuys, *Contested states in world politics*, pp. 25–6.

¹⁷ For more on this see Eiki Berg and Raul Toomla, 'Forms of normalisation in the quest for de facto statehood', *International Spectator* 44: 4, 2009, pp. 27–45.

¹⁸ The present article arose from numerous discussions with officials who were unclear as to just how far states could interact with contested states.

¹⁹ As Grant has noted: 'Since the Montevideo Convention of 1933, a baseline of prerequisites for statehood has been accepted widely though not unanimously.' See Thomas D. Grant, *The recognition of states: law and practice in debate and evolution* (Westport, CT: Praeger, 1999), p. 121.

²⁰ 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.' See Crawford, *The creation of states in international law*, p. 75.

that should be respected by a territory before it is recognized by its members.²¹ However, while the decision by a state to recognize another territory as a state is usually shaped by certain legal considerations, it is nevertheless widely understood that recognition remains a sovereign political decision.²² Individual states decide whom to recognize, when to do it and for what reasons. Ultimately, the decision to recognize a territory can be made by a state according to any criteria it chooses. Of course, in certain cases there may be very good reasons not to recognize a territory as a state. For instance, there are times when a decision has been taken by the international community not to recognize the state in question, most obviously through a UN Security Council resolution. A good example of this is the TRNC, which declared independence in 1983.²³ 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, but cannot actually prevent a state from recognizing a territory if it so wishes.

Forms and methods of recognition

Regarding the actual act of recognition, there is a variety of methods, modes and forms by which this may be performed.²⁴ 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.²⁵ It is, however, extremely unusual today. Another form of recognition is by treaty. This occurs when a state signs an international agreement to which the state to be

²¹ For example, in 1991, in its 'Guidelines on the recognition of new states in Eastern Europe and in the Soviet Union', the EU 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 with the commitments subscribed to in the framework of the Commission on Security and Cooperation in Europe (CSCE); 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 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, 2013).

²² As UN Secretariat legal advisers long ago 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.' See '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), 8 March 1950, UNSC Document S/1466, repr. in *International Organization* 4: 2, 1950, pp. 356–60.

²³ United Nations Security Council Resolution (UNSCR) 541 '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 (UNSCR 216) and South African Homelands (UNSCR 402 and 407).

²⁴ 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, ed., *The new nations in international law and diplomacy* (London: Stevens, 1965), pp. 112–13.

²⁵ Crawford, *The creation of states in international law*, p. 28.

recognized is also a party. However, it should be stressed that entering into a multi-lateral 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 of the GDR.²⁶ This raises an extremely important point concerning the question of intent, which will be discussed in more detail below.

In general, the most usual form of recognition is for a state to indicate its decision directly through a bilateral process. This can be done in a number of ways.²⁷ For instance, it may (and commonly does) take the form of an official statement, or even just a press release, issued by the foreign ministry of the recognizing state announcing its decision.²⁸ Another option is to send a letter to the state being recognized announcing the decision. A related, but somewhat more indirect, method entails an official from the recognizing state writing to an official of the territory being recognized using language that clearly indicates that the latter entity is now recognized 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 recognize 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 is not necessarily the case. Yet another form of bilateral recognition can come through the establishment of formal diplomatic relations. This may involve either the appointment of a resident or non-resident ambassador or a decision to upgrade a diplomatic official or mission: for example, to redesignate a regional consulate 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 recognizes it 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 here. While a state's decision to open an embassy in the territory in question, for example, would leave little room for doubt about the former's 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, will give rise to intense speculation. Perhaps fortunately,

²⁶ President John F. Kennedy, News Conference 59, 1 Aug. 1963, <http://www.jfklibrary.org/Asset-Viewer/Archives/JFKWHA-208.aspx>, accessed 16 Jan. 2015.

²⁷ O'Brien and Goebel, 'United States recognition policy', pp. 112–13.

