De-recognition of States: The Case of Kosovo

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Introduction

The literature on the recognition of states, a foundational topic of public international law, is truly vast. But the literature on de-recognition, the withdrawal of recognition once given, is measured, not in books, but in paragraphs. This is the first Article to systematically explore the question of de-recognition. It does so by examining a peculiar—indeed, genuinely strange—ongoing case study of a series of de-recognitions of Kosovo as a

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state. De-recognitions are by any account an exceptional phenomenon in international practice. The recognition of a new state is, by contrast, perfectly commonplace. It is an act by which the recognizing state acknowledges that a new sovereign political entity is born and possesses the attributes of statehood.[1]

The recognition of statehood (and any subsequent de-recognition thereof) needs to be clearly differentiated from the recognition of government, which does not have anything to do with the existence of a state.[2] Rather, the recognition of government refers to who exercises public authority in the state in question, and who gets to represent the state on the international stage.[3] While formal statements of recognition of government have fallen into disuse in modern times, they were a common occurrence in situations of an unconstitutional regime change in a state (e.g., through the use of force by an external power, revolution, or *coup d'état*).[4] Even if formal statements of recognition (and de-recognition) of governments have fallen into disuse, difficult questions of state representation persist in international relations and law—for example, whether Nicolás Maduro or Juan Guaidó is the legitimate head of state of Venezuela.[5] But such questions are *not* within the scope of this study, which is solely concerned with the de-recognition of *statehood*.

As noted above, while the recognition of states has provoked immense interest and debate in the doctrine of international law,[6] de-recognition has never been discussed systematically. In addition to a smattering of tangents in traditional academic literature,[7] there is a relatively recent bit of

1. *See* PHILIP C. JESSUP, A MODERN LAW OF NATIONS: AN INTRODUCTION 43 (1948).

2. Although the recognition of a new state typically involves the recognition of its government, the recognition of Albania in 1919 was a curious case where the Allies recognized the state without recognizing its government. *See* TI-CHIANG CHEN, THE INTERNATIONAL LAW OF RECOGNITION: WITH SPECIAL REFERENCE TO PRACTICE IN GREAT BRITAIN AND THE UNITED STATES 102–03 (1951).

3. *See* STEFAN TALMON, RECOGNITION OF GOVERNMENTS IN INTERNATIONAL LAW: WITH PARTICULAR REFERENCE TO GOVERNMENTS IN EXILE 33 (1998).

4. CHEN, *supra* note 2, at 97. Since the 1960s, different states abandoned the policy of formal recognition of governments, which also had an impact on the policy of de-recognition. *See* Mary Beth West & Sean D. Murphy, *The Impact on U.S. Litigation on Non-Recognition of Foreign Governments*, 26 STAN. J. INT'L L. 435, 436 (1990); *see also* M.J. Dixon, *Recent Developments in United Kingdom Practice Concerning the Recognition of States and Governments*, 22 INT'L LAW. 555, 555 (1988); TALMON, *supra* note 3, at 3–14.

5. Jamie Doward, *Fate of $1bn in Venezuelan Gold Hangs in Balance at High Court*, GUARDIAN (June 20, 2020), https://www.theguardian.com/world/2020/jun/20/fate-of-1bn-in-venezuelan-gold-hangs-in-balance-at-high-court [https://perma.cc/R4CE-748M].

6. A number of books and hundreds of academic articles have been written on the subject of recognition. *See generally, e.g.*, HERSCH LAUTERPACHT, RECOGNITION IN INTERNATIONAL LAW (1947); CHEN, *supra* note 2; JEAN CHARPENTIER, LA RECONNAISSANCE INTERNATIONAL ET L'EVOLUTION DU DROIT DES GENS (1956); SATYAVRATA RAMDAS PATEL, RECOGNITION IN THE LAW OF NATIONS (1st ed. 1959); P.K. MENON, THE LAW OF RECOGNITION IN INTERNATIONAL LAW: BASIC PRINCIPLES (1994); THOMAS D. GRANT, THE RECOGNITION OF STATES: LAW AND PRACTICE IN DEBATE AND EVOLUTION (1999); MIKULAS FABRY, RECOGNIZING STATES: INTERNATIONAL SOCIETY AND THE ESTABLISHMENT OF NEW STATES SINCE 1776 (2010).

7. LAUTERPACHT, *supra* note 6, at 349–51; CHEN, *supra* note 2, at 259–64; LASSA OPPENHEIM, INTERNATIONAL LAW 137 (4th ed. 1926); PATEL, *supra* note 6, at 105–10;

treatment of the de-recognition of states in a blog post.[8] This is, to an extent, only natural, since de-recognition has been very uncommon[9] in state practice. Extant doctrinal views on de-recognition have inevitably been built on the normative framework of recognition under international law, which takes the statehood criteria from the Montevideo Convention on Rights and Duties of States[10]—population, territory, government, and the capacity to engage in international relations—as its starting point. On this basis, the common doctrinal position, to the extent that such a position can be identified, has been to deny the possibility of de-recognition, save in exceptional cases when statehood itself objectively ceases to exist.[11] In other words, if the requirements of statehood continue to be present, the position of international law scholarship has been that, once freely given, recognition cannot be taken back. Today, however, numerous de-recognitions of Kosovo provide us with a unique opportunity for empirically testing the validity of this thesis.

Kosovo's statehood has been contested since it declared independence from Serbia in February 2008.[12] Serbia opposes its independence, viewing Kosovo as part of its territory.[13] Attitudes of other states towards the issue of Kosovo's statehood have been sharply divided. The United States and most European Union (EU) member states recognized it as an independent

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MENON, *supra* note 6, at 165–69. The rare example of a separate piece on de-recognition is Lauterpacht's article in which he discusses de-recognition but does so mainly in the context of de facto recognition of government. *See generally* Hersch Lauterpacht, *De Facto Recognition, Withdrawal of Recognition, and Conditional Recognition*, 22 BRIT. Y.B. INT'L L. 164 (1945). There is a differentiation between de jure and de facto recognition of governments in the literature, but it is not to be trusted for general propositions. In any case, this distinction does not apply in the case of recognition of states, but rather recognition of governments. JAMES CRAWFORD, BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 143 (9th ed. 2019). In the literature on international relations, there are recent writings dealing with the foreign policy of counter-recognition, but they do not mention revocations, as they did not enter the picture at the time. *See generally, e.g.*, JAMES KER-LINDSAY, FOREIGN POLICY OF COUNTER SECESSION—PREVENTING THE RECOGNITION OF CONTESTED STATES (2012).

8. De-recognition of states was touched upon in a relatively recent blog post, discussing whether the recognition of a state can be undermined by charges of corruption of the state's high officials. *See* Abhimanyu George Jain, *Recognition of States in International Law: For Sale*, EJIL: TALK! (Apr. 21, 2014), https://www.ejiltalk.org/recognition-of-states-in-international-law-for-sale/ [https://perma.cc/5P4L-GE4U].

9. A rare example is the U.S. de-recognizing Armenia in 1920, due to its loss of independence. *See* CHEN, *supra* note 2, at 261.

10. *Montevideo Convention on Rights and Duties of States*, Dec. 26, 1933, 165 L.N.T.S. 19, 25.

11. *See infra* notes 226–228, 232 and accompanying text.

12. *See* Kathrin Hille & Leslie Crawford, *The World Reacts to Kosovo Independence*, FIN. TIMES (Feb. 8, 2008), https://www.ft.com/content/890b8142-de18-11dc-9de3-0000779fd2ac [https://perma.cc/SG6J-VH9J].