²⁸ The most recent example of this was Sweden's decision to recognize the State of Palestine: 'Sweden recognises Palestine and increases aid', press release, Ministry of Foreign Affairs, Stockholm, 30 Oct. 2014.

as an official policy, implied recognition is extremely unusual.²⁹ 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 recognize in such circumstances. We will neither recognize nor not recognize. 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.'³⁰ However, in November 2009, New Zealand eventually announced that it had officially recognized Kosovo.³¹

In reality, the distinction between explicit and implied recognition may not be as clear-cut as might be supposed. The room for apparent confusion and misinterpretation appears to have grown in view of the tendency of states to conflate the officially separate issues of recognition and the establishment of diplomatic relations.³² As noted above, one of the forms of recognition is the establishment of an embassy. In those instances where a decision is made to establish in the territory in question a formal diplomatic presence, in the form of an embassy and a resident ambassador, there is no room for confusion. However, states often choose not to establish formal diplomatic presences on the ground in many other 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'.³³ This would appear to give rise to the question of whether interactions between officials from a state and a 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

²⁹ As Lauterpacht noted, 'the doctrine of implied recognition has been more conspicuous in the writings of authors than the practice of states' (*Recognition in international law*), p. 370.

³⁰ 'NZ on fence over Kosovo independence', New Zealand Press Association, 18 Feb. 2008, <http://www.stuff.co.nz/national/politics/275072/NZ-on-fence-over-Kosovo-independence>, accessed 16 Jan. 2015.

³¹ New Zealand sent a letter to the Kosovo Foreign Minister informing him of recognition: 'New Zealand recognises Kosovo', *Balkan Insight*, 9 Nov. 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?', *New Zealand Yearbook of International Law* 7, 2009, pp. 3–20.

³² '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 out the right to send and receive diplomatic missions, but this practice is now obsolete': Sir Ivor Roberts, ed., *Satow's diplomatic practice*, 6th edn (Oxford: Oxford University Press, 2009), p. 72.

³³ Roberts, ed., *Satow's diplomatic practice*, p. 76.

acting within the bounds of an existing international body, take a joint decision to recognize a state. Importantly, it must be stressed that it is not the organization that recognizes the state: according to international law, only states can recognize states. An international organization, such as the UN, cannot recognize a state,³⁴ even if membership of such an organization 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 recognized the territory as an independent state. The most recent example of this was the EU's statement of May 2011 concerning South Sudan. 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 some states did take extra steps of the kind noted above that could be read as recognition), with the case of 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 individual member states. Such processes of direct collective recognition still tend to be quite unusual and can be considered relatively underdeveloped in international law.³⁵

A second method of collective recognition can occur when a territory is admitted into an organization that is composed of states. This is a process that has been termed 'indirect collective recognition'.³⁶ In such cases, admission amounts to 'strong evidence' of statehood.³⁷ This method of recognition has become increasingly significant. There are now a whole host of state-based regional and international organizations that a territory can aspire to join, each of which can in turn confer legitimacy and thus help it to gain recognition more widely.³⁸ But even here there is room for confusion. There are instances of states being admitted into organizations even though some members may not recognize them.³⁹ This has occurred on numerous occasions in the case of the UN.⁴⁰ However, one could argue that it is not just admittance into an organization 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,

³⁴ 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, <http://bernardavishai.blogspot.co.uk/2011/07/what-un-vote-means-and-does-not.html>, accessed 16 Jan. 2015.

³⁵ 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': Grant, *The recognition of states*, p. 133.

³⁶ Dugard and Raič, 'The role of recognition', p. 97.

³⁷ Crawford, *The creation of states in international law*, p. 545.

³⁸ An African Union official noted that, although recognition is ultimately up to individual states, a decision to admit a state into the organization will 'almost certainly impact on the position of its members': letter from Ben M. Kioko, Head of Legal Division of the Organization of African Unity (OAU), cited in Grant, *The recognition of states*, p. 24.

³⁹ Crawford, *The creation of states in international law*, p. 545.

⁴⁰ 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 Nijhoff, 2009).

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 important, indeed, than bilateral interaction—in the debate concerning engagement without recognition.

The importance of intent in recognition

In surveying the question of recognition, then, it would appear that there is ample room for confusion when it comes to understanding whether a state has recognized another territory as a state. 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 of the end goal on the part of each state participating in the conference. If it does not accept that 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 little 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 recognize 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 that there is considerable room for misunderstanding of whether a state has or has not recognized a contested territory. Likewise, in a multilateral environment, the acceptance by a state of the membership or participation of a contested state in an organization 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 in considering matters of recognition: the question of intent. As the eminent legal scholar Sir Hersch Lauterpacht noted in the late 1940s: ‘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.’⁴¹ This view has been echoed by states themselves. For example, as President Kennedy stated, again referring to the 1963 Nuclear Test Ban Treaty:

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

⁴¹ Lauterpacht, *Recognition in international law*, p. 371.

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.⁴²

In theoretical terms and practical terms alike, 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 recognized 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 recognized 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. This is 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 apparently never formally enunciated—that meeting 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 or Prime Minister of the TRNC is officially avoided. If it is used, it is always done within quotation marks: ‘Prime Minister of the TRNC’.⁴³ Most commonly, the incumbent is referred to as the leader of the Turkish Cypriot community.⁴⁴

Another method of avoiding ambiguity is to avoid meeting with an official at a location that is indicative of statehood—such as the prime minister’s office or a presidential palace. Instead, meetings are often held at other venues, such as

⁴² President John F. Kennedy, news conference 59, 1 Aug. 1963.

⁴³ Scott Pegg and Eiki Berg, ‘Lost and found: the WikiLeaks of de facto state–great power relations’, *International Studies Perspectives*, 2014, available as Early View: <http://onlinelibrary.wiley.com/doi/10.1111/insp.12078/abstract>, accessed 16 Jan. 2015.

⁴⁴ See e.g. ‘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.

the headquarters of a political party.⁴⁵ This said, some meetings have occurred on official premises. A good case in point was the 2007 meeting between the British Foreign Secretary, Jack Straw, and 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 Mr Talat in buildings which had the “trappings of state”’,⁴⁶ and criticized any steps to ‘upgrade’ the Turkish Cypriot administration or change the ‘practice of previous years’.⁴⁷ So strong, indeed, was the objection that the then President of Cyprus, Tassos Papadopoulos, refused to meet Straw.⁴⁸ However, the Foreign and Commonwealth Office emphasized that the meeting was being held at the ‘office of the Turkish Cypriot leader’.⁴⁹

A greater problem relates to any decision by a state official to meet an official from a contested state abroad or welcome such an official to the state itself. 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 and the US Secretary of State, Colin Powell, at the UN in New York soon after the 2004 reunification referendum in Cyprus.⁵⁰ In the days before the meeting, the State Department clearly noted that Talat was being met as leader of the Turkish Cypriots⁵¹ 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, the encounter 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 a significant step in upgrading the status of the Turkish Cypriots.⁵² No one, however, interpreted the meeting as indicative of recognition. Again, the meetings were seen to have occurred within the broader context of reunification efforts.

While meeting with the most senior leaders of a contested state often poses few problems as this can be read as encouragement 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 officials responsible for administering areas that are deemed properly

⁴⁵ For example, when members of the UK House of Commons Foreign Affairs Committee met Ferdi Soyer, ‘Prime Minister of the Turkish Republic of Northern Cyprus’, in 2009, they did so at the CTP (Republican Turkish Party) headquarters. See ‘Appendix: visit programme’, ‘Visit to Cyprus’, House of Commons Foreign Affairs Committee, 3rd Report, Session 2008–09 (London: Stationery Office, 6 Feb. 2009).

⁴⁶ ‘Protests mar Straw Cyprus visit’, BBC News, 25 Jan. 2006, http://news.bbc.co.uk/1/hi/uk_politics/4646474.stm, accessed 16 Jan. 2015.

⁴⁷ ‘Recent developments: 2006’, Press and Information Office, Republic of Cyprus, <http://www.moi.gov.cy/moi/pio/pio.nsf/6645bc8e70e73e2cc2257076004d01c1/5f2c3c733a27182dc2257838003bae7d?OpenDocument>, accessed 8 Jan. 2015.

⁴⁸ ‘Protests mar Straw Cyprus visit’, BBC News, 25 Jan. 2006.

⁴⁹ ‘Straw chooses Talat over Tassos’, *Cyprus Mail*, 19 Jan. 2006.

⁵⁰ ‘Powell to meet with Turkish Cypriot leader’, Associated Press, 1 May 2004.

⁵¹ ‘Secretary Powell to meet Mehmet Ali Talat (taken question)’, Office of the Spokesman, State Department, Washington DC, 20 April 2004, <http://2001-2009.state.gov/r/pa/prs/ps/2004/32051.htm>, accessed 16 Jan. 2015.