13. *See* Jovana Gec, *AP Explains: Why Do Serbia-Kosovo Tensions Persist?*, ASSOCIATED PRESS (May 29, 2019), https://apnews.com/article/5d6963a912494fbaaa21f3ee316253cb#:~:text=Serbia%20has%20refused%20to%20recognize,nations%20have%20sided%20with%20Serbia [https://perma.cc/UK4W-YLKK].

state within a few months of its declaration of independence,[14] while China, Russia, India, and some other EU countries[15] refused to do so. Nevertheless, Kosovo had an upward trajectory in achieving international recognition. While it is hard to determine the exact number of states that recognized Kosovo, since, as we will soon see in detail, some of the recognitions have been contested,[16] it appears to have reached 114 recognitions at its peak (for reference, the United Nations (U.N.) has 193 member states).[17]

On the other hand, Serbia has maintained active counter-secession efforts. Not only has it tried to prevent further recognitions, as well as block Kosovo's attempts to join international organizations, but, as of 2011, it has also secured de-recognitions of Kosovo.[18] In January 2013, the Serbian Ministry of Foreign Affairs announced the first de-recognition of Kosovo (by Sao Tome and Principe).[19] As of March 2020, the Ministry claimed an additional seventeen states followed suit in withdrawing their recognition of Kosovo.[20]

However, it is very challenging to discern an accurate picture of Kosovo's de-recognitions.[21] The authorities of Serbia and Kosovo have provided conflicting accounts. After de-recognitions were announced, the de-recognizing states have mostly stayed silent on the issue. Some have even revoked their de-recognitions, further adding to the confusion.[22] At first, Kosovo was denying that de-recognitions were even taking place, portraying them as Serbia's propaganda and "fake news." They then argued that recognitions were irrevocable under international law, and, finally, accepted they were taking place.[23] On the other hand, Serbia viewed de-

14. *List of Recognitions*, MINISTRY FOREIGN AFFS. & DIASPORA KOS., http://www.mfa-ks.net/al/politika/484/lista-e-njohjeve/484 [https://perma.cc/9ZAS-74SD] (last visited June 22, 2021).

15. Cyprus, Greece, Romania, Slovakia, and Spain did not recognize it. *Id.*

16. ; *see also infra* notes 58–59 and accompanying text.

17. This is the number stated in the European Commission Staff Working Document: Kosovo 2019 Report, at 90, SWD (2019) 216 final (May 29, 2019), https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf [https://perma.cc/W82N-SHNP] [hereinafter Kosovo 2019 Report]. However, the exact number of Kosovo's recognitions remains unclear. *See infra* notes 60–61 and accompanying text.

18. KER-LINDSAY, *supra* note 7, at 84, 87.

19. *Dačić čestitao Sao Tome i Principe na Povlačenju Priznanja Kosova*, MINISTRY FOREIGN AFFS. REP. SERB. (Jan. 15, 2013), http://www.mfa.gov.rs/sr/index.php/pres-servis/vesti-od-znacaja?year=2013&month=01&day=15&modid=77&lang=lat [https://perma.cc/F8F7-F4JW]. However, Mr. Dačić also claimed in January 2019 that Sao Tome and Principe revoked the recognition of Kosovo in 2018. *See New Year's Reception at the Ministry of Foreign Affairs*, MINISTRY FOREIGN AFFS. REP. SERB. (Jan. 14, 2019), http://mfa.gov.rs/en/press-service/statements/18477-new-years-reception-at-the-ministry-of-foreign-affairs [https://perma.cc/44W5-P58D].

20. *Serbia Claims Sierra Leone Is Latest Country to Rescind Kosovo Recognition*, RADIO FREE EUR.: RADIO LIBERTY (Mar. 3, 2020, 3:56 PM), https://www.rferl.org/a/serbia-claims-sierra-leone-is-latest-country-to-rescind-kosovo-recognition/30466817.html [https://perma.cc/88YS-J3HN].

21. *See infra* notes 60–61 and accompanying text.

22. *See infra* notes 87–88 and accompanying text.

23. *See infra* note 78 and accompanying text.

recognitions as political acts of tremendous importance in its struggle against Kosovo's independence.[24] In turn, states that de-recognized Kosovo generally offered justifications for their acts, which were framed in political rather than legal terms. Reactions from other states failed to follow.

This Article will dissect the muddled practice of Kosovo's de-recognitions, using it to provide the first systemic account of the de-recognition of statehood in international law. It will challenge the dominant doctrinal stance on the irrevocability of recognitions.

This Article's primary claim is that, contrary to the dominant doctrinal position, state recognition is revocable under international law even when the criteria for statehood are present—or at least when these criteria have not worsened since the point in time at which the initial recognition of statehood was given. This Article's secondary claim pertains to the possible effects of de-recognition. I demonstrate that de-recognition does not affect the existence of a state, nor the enjoyment of rights that stem from statehood on the international plane, but that it can deny the future enjoyment of the rights within the domestic legal orders of de-recognizing states. My tertiary claim is that the "consummation" of rights after recognition reduces the possibility of de-recognition, or, at least, off-sets its adverse effects.

Part I of the Article will give the factual and legal backgrounds of Kosovo's secession and Serbia's counter-secession efforts, in order to provide an overarching account of Kosovo's recognitions and de-recognitions. Part II will explore the nature of recognition and its effect on the enjoyment of rights, both in international and domestic spheres, in order to frame the discussion on de-recognition, which follows in Part III. This Part will start with an overview of state practice and doctrinal positions regarding de-recognition to get to the analysis of the state practice of Kosovo's de-recognition. On the basis of these findings, in Part IV, I will argue in favor of revocability of recognition against the dominant doctrinal stance. This final Part will also assess the consequences of de-recognition on three levels: (1) the existence of the state, (2) its rights on the international plane, and (3) its rights in the domestic order of the de-recognizing state.

I. Kosovo's Secession and Serbia's Counter-Secession: Factual and Legal Background

As is well known, Kosovo declared its independence from Serbia on February 17, 2008.[25] Immediately thereafter, Serbia rejected this declara-

24. *See, e.g.*, *Minister Dačić Thanked Burundi for Revoking Recognition of Kosovo*, MINISTRY FOREIGN AFFS. REP. SERB. (Apr. 2, 2018), http://www.mfa.gov.rs/en/press-service/statements/17631-minister-dacic-thanked-burundi-for-revoking-recognition-of-kosovo [https://perma.cc/7CCX-WHNV].

25. *See Kosovo MPs Proclaim Independence*, BBC NEWS (Feb. 17, 2008), http://news.bbc.co.uk/2/hi/europe/7249034.stm [https://perma.cc/TUN4-PR7T]. Independence was declared when negotiations between Belgrade and Pristina failed, after the Secretary General's Special Envoy Martti Ahtisaari's plan was not endorsed by the U.N.

tion as unilateral, considering it contrary to international law, and the domestic law of Serbia, and therefore, null and void.[26] Serbia views Kosovo as a part of its territory under the international regime established by United Nations Security Council (UNSC) Resolution 1244.[27] Kosovo views itself as an independent state.

Naturally, attitudes of other states towards the issue of Kosovo's independence from Serbia have been sharply divided.[28] The United States and most EU member states recognized it as an independent state within a few months of its declaration of independence.[29] However, the rest, including China, Russia, India, and some other EU countries,[30] criticized the declaration of independence, refused to recognize it, and warned that the recognition of Kosovo created a dangerous precedent.[31] There were also "battleground states," those which stood in between two opposing camps of recognizers and non-recognizers.[32] However, these states were not a united front. Some of them had serious concerns about the implication the

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Security Council, primarily due to Russia's opposition to it. *See* Neil MacDonald, *Russia Rejects Plan for Kosovo*, FIN. TIMES (July 13, 2007), http://www.ft.com/intl/cms/s/0/f3f09aae-30a0-11dc-9a81-0000779fd2ac.html#axzz1xqyDvwn9 [https://perma.cc/9H8E-Z45P]. Ahtisaari Plan envisaged internationally supervised independence of Kosovo. *See* Comprehensive Proposal for the Kosovo Status Settlement, U.N. Doc. S/2007/168/Add.1, at ¶ 1.11 (Mar. 26, 2007). Serbia also rejected this. *See* Craig S. Smith, *Serbia Rejects Plan that Could Lead to Kosovo Independence*, N.Y. TIMES (Feb. 3, 2007), http://www.nytimes.com/2007/02/03/world/europe/03kosovo.html?pagewanted=print [https://perma.cc/HC8R-YUXQ].

26. *See* Letter dated April 17th, 2008, from the Permanent Representative of Serbia to the United Nations addressed to the President of the Security Council, at 19, U.N. Doc. S/2008/260 (Apr. 18, 2008), http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kos%20S%202008%20260.pdf [https://perma.cc/D9Z4-KTLS].

27. *See generally* S.C. Res. 1244 (June 10, 1999). While Serbia was consistently claiming it will never recognize Kosovo as an independent state, recently that position has softened from "never" to "highly unlikely." *See* Von Walter Mayr, *Interview with Serbian President Aleksandar Vucic*, DER SPIEGEL (Nov. 22, 2019), https://www.spiegel.de/international/europe/interview-with-serbian-president-aleksandar-vucic-a-1297616.html [https://perma.cc/AVB3-ZJJW]. Belgrade and Pristina started entertaining ideas of border adjustment that might lead to an agreement and, consequently, recognition of Kosovo by Serbia. *See* Andrew Gray & Ryan Heath, *Serbia, Kosovo Presidents Broach Border Changes for Historic Deal*, POLITICO (Aug. 25, 2018, 11:42 PM), https://www.politico.eu/article/aleksandar-vucic-hashim-thaci-serbia-kosovo-balkans-eu-enlargement-alpbach-forum/) [https://perma.cc/F2JV-Q3Q9]; U.N. SCOR, 63rd Sess., 5839 mtg. at 4, U.N. Doc. S/PV.5839 (Feb. 18, 2008)(containing the earlier statements excluding any possibility for recognition); *President Discusses Kosovo, EU, Regional Ties*, B92 (Jan. 16, 2013, 6:58 PM), https://www.b92.net/eng/news/politics.php?yyyy=2013&mm=01&dd=16&nav_id=84187 [https://perma.cc/U2KL-LXSX]; *Serbian Parliament's Resolution on Kosovo and Methohija*, B92 (Jan. 13, 2013, 7:16 PM), https://www.b92.net/eng/insight/strategies.php?yyyy=2013&mm=01&nav_id=84141 [https://perma.cc/M4HP-NLBY].

28. KER-LINDSAY, *supra* note 7, at 47.

29. *See generally* Kosovo 2019 Report, *supra* note 17.

30. Cyprus, Greece, Romania, Slovakia, and Spain did not recognize Kosovo.

31. James Ker-Lindsay, *Explaining Serbia's Decision to Go to the ICJ*, *in* THE LAW AND POLITICS OF THE KOSOVO ADVISORY OPINION 9, 11 (Marko Milanović & Michael Wood eds., 2015).

32. *See id.*

recognition would have for legitimizing secession, but they did not wish to antagonize any of the opposing sides.[33] These countries appeared to be relenting, but needed further persuasion.[34] Other states were more willing to recognize it as an independent state, but did not want to rush into the process.[35] The *sui generis* (unique case) argument was used to encourage battleground states to recognize Kosovo, as it gave them comfort that Kosovo's case would not have unintended effects elsewhere in the world.[36] This argument was heavily used by the United States and United Kingdom, who "launched serious diplomatic initiative[s] . . . to persuade [other] countries to recognize Kosovo."[37]

Serbia was no bystander. Even before Kosovo declared independence, Serbia tried to counter its secession in different ways.[38] Serbia also tried to prevent, or at least, destabilize Kosovo's quest for statehood. First, Serbia pushed and seceded in the U.N. General Assembly (UNGA) with the request for an advisory opinion (AO)[39] on Kosovo's declaration of independence from the International Court of Justice (ICJ). This was an admirable success[40] because powerful states that recognized Kosovo were strongly against it.[41]

In any case, the ICJ proceedings provided a persuasive and legitimate argument that aided Serbia's effort to stall the tide of recognition of Kosovo within battleground states. Moreover, Serbia was confident that the ICJ would uphold its territorial integrity, which would imply that Kosovo Albanians did not have the right to secede.[42] This would, in the mind of Serbian officials, ensure the political support needed for the re-opening of

33. *See id.*
34. *See id.*
35. *See id.*
36. *Id.*
37. The British Foreign Office even had an officer in charge of coordinating Kosovo recognition efforts. *Id.* at 11 n.15.
38. There were aggressive efforts for delegitimizing Kosovo's representatives at the international level. Serbia insisted for a while that Kosovo could only be represented by UNMIK and refused to participate in meetings where representatives of Kosovo were invited. Ultimately, it had to drop this policy for the sake of its EU integration. *See, e.g.*, Judy Dempsey, *Serbia Insists on Summit Boycott*, N.Y. TIMES (May 26, 2011), http://www.nytimes.com/2011/05/27/world/europe/27iht-east27.html?_r=1 [https://perma.cc/Q7P8-9YHW]. *See generally* Tatjana Papić, *Fighting for a Seat at the Table: International Representation of Kosovo*, 12 CHINESE J. INT'L L. 543, 560 (2013).
39. Statute of the International Court of Justice art. 65, ¶¶1–2 (permitting advisory opinions).
40. The Serbian Foreign Minister at the time claimed that he spent 700 hours in air in 2008, to secure the support. *See Better Troublesome than Dull*, ECONOMIST (Oct. 22, 2009), http://www.economist.com/node/14710896 [https://perma.cc/MS93-E4Z6].
41. Ker-Lindsay, *supra* note 31, at 14–15.
42. *See International Court of Justice Rules on Kosovo Independence*, RADIO FREE EUR.: RADIO LIBERTY (July 22, 2010, 9:15 AM), http://www.rferl.org/content/High_UN_Court_To_Rule_On_Kosovo_Independence/2106373.html (containing statement of then-Serbian PresidentBoris Tadić) [https://perma.cc/FGQ8-U6N7]; Petrit Çollaku & Bojana Barlovac, *Both Kosovo, Serbia Confident on Eve of ICJ Opinion*, BALKAN INSIGHT (July 21, 2010, 1:08 PM), https://balkaninsight.com/2010/07/21/both-kosovo-serbia-confident-on-eve-of-icj-opinion/ [https://perma.cc/56FC-2BAW] (containing statement of then-Serbian Prime Minister Mirko Cvetković).

status negotiations, which was initially one of the main goals of Serbia's foreign policy.[43] However, this did not happen. The ICJ concluded that Kosovo's declaration of independence was not made in violation of international law, as there were no prohibitions imposed by general international law on such declarations, nor did it contravene the legal framework of the United Nations Mission in Kosovo (UNMIK).[44] The Court did not address the legal consequences of Kosovo's declaration of independence, as the question posed was too narrow and specific.[45] Consequently, it gave no answer on whether Kosovo was a state, nor on the effects that the recognitions afforded it.

Initially, the decision of the ICJ was a heavy blow for Serbia. Naturally, in Belgrade, the capital of Serbia, the decision was not depicted as a defeat, but only as "difficult."[46] Belgrade played the "opening Pandora's box" card, warning against misinterpretations of the court's ruling as a "legalization" of Kosovo's attempt at secession—an interpretation that was preached by Kosovo officials,— which could have major implications for the secessionist movements worldwide.[47] Also, it emphasized that Kosovo set a dangerous precedent (and was not a unique case as claimed by many),[48] because it offered "a universally applicable precedent that provide[d] a ready-made model for unilateral secession."[49] On the other side, in Pristina, Kosovo's capital, the atmosphere was jubilant. The decision was viewed as a "historic victory."[50] It was asserted by Kosovo officials that they won on all counts, calling upon states which had not recognized Kosovo to do so and not to fear the possible precedential effect of such an

43. Tatjana Papić, *The Political Aftermath of the ICJ's Kosovo Opinion*, *in* THE LAW AND POLITICS OF THE KOSOVO ADVISORY OPINION, *supra* note 31, at 240, 248.

44. *See* Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 403, 452 (July 22) [hereinafter Unilateral Declaration of Kosovo]. Forty-seven states had already recognized Kosovo before the International Court of Justice (ICJ) was asked to give an advisory opinion on the legality of the unilateral declaration of independence on September 23, 2008. *See generally* Request for an Advisory Opinion of the International Court of Justice on Whether the Unilateral Declaration of Independence of Kosovo Is in Accordance with International Law, U.N. Doc. A/63/L.2 (Sept. 23, 2008). While the advisory proceeding was pending before the ICJ, twenty-two additional countries recognized Kosovo. The rest recognized its statehood after the advisory opinion was rendered, holding that declaration of independence was not in violation of international law.

45. *See* Unilateral Declaration of Kosovo, *supra* note 44, at 451–52.

46. *President Reacts to ICJ Decision*, B92 (July 22, 2010, 10:33 PM), http://www.b92.net/eng/news/politics.php?yyyy=2010&mm=07&dd=22&nav_id=68619 [https://perma.cc/B2HM-KCTD].

47. *See Tadić: Teška Odluka'* [*'Tadić: Difficult Decision'*], BLIC (July 23, 2010), http://www.blic.rs/Vesti/Politika/199626/Tadic-Teska-odluka [https://perma.cc/K2LL-YUZB]; Vuk Jeremic, *Kosovo's Disastrous Precedent*, WALL ST. J. (July 28, 2010, 12:01 AM), http://online.wsj.com/article/SB10001424052748703977004575392901873224526.html [https://perma.cc/FR2L-Z6VZ].