⁵² ‘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 United States would be seeking to reward the Turkish Cypriots with measures to ‘limit their isolation’.

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 one recognized state, and one recognized administration, means that meetings with the Turkish Cypriot 'Minister of Agriculture' are generally avoided. Nevertheless, on some issues where there is a perceived need to interact with a contested state for security reasons—such as combating organized crime or terrorism—meetings do take place, sometimes on a regular basis.⁵³ Also, in some instances such meetings are held without addressing 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.⁵⁴ In such instances, the venue of the meeting, and even the use of titles, is unproblematic. Even 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.⁵⁵ This in turn enables other countries to follow suit. As a result, even states that do not recognize 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 organized in Slovenia in September 2012 did not raise objections.⁵⁶

The one official post that presents a problem in almost all cases is the foreign minister of a contested state. 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'.⁵⁷ 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 longstanding supporter of reunification, to the post in September 2013. For example, in January 2014 an ambassador of a Nordic state tweeted a photo of

⁵³ Turkish Cypriot official, comments to the author, June 2013; former British diplomat, comments to the author, July 2013; Pegg and Berg, 'Lost and found', p. 15.

⁵⁴ In official communication, the Serbian government still refers to the Provisional Institutions of Self-Government in Kosovo.

⁵⁵ 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', Serbian government official website, 11 May 2011 (webpage no longer available).

⁵⁶ 'PM Thaci with FM Lajcak at #BledStrategicForum2012 #Kosovo #Slovakia pic.twitter.com/naa4qmpZ', tweet by @heroinatbp (Heroina Telaku, official serving at the Kosovo Ministry of Foreign Affairs), 3 Sept. 2012, accessed 17 April 2014.

⁵⁷ 'The Minister of Foreign Affairs', in Roberts, ed., *Satow's diplomatic practice*, p. 184.

himself and two other Nordic ambassadors meeting with Nami.⁵⁸ 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.⁵⁹ 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, it 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’.⁶⁰ 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 emphasizing that: ‘We do not recognize the so-called “Turkish Republic of Northern Cyprus”’. As such, we do not recognize the title of ‘minister’ other than for members of the government of the Republic of Cyprus.’⁶¹

As regards Kosovo, there are also many examples of engagement without recognition in the case of the foreign minister. This is particularly evident in respect of four of the five EU members that do not recognize Kosovo.⁶² For example, in December 2012 Kosovo’s Foreign Minister, Enver Hoxhaj, was invited to speak by two of Slovakia’s leading think-tanks.⁶³ Although officials from the Slovak Ministry of Foreign Affairs were present,⁶⁴ 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 the Foreign Ministry.⁶⁵ As the ministry noted, Lajcak ‘has privately met representatives of Kosovo many times’.⁶⁶ 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.⁶⁷ In March 2013, Hoxhaj travelled to Athens where he met with the Greek

⁵⁸ ‘Nordic lunch & an always excellent & honest discussion w Mr @NamiOzdil. #CyProb @FinlandinCyprus @SwedeninCyprus pic.twitter.com/7VsQIDggEx’, tweet by @caskly (Casper Klynge, Ambassador of Denmark to Cyprus), 18 Jan. 2014, accessed 17 April 2014.

⁵⁹ ‘FM Özdil Nami is continuing his contacts, Washington’, *KP Daily News*, 13 March 2014. <http://www.kpdailynews.com/index.php/cat/35/news/392>, accessed 16 Jan. 2015.

⁶⁰ ‘State reprimand for errant ambassadors’, *Cyprus Mail*, 1 July 2014.

⁶¹ ‘Foreign Ministry slams Britain over Nami contacts’, *Cyprus Mail*, 9 Sept. 2014.

⁶² For more on the positions of the five EU non-recognizers (Cyprus, Greece, Romania, Slovakia and Spain), 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’, Pristina, Kosovo, April 2012. See also Katarina Lezova, ‘The notion of Kosovo as a precedent and the impact of the Hungarian minority issue on Slovakia’s policy towards Kosovo’s independence’, *Europe-Asia Studies* 65: 5, 2013, pp. 965–91; 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* 15: 4, 2010, pp. 495–510.

⁶³ ‘Kosovo’s foreign minister to unofficially visit Slovakia’, *Slovak Spectator*, 4 Dec. 2012.