48. *See* Marko Milanović, *Arguing the* Kosovo *Case*, *in* THE LAW AND POLITICS OF THE KOSOVO ADVISORY OPINION, *supra* note 31, at 21.

49. Jeremic, *supra* note 477.

50. Violeta Hyseni, *Serbia and Kosovo react to ICJ Ruling*, BBC NEWS (July 22, 2020), https://www.bbc.com/news/world-europe-10733676 [https://perma.cc/HVG4-8F6Y].

action, since "Kosovo is a unique case."[51]

As for the other states, the ICJ decision was in accord with their previous attitudes on Kosovo's independence; therefore, not a single state, on either of the opposing camps, saw a reason to change its mind.[52] Thus, the ICJ's advisory opinion did not have any effect, or was marginal at best, on the previously held positions of other states on the issue of Kosovo's secession from Serbia. It soon became clear, as we will discuss below, that the outcome of the ICJ proceeding was not as much of a victory for Pristina as it was thought, nor was it as much of a defeat for Belgrade as it initially appeared.[53]

Nevertheless, the ICJ advisory proceedings did have other positive effects, because they fulfilled their function as a U.N. instrument, helping calm down huge tensions surrounding the issue of Kosovo's declaration of independence by keeping it at the dock of the ICJ.[54] Additionally, the delivery of the AO offered a possibility for opening a new dialogue between Serbia and Kosovo.[55] Specifically, after the ICJ rendered its AO, the UNGA adopted the resolution,[56] vesting the responsibility for a dialogue between Serbia and Kosovo with the EU,[57] which is a supranational organization both wanted to join.

These negotiations started in Brussels in 2011. By changing the setting in which different issues had been discussed, they led to many important and practical agreements between Belgrade and Pristina. At the same time, the political narratives of the parties in the negotiations did not change. What did change was their willingness to take some practical steps on issues that needed to be resolved as a condition for their further EU integrations. This meant that in parallel to EU-led negotiations, both sides continued to further their mutually exclusive ends: Serbia continued to work to undermine Kosovo's claim for statehood, and Kosovo continued to work to fortify it. Kosovo was working to gain more recognitions and join international institutions, while Serbia was trying to frustrate both those efforts. Specifically, Serbia was working on not only preventing further recognitions of Kosovo, but also on trying to secure revocations of recognitions already given.[58] Furthermore, it was successfully obstructing

51. *Id.*; *see also* Papić, *supra* note 43, at 241.
52. Papić, *supra* note 43, at 243–46.
53. KER-LINDSAY, *supra* note 7, at 161.
54. Papić, *supra* note 43, at 266.
55. *Id.* at 265–66.
56. Serbia initially tried to use the UNGA as a means of pressuring negotiations regarding Kosovo's status to re-open. However, this was in direct opposition to the views of major EU member states (U.K., Germany, and France), which recognized Kosovo and viewed its independence as irreversible. These states held the key to Serbia's EU aspirations, therefore Serbia had to change its approach for the sake of its future in EU integrations. Consequently, Serbia withdrew its first draft resolution and submitted a new one, co-sponsored with the EU states, which the UNGA adopted. *See id.* at 247–52.
57. G.A. Res. 64/298, ¶ 2 (Sept. 9, 2010). The resolution was drafted to allow all interested parties, in particular Serbia and Kosovo, to interpret it in the light of their existing narratives towards the Kosovo issue.
58. KER-LINDSAY, *supra* note 7, at 87.

Kosovo's attempts to join the U.N. Educations, Scientific and Cultural Organization (UNESCO) and the International Criminal Police Organization (Interpol). Ultimately, this setting affected negotiations between Serbia and Kosovo in Brussels. These negotiations were halted in November 2018, when Kosovo introduced 100% import tariffs on all goods coming from Serbia and Bosnia and Herzegovina—a reactive measure to Serbia's third block on Kosovo's integration into Interpol.[59] The situation remains unchanged at the time of the completion of this Article, in June 2020.

A. Kosovo Recognition Trajectory

The exact number of recognitions afforded to Kosovo remains unclear. Some of the recognitions were contested,[60] and the website of the Ministry of Foreign Affairs of Kosovo adds to the confusion. Its English version lists 114 recognitions, while the Albanian version claims there are 116.[61] What is indeed indisputable is that Kosovo had a positive trajectory in achieving international recognition of its statehood. In the first six weeks after its declaration of independence, thirty-five states recognized it, including two permanent members of the UNSC (i.e., the United States and France).[62] Its membership in Bretton Woods institutions (i.e., the International Monetary Fund (IMF), and the World Bank (WB)) followed in 2009.[63] In less than three years from the declaration of independence, Kosovo was able to secure seventy-five recognitions, which included one third of the U.N. member states.[64]

There was a remarkable absence of international law references in the announcements of Kosovo's recognitions, which may be revelatory of the minor role that international law played in the process.[65] Most of the recognizing states referred to political justifications for recognition, such as the need for regional stability, peace, and security and the fact that negotia-

59. Kosovo did not secure a two-thirds vote on its application for membership: sixty-eight states voted in favor, fifty-one voted against, and sixteen abstained. *See* Eve-Anne Trevors, *Kosovo Fails to Join Interpol*, PRISHTINA INSIGHT (Nov. 20, 2018, 10:18 AM), https://prishtinainsight.com/kosovo-fails-to-join-interpol/ [https://perma.cc/BK6H-J8KA].

60. KER-LINDSAY, *supra* note 7, at 47 n.30; *see also São Tomé: Presidente da República Declara Inexistente Reconhecimento do Kosovo*, ARQUIVO.PT (Jan. 8, 2013), https://arquivo.pt/wayback/20130110181553/http://www.expressodasilhas.sapo.cv/pt/noticias/go/sao-tome—presidente-da-republica-declara-inexistente-reconhecimento-do-kosovo [https://perma.cc/ZUC6-QLX6].

61. *See List of Recognitions*, *supra* note 14.

62. *See* Hille & Crawford, *supra* note 14.

63. *See* Press Release, Int'l Monetary Fund, Kosovo Becomes the International Monetary Funds' 186th Member (June 29, 2009); *Kosovo Joins World Bank Group Institutions*, RELIEFWEB (June 29, 2009), https://reliefweb.int/report/serbia/kosovo-joins-world-bank-group-institutions [https://perma.cc/7WMQ-E3TC]. Serbia, also a member state of these financial institutions, did not object to Kosovo joining. For more on the first years of Kosovo's quest for international recognition, see generally Papić, *supra* note 38.

64. *See List of Recognitions*, *supra* note 14.

65. Cedric Ryngaert & Sven Sobrie, *Recognition of States: International Law or Realpolitik: The Practice of Recognition in the Wake of Kosovo, South Ossetia, and Abkhazia*, 24 LEIDEN J. INT'L L. 467, 479 (2011).

tion options on Kosovo's status were exhausted.[66] On the other hand, international law was invoked, especially principles of sovereignty and territorial integrity, by those states which refused to recognize Kosovo. But since unilateral declarations of independence, as noted by the ICJ, are not prohibited under international law, it seems that internal political considerations of non-recognizing states were the predominant reason for withholding recognition.[67]

It was expected that the ICJ's AO in July 2010 would only boost further recognitions.[68] However, recognitions were not coming at the expected pace. From the ICJ decision on July 22, 2010 until June 2020, there were forty-seven recognitions: three in 2010, twelve in both 2011 and 2012, eight in 2013, and four in 2014.[69] Since 2015, there has been a steady drop in the number of recognitions of Kosovo, with only three afforded in that year, two in both 2016 and 2017, one in 2018, and none in 2019 or (the first half of) 2020.[70] Thus, not only have recognitions slowed down, but the number of recognitions is in decline. And, according to the Serbian Ministry of Foreign Affairs, eighteen states revoked their recognition of Kosovo between January 2013 and March 2020.[71]

The sharp decline in the recognition of Kosovo can be explained by several reasons. First, as of 2014, Kosovo was absorbed in internal political crises, which left no room for pursuing new recognitions.[72] Second, the interest on the issue from international partners was in decline, due to many disrupting occurrences in the world. Finally, utilizing these occurrences, Serbia took its chance to intensify counter-recognition campaigns, particularly embodied by securing de-recognitions and preventing Kosovo from joining international organizations, waging an additional front in the "war of recognitions"[73] in the growingly polarized international community.[74]

B. Revocation Trend

The Serbian Foreign Ministry claimed the first de-recognition of

66. *See id.* at 480; Grace Bolton & Gezim Visoka, *Recognizing Kosovo's Independence: Remedial Secession or Earned Sovereignty?* 17–21 (South East Eur. Stud. at Oxford, Occasional Paper No. 11/10, 2010) (providing individual justifications of the first seventy recognitions of Kosovo).

67. Ryngaert & Sobrie, *supra* note 65, at 480.

68. *See* KER-LINDSAY, *supra* note 7, at 160.

69. *See List of Recognitions*, *supra* note 14.

70. *Id.*

71. *Serbia Claims Sierra Leone Is Latest Country to Rescind Kosovo Recognition*, *supra* note 20.

72. Gëzim Visoka, *Acting Like a State–Kosovo and Everyday Making of Statehood*, *in* INTERVENTIONS 82 (Jenny Edkins & Nick Vaughan-Williams eds., 2017).

73. William Thomas Worster, *Law, Politics, and the Conception of the State in State Recognition Theory*, 27 B.U. INT'L L.J. 115, 117 (2009).

74. After Kosovo's widespread recognition among Western states, Russia afforded recognitions to the entities trying to secede from Georgia. *See* Salome Zurabishvili, *Moscow's Possible Motives in Recognizing Abkhazia, South Ossetia*, RADIO FREE EUR.: RADIO LIBERTY (Sept. 24, 2014), https://www.rferl.org/a/Moscows_Possible_Motives_In_Recognizing_Abkhazia_South_Ossetia/1291181.html [https://perma.cc/B53F-LW3K].

Kosovo happened in January 2013, by Sao Tome and Principe.[75] In the next four years, not a single state decided to revoke its recognition until the last quarter of 2017, when two states did: Suriname[76] and Guinea Bissau.[77] In 2018, the number of revocations continued to grow, with nine states announcing them: Burundi,[78] Liberia,[79] Papua New Guinea,[80] Lesotho,[81] Dominica,[82] Grenada,[83] Comoros,[84] Madagascar,[85] and the Sol-

75. *See supra* note 19 and accompanying text.

76. *Suriname Revokes Its Decision to Recognize Kosovo*, MINISTRY FOREIGN AFFS. REPUBLIC SERB. (Oct. 31, 2017), http://www.mfa.gov.rs/en/component/content/article/17111-suriname-revokes-its-decision-to-recognize-kosovo [https://perma.cc/4UVE-ZRTY]. For the full text of the note, see *Šta Sadrži Diplomatska Nota iz Surinama* [*What Does the Diplomatic Note from Suriname Contain?*], BLIC (Oct. 31, 2017), https://www.blic.rs/vesti/politika/sta-sadrzi-diplomatska-nota-iz-surinama/1dqzq6v [https://perma.cc/K6GR-7F53].

77. *Government of the Republic of Guinea-Bissau Revokes Decision on Recognizing Kosovo*, MINISTRY FOREIGN AFFS. REPUBLIC SERB. (Nov. 21, 2017), http://www.mfa.gov.rs/en/statements-archive/statements2017/17193-government-of-the-republic-of-guinea-bissau-revokes-decision-on-recognizing-kosovo [https://perma.cc/538D-8VSQ]; *see Nota Gvineje Bisao Prištini o Povlačenju Priznanja* [*Guinea-Bissau Note to Pristina on the Withdrawal of Recognition*], POLITIKA (Nov. 21, 2017, 5:11 PM), http://www.politika.rs/sr/clanak/392988/Gvineja-Bisao-povukla-odluku-o-priznanju-Kosova [https://perma.cc/49EC-TQFD] (providing the text of the note).

78. *See* Plator Gashi, *Burundi Revokes Its Kosovo Recognition, Leaving Kosovo PM Nonplussed*, PRISHTINA INSIGHT (Apr. 4, 2018, 12:15 PM), https://prishtinainsight.com/burundi-revokes-kosovo-recognition-leaving-kosovo-pm-nonplussed/ [https://perma.cc/KRR6-R32L].

79. *Dačić Claims Liberia has Annulled Recognition of Kosovo, Saying It Is Due to Serbian Contributions to Dialogue in Brussels. Pristina: Fake News, Number of Recognition Will Grow*, KOSSEV (June 20, 2018), https://kossev.info/dacic-claims-liberia-has-annulled-recognition-of-kosovo-saying-it-is-due-to-serbian-contribution-to-dialogue-in-brussels-pristina-fake-news-number-of-recognition-will-grow/ [https://perma.cc/R3CS-547R] (containing the note on Liberia's de-recognition of Kosovo).

80. *See* Agata Palickova, *15 Countries, and Counting, Revoke Recognition of Kosovo, Serbia Says,* EURACTIV (Aug. 27, 2019), https://www.euractiv.com/section/enlargement/news/15-countries-and-counting-revoke-recognition-of-kosovo-serbia-says/ [https://perma.cc/D56X-PX5Z].

81. Srna, *Lesotho Withdraws its Kosovo Recognition, Serbia's FM Says*, N1 (Oct. 16, 2018), https://rs.n1info.com/english/news/a428408-lesothos-government-withdraws-its-recognition-of-kosovos-independence-serbias-fm-says/ [https://perma.cc/QA2A-7UQM].

82. *Commonwealth of Dominica Revokes Recognition of Kosovo*, Ministry of Foreign Affairs of the Republic of Serbia, (Nov. 2, 2017), http://www.mfa.gov.rs/en/component/content/article/18306-commonwealth-of-dominica-revokes-recognition-of-kosovo [https://perma.cc/8UV9-RWLA].

83. *See Grenada Retracts Recognition of Kosovo*, N1 (Nov. 4, 2018), http://rs.n1info.com/English/NEWS/a433192/Grenada-retracts-recognition-of-Kosovo.html [https://perma.cc/UE3G-RV9F]; *Beograd: Još Jedno Povlačenje Priznanja; Priština: Još Jednom Lažne Vesti* [*Another Recognition Withdrawal: Pristina: Fake News Once Again*], KOSSEV (Nov. 4, 2018), https://kossev.info/beograd-jos-jedno-povlacenje-priznanja-pristina-jos-jednom-lazne-vesti/ [https://perma.cc/TF95-TKWN] (containing text of the note).

84. *See Serbia's FM: Union of Comoros Annuls Decision on Kosovo*, N1 (Nov. 7, 2018), https://rs.n1info.com/english/news/a434017-another-african-country-withdraws-decision-on-recognising-kosovos-independence-fm-says/ [https://perma.cc/AYM9-6P8X]; *Dačić: Unija Komora Deseta Zemlja Koja je Povukla Priznanje, Neće Glasati za članstvo Kosova u INTERPOL-u* [*Dačic: Union of Chambers Tenth Country Withdrawing Recognition Will Note Vote for Kosovo's Membership in INTERPOL*], N1 (Nov. 7, 2018), https://kos-

omon Islands.[86] The Liberian revocation of recognition was later explicitly withdrawn,[87] and Guinea-Bissau's recognition was impliedly withdrawn, by accrediting Kosovo's ambassador in the state.[88] The year 2019 brought five new revocations by Central African Republic (CAR),[89] Palau,[90] Togo,[91] Ghana,[92] and Nauru.[93] And, at the beginning of March 2020, Sierra Leone

sev.info/dacic-unija-komora-deseta-zemlja-koja-je-povukla-priznanje-nece-glasati-za-clanstvo-kosova-u-interpol-u/ [https://perma.cc/ME5H-GLCT] (containing first page of this note in Serbian).

85. *Madagascar Becomes 12th State to Revoke Recognition of Kosovo, Belgrade Says*, N1 (Dec. 7, 2018), http://rs.n1info.com/English/NEWS/a442098/So-far-12-countries-have-withdrawn-recognition-of-Kosovo-Madagascar-to-be-the-last-Belgrade-says.html [https://perma.cc/3FT8-B5EP].

86. *See The Solomon Islands Annuls Recognition of Kosovo: The First Official Annulment*, KoSSev (Dec. 3, 2018, 10:15 AM), https://kossev.info/the-solomon-islands-annuls-recognition-of-kosovo-the-first-official-annulment/ [https://perma.cc/B673-XV6S].