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

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

⁶⁶ ‘Kosovo’s foreign minister to unofficially visit Slovakia’.

⁶⁷ As a former senior official from Greece explained to the author in October 2011, while Athens refuses to recognize Kosovo, it has decided to engage as much as possible with Pristina, where the Greek representative meets government officials on a regular basis. Although Belgrade does not like this, it accepts it. Officials in Pristina also note that the two countries enjoy ‘very good relations’, even though there is no recognition. See ‘Push for diplomatic recognition creates tricky precedents, strange bedfellows’, *Washington Diplomat*, 22 Nov. 2010.

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.⁶⁸ (After that, the Greek Foreign Ministry routinely referred to Hoxhaj by his official title.⁶⁹) 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 recognizing 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 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.⁷⁰ 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 recognize Kosovo, it would not stand in the way of its integration into the EU.⁷¹ This decision is perhaps even more extraordinary when one considers that it may well undermine the ability of Cyprus in future to call upon other states not to meet Turkish Cypriot officials.⁷²

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 noted above, 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. States have increasingly used the model of the representative or liaison office to conduct business with a state or territory that they are either unwilling or unable to recognize.⁷³ In some cases,

⁶⁸ 'Statements of Foreign Minister Avramopoulos and E. Hoxhaj, the Foreign Minister of Kosovo, following their meeting', Ministry of Foreign Affairs, Hellenic Republic, 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>, accessed 8 Jan. 2015.

⁶⁹ See e.g. 'Deputy Prime Minister and Foreign Minister Venizelos meets with Kosovo Foreign Minister E. Hoxhaj', Ministry of Foreign Affairs, Hellenic Republic, 10 Feb. 2014, <http://www.mfa.gr/en/current-affairs/news-announcements/deputy-prime-minister-and-foreign-minister-venizelos-meets-with-kosovo-foreign-minister-hoxhaj.html>, accessed 16 Jan. 2015.

⁷⁰ 'PM Thaci is having a breakfast with MFA of Cyprus, Kasoulides #UN #NYC @pmkosovo @Enver_Hoxhaj pic.twitter.com/Hx9EoBtBSH', tweet by @AbelardTahiri (Abelard Tahiri, Chief of Staff to Prime Minister Thaci), 24 Sept. 2013, accessed 17 April 2014.

⁷¹ Cypriot official, comments to the author, Jan. 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 as 'difficult' over Kosovo, given that 23 of the 28 members of the EU had recognized Kosovo and that, apart from Spain, the other non-recognizers – Greece, Romania and Slovakia – were all adopting increasingly moderate positions.

⁷² James Ker-Lindsay, 'There is a good case to be made for Cyprus pressing ahead with full recognition of Kosovo's independence', *Europb* blog, London School of Economics and Political Science, 3 Oct. 2013, <http://blogs.lse.ac.uk/europblog/2013/10/03/there-is-a-good-case-to-be-made-for-cyprus-pressing-ahead-with-full-recognition-of-kosovos-independence/>, accessed 16 Jan. 2015.

⁷³ Berridge, *Diplomacy*, pp. 218–19.

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.⁷⁴

In the case of Abkhazia, no country, apart from those that have recognized it, maintains an informal presence on the territory. Almost all diplomatic interaction is handled from the embassies in the Georgian capital of Tbilisi 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.⁷⁵ This said, officials from the embassies, including the ambassador, will meet Turkish Cypriot officials. Meanwhile, contested states will often seek to establish their own liaison offices in foreign capitals. For instance, the TRNC maintains offices in London and in various other capitals.⁷⁶ However, these are purely informal missions. They are not recognized by the countries concerned, and the members of staff serving in the office do not hold diplomatic status, unless by virtue of being accredited to an embassy of a recognized 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. Between 1999 and 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 recognize Kosovo's statehood. However, a number of countries that did not recognize Kosovo maintained a formal diplomatic presence in Pristina. In such cases, the continuing 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 government; the Greek government has also taken the step of allowing Pristina to establish an official trade office in Athens.⁷⁷

⁷⁴ Berridge, *Diplomacy*, p. 219.

⁷⁵ See e.g. the booklet on the Turkish Cypriot legal system, *Information for British nationals imprisoned and detained in the north of Cyprus* (Nicosia: British High Commission, Oct. 2011).