87. *See Liberia Reaffirms Bilateral Ties with Kosovo*, Gov't Republic Liber.: Ministry Foreign Affs., http://mofa.gov.lr/public2/2press.php?news_id=3108&related=7&pg=sp&sub=44 [https://perma.cc/28P7-DBNQ] (last visited June 22, 2021) (containing the statement published at the website of Liberian Foreign Ministry); *see also After the 'Note on the Withdrawal' of Kosovo's Recognition: Liberia Reaffirms Bilateral Ties with Kosovo*, KoSSev (June 22, 2018), https://kossev.info/after-the-note-on-the-withdrawal-of-kosovos-recognition-liberia-reaffirms-bilateral-ties-with-kosovo/ [https://perma.cc/MWH2-7EX7] [hereinafter *Liberia Reaffirms Bilateral Ties with Kosovo*]; Pete Baumgartner & Arbana Vidishiqi, *Flare-Up Between Kosovo and Serbia After Liberian Gaffe*, Radio Free Eur.: Radio Liberty (June 22, 2018), https://www.rferl.org/a/flare-up-between-kosovo-and-serbia-after-liberian-gaffe/29314209.html [https://perma.cc/7E36-BZZ9].

88. *See Republika e Kosovës Akrediton Ambasador në Republikën Guinea Bissau* [*The Republic of Kosovo Accredits an Ambassador to the Republic of Guinea Bissau*], Republic Kos. (July 19, 2018), http://ambasada-ks.net/sg/?page=1,8,229 [https://perma.cc/2S8H-JX4C] (stating that the Ambassador of Kosovo to Senegal was also accredited Guinea-Bissau's ambassador). .

89. *Centralnoafrička Republika Poslala Notu – Ne Priznaje Kosovo* [*The Central African Republic Has Sent a Note – It Does Not Recognize Kosovo*], RTS (July 27, 2019), https://www.rts.rs/page/stories/sr/story/9/politika/3604671/centralnoafricka-republika-poslala-notu—ne-priznaje-kosovo.html [https://perma.cc/6KEF-MQNJ].

90. *Republika Palau Povukla Priznanje Kosova?* [*Republic of Palau Withdraws Recognition of Kosovo*], KoSSev (Jan. 18, 2020), https://kossev.info/republika-palau-povukla-priznanje-kosova/ [https://perma.cc/M8AA-3C3N]; *Palau Drops Kosovo Recognition in Favour of Serbia*, One PNG (Jan. 22, 2019), https://www.onepng.com/2019/01/palau-drops-kosovo-recognition-in.html [https://perma.cc/5PYM-QH4J].

91. *Dačić: Togo Povukao Priznanje Kosova, Nastavićemo sa Takvim Aktivnostima* [*Dačić: Togo Withdrew the Recognition of Kosovo, We Will Continue with Such Activities*], Beta (Aug. 25, 2019), https://beta.rs/vesti/politika-vesti-srbija/115813-dacic-togo-povukao-priznanje-kosova-nastavicemo-sa-takvim-aktivnostima [https://perma.cc/G96J-NQ44]; *Hit Tvit i Šest Predloga: Predlog Broj – Miloš Veliki Privukao je Najveću Pažnju ove Nedelje* [*Hit Twit and Six Proposals: Proposal Number 1 – Milos Veliki Attracted the Most Attention This Week*], Pink.rs (Aug. 2019), https://pink.rs/vesti/150012/hit-tvit-i-sest-predloga-dacic-togo-15-zemlja-koja-je-povukla-priznanje-kosova [https://perma.cc/X6R3-GGJ4].

92. *Ghana Withdraws 'Premature' Kosovo Recognition*, Radio Free Eur.: Radio Liberty (Nov. 12, 2019, 4:16 AM), https://www.rferl.org/a/ghana-withdraws-premature-kosovo-recognition/30266937.html [https://perma.cc/2A5E-7R9M].; *see also Ghana Revokes Recognition of Kosovo*, Ministry Foreign Affs. Republic Serb. (Nov. 11, 2019), http://www.mfa.gov.rs/en/press-service/statements/19074-ghana-revokes-recognition-of-kosovo [https://perma.cc/8B7D-DMEZ] (containing a copy of the note on Ghana's de-recognition of Kosovo).

de-recognized Kosovo.[94]

On the basis of these accounts and the accounts of the Foreign Ministry of Kosovo, one can see that from 2018 to 2020 there were more revocations of previously given recognitions of Kosovo than new recognitions afforded to it. Moreover, Serbia insists that it has fulfilled one of its foreign policy goals: for the number of recognitions afforded to Kosovo to drop to ninety-six, which is below half the number of U.N. member states.[95]

Reactions from Pristina on the news of the de-recognitions taking place at the time were conflicting. The Foreign Ministry and its head, Behgjet Pacolli, were simultaneously dismissing de-recognitions as fake news and propaganda by Belgrade,[96] while implicitly recognizing that they were indeed taking place, claiming that the de-recognitions had been secured in exchange for financial aid, arms sale deals, visa waiver agreements,[97] or even by bribery.[98] On the other hand, Kosovo's Prime Minister, Ramush Haradinaj, did confirm that de-recognitions were taking place.[99] The Deputy Prime Minister of Kosovo and a former foreign minis-

93. *The Republic of Nauru Becomes the 17th Country to Revoke Its Recognition of Kosovo*, Ministry Foreign Affs. Republic Serb. (Nov. 22, 2019), http://www.mfa.gov.rs/en/press-service/statements/19099-the-republic-of-nauru-becomes-the-17th-country-to-revoke-its-recognition-of-kosovo [https://perma.cc/Y673-54GW] (containing a copy of the note on Nauru's de-recognition).

94. *Serbia Claims Sierra Leone Is Latest Country to Rescind Kosovo Recognition*, *supra* note 20.

95. Jack Robinson, *Togo Withdraws Recognition of Kosovo Claims Serbia's Foreign Minister*, Prishtina Insight (Aug. 26, 2019), https://prishtinainsight.com/togo-withdraws-recognition-of-kosovo-claims-serbias-foreign-minister/ [https://perma.cc/6X63-2YTB].

96. *Ghana Withdraws 'Premature' Kosovo Recognition*, *supra* note 92; *Pristina's FM: No Proof of Withdrawals of Kosovo Recognition*, N1 (July 9, 2018), http://rs.n1info.com/English/NEWS/a402619/Kosovo-FM-says-no-proof-of-any-country-withdrawal-of-Pristina-independence.html [https://perma.cc/U4MF-453U].

97. Misha Savic, *Balkan Rift Deepens with Some Unexpected Help From. . . Togo*, Bloomberg (Aug. 28, 2019, 4:59 AM), https://www.bloomberg.com/news/articles/2019-08-28/balkan-rift-deepens-with-some-unexpected-help-from-togo [https://perma.cc/3Z2J-LCV3]; *Pacoli: Srbija Podmićuje Afričke Zemlje da Povuku Priznanje Kosova* [*Pacolli: Serbia Bribes African Countries to Withdraw Recognition of Kosovo*], Politika (Jan. 22, 2019, 12:29 AM), http://www.politika.rs/sr/clanak/420896 Пацоли-Србија-подмићује-афричке-земље-да-повуку-признање-Косова [https://perma.cc/NV77-ZQ7V].

98. Izvor Koha, *MSP Kosova se Ipak Oglasilo: Diplomatske Note Izdate uz Mito, Odbačene Naknadno* [*However, the ICJ of Kosovo Announced: Diplomatic Notes Issued with Bribes, Rejected Later*], KoSSev (Aug. 26, 2019), https://kossev.info/msp-kosova-necemo-komentarisati-propagandu-i-falsifikovane-dokumente-dacica/ [https://perma.cc/EE7J-JGE9]; Mila Đurđević et al., *Da li je Dačić Plaćao Povlačenje Priznanja Kosova? [Did Dačić Pay for the Withdrawal of Kosovo's Recognition?]*, Radio Free Eur.: Radio Liberty (Aug. 27, 2019), https://www.slobodnaevropa.org/a/da-li-je-dačić-plaćao-povlačenje-priznanja-kosova-/30131802.html [https://perma.cc/EAJ3-UBEP]. The same claims were made by Serbia in respect to recognitions given to Kosovo. *See FM Confirms: Two Countries Revoking Kosovo Recognitions*, B92 (Sept. 8, 2011, 6:26 PM), https://www.b92.net/eng/news/politics.php?yyyy=2011&mm=09&dd=08&nav_id=76304 [https://perma.cc/72M3-JQLY].

99. *See* Gashi, *supra* note 78.

ter, Enver Hoxhaj, claimed he had information on ten more to come,[100] which was subsequently denied by the Foreign Ministry.[101] Thus, it seems that Kosovo's officials were both refusing the possibility of de-recognition under international law[102] and accepting it.[103]

There are many curiosities surrounding the revocations of Kosovo's recognition. First, the news about these revocations was coming exclusively from the Serbian Ministry of Foreign Affairs. Serbian Foreign Minister Ivica Dačić; appeared on television, either at a press conference organized at the Ministry[104] or on a television show.[105] He would wave a paper in his hand claiming it was a diplomatic note containing a concrete revocation.[106] Some of these diplomatic notes were published on the website of the Serbian Ministry of Foreign Affairs or in the media.[107] However, the states that were said to have de-recognized Kosovo were staying silent,[108] and Kosovo claimed it did not receive any communication about revocation[109] nor notes about their renouncement.[110] Second, it seems that substantial parts of at least some of the diplomatic notes on revocation of recognition were identical,[111] which signaled coordinated action within the Serbian Foreign Ministry. Third, some of the revocations were later withdrawn, so there was even news of the revocation of de-recognitions.[112] Finally, it seems that Russia helped secure the revocations. Namely, there is an overlap with the conclusion of bilateral treaties between Russia and

100. Hodžaj: Još 10 Zemalja Može da Povuče Priznanje Kosova, RTS (Sept. 6, 2019), https://www.rts.rs/page/stories/sr/story/9/politika/3652620/hodzaj-jos-10-zemalja-moze-da-povuce-priznanje-kosova.html [https://perma.cc/4Z72-Q4LJ].

101. *"Kosovo Nije Dobilo Najavu Nijedne Država o Povlačenju Priznanja"* [*"Kosovo Has Not Received Any Announcement from Any State About the Withdrawal of Recognition"*], B92 (Sept. 20, 2019), https://www.b92.net/info/vesti/index.php?yyyy=2019&mm=09&dd=10&nav_category=640&nav_id=1589438 [https://perma.cc/6T69-9C5D].

102. Die Morina, *Kosovo Says Suriname Can't Revoke Independence Recognition*, BalkanInsight (Oct. 31, 2017), https://balkaninsight.com/2017/10/31/kosovo-claims-suriname-cannot-revoke-independence-recognition-10-31-2017/ [https://perma.cc/YV8A-CZHB].

103. *See Hodžaj: Moguće Dalje Povlačenje Priznanja Kosova*, Radio KIM (Sept. 10, 2019, 10:35 AM), https://www.radiokim.net/vesti/politika/hodzaj-moguce-dalje-povlacenje-priznanja-kosova.html [https://perma.cc/Q6TD-4U6J].

104. *See, e.g.*, Gashi *supra* note 78.

105. *MPJ Pas Deklarimeve se Togo Ka Tërhequr Njohjen: Serbia Po Përdorë Ryshfet Për ta Kundërshtuar Kosovën* [*MFA After Statements that Togo Has Withdrawn Recognition: Serbia Is Using Bribes to Oppose Kosovo*], Koha (Aug. 26, 2019), https://www.koha.net/arberi/180953/mpj-pas-deklarimeve-se-togo-ka-terhequr-njohjen-serbia-po-perdore-ryshfet-per-ta-kundershtuar-kosoven/ [https://perma.cc/PPA3-PH6L].

106. *See* Robinson, *supra* note 95.

107. *See supra* notes 75–95 and accompanying text.

108. One notable exception is Ghana, which issued a statement to the press. *See Ghana Withdraws 'Premature' Kosovo Recognition*, *supra* note 92.

109. *See* Baumgartner & Vidishiqi, *supra* note 87.

110. *See MPJ Pas Deklarimeve se Togo Ka Tërhequr Njohjen: Serbia Po Përdorë Ryshfet Për ta Kundërshtuar Kosovën*, *supra* note 105; Koha, *supra* note 98.

111. *See* Đurđević et al., *supra* note 98; *see also supra* note 84 and accompanying text; *infra* notes 277–278 and accompanying text.

112. *See Liberia Reaffirms Bilateral Ties with Kosovo*, *supra* note 87; *Republika e Kosovës Akrediton Ambasador në Republikën Guinea Bissau*, *supra* note 88.

Suriname, Burundi, Dominica, Grenada, Madagascar, and Palau, respectively, and their subsequent Kosovo recognition revocations.[113] These bilateral treaties were on visa waivers, except in the cases of Suriname and Madagascar, which concluded, respectively, treaties on the establishment of diplomatic relations and military cooperation.[114] However, the Serbian Foreign Minister denied Russia's involvement in the revocations of Kosovo's recognitions.[115] Also, he claimed that even if that was true, this does not differ from what the United States was doing with respect to the recognition of Kosovo in the first place.[116] Indeed, it is common knowledge that the United States showed open support for Kosovo's independence and lobbied for its recognition.[117] This led some states to view Kosovo as a "U.S. project," which may explain why many Arab and Asian states steadfastly refused to recognize Kosovo."[118]

II. Recognition in International Theory and Practice

While it is beyond the scope of this Article to discuss in detail the criteria of statehood and the nature of recognition, which has already been extensively discussed by others,[119] a brief look into these criteria is still necessary in order to sketch the normative boundaries of these concepts under international law and provide a background for discussion of de-recognition in the next Part.

A. Criteria for Statehood and Policy of Recognition

The act of recognition is a result of the free will of each state.[120] The practice of international law shows that there is no duty to recognize the new state, but that each state freely decides upon it.[121]

Still, international law has created the normative framework upon which the question of recognition of an emerging state needs to be

113. Mila Đurđević, *Ruska Veza' u Navodnom Povlačenju Priznanja Kosova?* [*Russian Connection in Alleged Withdrawal of Kosovo Recognition?*], RADIO FREE EUR.: RADIO LIBERTY (July 25, 2018), https://www.slobodnaevropa.org/a/30073173.html [https://perma.cc/SRV3-XYY3].

114. *See id.*

115. *See id.*

116. *See id.* (containing embedded audio recordings).

117. *See* KER-LINDSAY, *supra* note 7, at 112.

118. *Id.*

119. JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 17 (2d ed. 2006); GRANT, *supra* note 6, at ix; Stefan Talmon, *The Constitutive Versus the Declaratory Theory of Recognition: Tertium Non Datur?*, 75 BRIT. Y.B. INT'L L. 101, 101 (2005); Jure Vidmar, *Explaining the Legal Effects of Recognition*, 61 INT'L & COMPAR. L.Q. 361, 362 (2012). *See generally* LAUTERPACHT, *supra* note 6; CHEN, *supra* note 2; Ryngaert & Sobrie, *supra* note 65.

120. Scholars disagree whether a recognition of state can be conditioned or not. *Cf.* José Maria Ruda, *Recognition of States and Governments*, *in* INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS 449, 451 (1991); Int'l L. Comm'n, Rep. on the Unilateral Acts of States, U.N. Doc. A/CN.4/534, ¶ 52 (2003).

121. Ian Brownlie, *Recognition in Theory and Practice*, *in* THE STRUCTURE AND PROCESS OF INTERNATIONAL LAW: ESSAYS IN LEGAL PHILOSOPHY DOCTRINE AND THEORY 627, 635–36 (R. St. J. Macdonald & Douglas M. Johnston eds., 1983).

assessed. The normative setting of state recognition in international law is built upon two pillars: (1) the criteria for statehood from the Montevideo Convention on Rights and Duties of States,[122] and (2) the prohibition on recognition of an entity (otherwise fulfilling the criteria of statehood) that was created in violation of *jus cogens* norms, such as the prohibition on the use of force and the right to self-determination.[123]

The first pillar is traditional and it is based on the principle of effectiveness,[124] embodied in the factual existence of the basic criteria for statehood incorporated in the Montevideo Convention: (1) a permanent population, (2) a defined territory, (3) a government, and (4) the capacity to enter into relations with other states.[125] These criteria, often referred to as the "Montevideo criteria," are said to reflect customary international law.[126] In the past, states explicitly referred to their fulfillment when recognizing a new state. For example, the U.S. Department of State issued a statement to the press on the criteria it used when deciding whether or not to recognize a new state:

> In the view of the United States, international law does not require a state to recognize another entity as a state; it is a matter for the judgment of each state whether an entity merits recognition as a state. In reaching this judgment, the United States has traditionally looked to the establishment of certain facts. These facts include effective control over a clearly-defined territory and population; an organized governmental administration of that territory; and a capacity to act effectively to conduct foreign relations and to fulfill international obligations.[127]

However, this does not mean that, in practice, statehood is necessarily equated with effectiveness.[128] There have been instances where entities were viewed as states despite their lack of effectiveness, as will be discussed later in this Part.[129]

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122. *See supra* note 10 and accompanying text.