⁷⁶ 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 Oct. 2014.

⁷⁷ Senior Greek diplomat, comment to the author, Nov. 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', 8 March 2013.

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 so. 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 that Russia's position on Kosovo's statehood might in fact be changing.⁷⁸ However, the Russian Ministry of Foreign Affairs insisted that there had been no change in its position.⁷⁹ The representative had been there to observe a specific political development of considerable significance. Again, this statement 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 recognize 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 because 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 to relatively low-level meetings of officials. In such instances, there is a real concern among non-recognizing states that a decision to participate could be construed as recognition of the contested state, or at the very least an unacceptable degree of legitimization. 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 it 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 EU and the Organization of the Islamic Conference (OIC), as it was then known, was cancelled after the host country, Turkey, attempted to ensure the participation of the TRNC.⁸⁰ Likewise, in the

⁷⁸ 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 Sept. 2012.

⁷⁹ 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 Ministry of Foreign Affairs, comments on the completion of the 'supervised independence' period of Kosovo by decision of International Steering Group, 11 Sept. 2012. See also 'Kosovo still "quasi-state" without legal existence: Russia', AFP, 11 Sept. 2011, <https://sg.news.yahoo.com/russia-labels-kosovo-quasi-state-without-legal-existence-091759818.html>, accessed 16 Jan. 2015.

⁸⁰ 'Ankara cancels EU, OIC meeting: row over Turkish Cypriots', AFP, 1 Oct. 2004, <http://www.dawn.com/news/372321/ankara-cancels-eu-oic-meeting-row-over-turkish-cypriots>, accessed 16 Jan. 2015.

case of Abkhazia, no efforts have been made to include it in any international meetings, and Georgian officials do not believe that any such attempt would succeed.⁸¹

Kosovo, on the other hand, has proved to be rather more troublesome. In the first few years following the declaration of independence, the non-recognizing 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.⁸² 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,⁸³ it was agreed that at regional meetings it is designated as Kosovo*; the asterisk refers 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'.⁸⁴ 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.⁸⁵

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 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 in a multilateral setting. In such circumstances, the state in question signals a complete rejection of the contested state.

⁸¹ Georgian officials, comments to the author, Dec. 2011.

⁸² 'Serbia, Slovakia and Romania to miss summit with Obama over Kosovo', DPA, 24 May 2011, http://article.wn.com/view/2011/05/26/Romania_to_boycott_Obama_summit_over_Kosovo_e/, accessed 16 Jan. 2015.

⁸³ 'Kosovo and Serbia reach key deal', *New York Times*, 24 Feb. 2012.

⁸⁴ James Ker-Lindsay, 'The significance of Kosovo*', *E-International Relations*, 3 March 2012, <http://www.e-ir.info/2012/03/03/the-significance-of-kosovo/>, accessed 16 Jan. 2015.

⁸⁵ 'Kosovo minister Enver Hoxhaj makes historic Serbia visit', BBC News, 23 Oct. 2014, <http://www.bbc.co.uk/news/world-europe-29746283>, accessed 16 Jan. 2015. 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 Oct. 2014.

Where problems arise is towards the other end of the spectrum, where the level of interaction is extensive. This creates ample room for ambiguity, especially in those cases where there is a tradition of implied recognition on the part of the state in question. In such circumstances, one would 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 recognized Kosovo.

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. 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 recognize 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 recognize the territory in question as independent is almost absurd. In such cases, the decision not to recognize will usually be the result of certain internal or external factors that make it politically difficult, if not impossible, to recognize the territory formally. 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.

More problems tend to emerge 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 in relation to which this problem currently exists is Kosovo. But even here there is considerable room for manoeuvre if the various parties are willing to cooperate and maintain the necessary political cover. 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. It is clear that 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 question maintains the position that the engagement entered into does not consti-

tute 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.'⁸⁶ As has been shown in this article, if a state wishes to enter into an extensive relationship with a contested state, but cannot recognize 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 recognized it, a state can even go so far as to interact with a contested state as though it were recognized in all but name.

⁸⁶ Stefan Talmon, 'The Cyprus question before the European Court of Justice', *European Journal of International Law* 12: 4, 2001, pp. 748–9.