123. *See* Ryngaert & Sobrie, *supra* note 65, at 472–74.

124. *See* CRAWFORD, *supra* note 119, at 97; Anne Peters, *Statehood After 1989:* 'Effectivités' *Between Legality and Virtuality*, *in* 3 PROCEEDINGS OF THE EUROPEAN SOCIETY OF INTERNATIONAL LAW 171, 173 (James Crawford ed., 2010) (containing an explanation of effectiveness).

125. *Montevideo Convention on Rights and Duties of States*, *supra* note 10, at art. 1. For a discussion of the Montevideo criteria, see generally Thomas D. Grant, *Defining Statehood: The Montevideo Convention and Its Discontents*, 37 COLUM. J. TRANSNAT'L L. 403 (1999).

126. DAVID HARRIS, CASES AND MATERIALS ON INTERNATIONAL LAW 99 (2004).

127. Eleanor C. McDowell, *Contemporary Practice of the United States Relating to International Law*, 71 AM. J. INT'L L. 337, 337 (1977) ("The United States has also taken into account whether the entity in question has attracted the recognition of the international community of states."). Similar statements have also been made by Canada and the U.K. *See* Ryngaert & Sobrie, *supra* note 65, at 472–73.

128. CRAWFORD, *supra* note 119, at 97.

129. This was the case with Ethiopia, Austria, Czechoslovakia, Poland, and the Baltic States, during the period of 1936 to 1940, when they had been unlawfully annexed; Guinea-Bissau from 1973 until 1974, when Portugal recognized it as state; and Kuwait from 1990 to 1991. *Id.* As well as with Croatia and Bosnia and Herzegovina, during the dissolution of the former Yugoslavia. *See infra* notes 150–152 and accompanying text.

The second pillar, which was established more recently, is embodied by the prohibition of recognition of entities emerging contrary to *jus cogens* (peremptory) rules.[130] This pillar is based on the principle of legality[131] and its universal acceptance, going beyond a state recognition, which is embodied in Article 41(2) of the Draft Articles on State Responsibility.[132] Article 41(2) stipulates that

> "[n]o State shall recognize as lawful a situation created by a serious breach [of an obligation arising under a peremptory norm of general international law], . . . nor render aid or assistance in maintaining that situation."[133] [not a block quote]

So, if an entity is established contrary to the *jus cogens* rules of international law—including the prohibition of the use of force, racial discrimination and apartheid, genocide, and the right to self-determination—there is an obligation to withhold recognition of statehood the entity, even if it otherwise satisfies the effectiveness principle.[134]

States, both individually[135] and through actions within an international organization (particularly the U.N.),[136] consistently refused to recognize effective entities being born through the use of force, such as the Turkish Republic of Northern Cyprus and the Republika Srpska.[137] And, recently, states refused to recognize Abkhazia and South Ossetia, two Georgian secessionist provinces,[138] which were created by the use of force. States also refused to recognize effective entities that were against the right to self-determination in pursuance of racist policies, such as Southern Rhodesia[139] and the South African Bantustans.[140]

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130. The rule originated in 1932 when the U.S. adopted a policy of non-recognition of states established by aggression after the events in Manchuria, China, where Japan, by the use of force, established the puppet state of Manchukuo. *See infra* notes 202–208 and accompanying text. This became known as the "Stimson doctrine" after the U.S. Secretary of State Henry Stimson, who sent a note to Japan and China, declaring the U.S.' refusal to recognize Manchukuo, which resulted from aggression, because it would impair the sovereignty, independence, and territorial integrity of China and was created contrary to the Briand-Kellogg Pact. *See* Quincy Wright, *The Stimson Note of January 7, 1932*, 26 AM. J. INT'L L. 342, 342 (1932). This doctrine was picked up by the League of Nations. *See infra* note 207 and accompanying text; *see also* CRAWFORD, *supra* note 119, at 75; GRANT, *supra* note 6, at 203 n.62; FABRY, *supra* note 6, at 135–37.

131. *See* CRAWFORD, *supra* note 119, at 74–75.

132. Int'l L. Comm'n, Draft Articles on Responsibility of States for Internationally Wrongful Acts, UN Doc. A/56/10, at art. 41, (2001).

133. *Id.* ¶ 8.

134. *Id.*; *see also* CRAWFORD, *supra* note 119, at 97–157.

135. *See, e.g.*, Geoffrey Marston, *United Kingdom Materials on International Law 1997*, 68 BRIT. Y.B. INT'L L. 467, 520 (1997) ("First of all, the occupation of the northern section of Cyprus is illegal and we do not recognize the so-called Turkish Republic of Northern Cyprus as a legitimate entity. Any attempt to absorb it into the Turkish mainland would be clearly contrary to international law.").

136. *See generally* S.C. Res. 541 (Nov. 18, 1983) (concerning TRNC); S.C. Res. 787 (Nov. 16, 1992) (concerning the Republika Srpska).

137. For more on the practice of the non-recognition in cases of the use of force, see CRAWFORD, *supra* note 119, at 128–48.

138. This is so even without a UNSC resolution requiring such refusal.

139. *See generally* S.C. Res. 216 (Nov. 12, 1965); S.C. Res. 217 (Nov. 20, 1965).

Some additional criteria were advanced and, to a certain extent, followed in practice (also based on the principle of legality), which require that an entity not be created against human and minority rights, and in contravention of democratic norms.[141] These criteria can be found in the European Commission's (EC) Declaration on the Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union, adopted by the EC Arbitration Commission on Yugoslavia (so-called "Badinter Commission") in 1991.[142] It is, however, disputed whether the guidelines list criteria for statehood or criteria for recognition.[143]

In any case, the EC's Declaration aimed to provide "the normative ground for European state[s']" practice of recognizing new states,[144] as it listed conditions that needed to be fulfilled for an entity to be recognized as a state.[145] The EC Declaration extended the traditional two pillars,[146] trying to put in place these new normative boundaries preventing new states from being created against the respect of the right to self-determination, human and minority rights, and adherence to democracy. These boundaries were supposed to limit state discretion,[147] despite the fact that the EC Declaration accepted that "the political realities in each case"[148] would influence recognitions.

In practice, however, it seemed that these "political realities" prevailed as it soon became clear that the normative framework of the EC Declaration was not consistently followed by states—neither the traditional requirements for statehood, nor the new criteria.[149] For example, Croatia was recognized before it had effective control of its territory[150] or provided protection to minorities.[151] Additionally, Bosnia and Herzegovina was rec-

140. *See generally* G.A. Res. 31/6 (Oct. 26, 1976); G.A. Res. 32/105 (Dec. 14, 1977); G.A. Res. 34/93 (Dec. 12, 1979); S.C. Res. S/13549 (Sept. 21, 1979); S.C. Res. S/14794 (Dec. 15, 1981) (containing the presidential statements).

141. CRAWFORD, *supra* note 119, at 148–55; s*ee also* GRANT, *supra* note 6, at 84–105.

142. Adopted at an Extraordinary EPC Ministerial Meeting at Brussels on December 16, 1991. *See* Danilo Türk, *Recognition of States: A Comment*, 4 EUR. J. INT'L L. 66, 72 (1993).

143. *See* GRANT, *supra* note 6, 83–106; Talmon, *supra* note 119, at 125–126.

144. Ryngaert & Sobrie, *supra* note 65, at 475.

145. The Badinter's Commission also took the position that the principle of *uti possidetis juris* (maintaining borders existing at the time of independence) should be applied unless the states concerned agreed otherwise. *See* Alain Pellet, *The Opinions of the Badinter Arbitration Committee A Second Breath for the Self-Determination of Peoples*, 3 EUR. J. INT'L L. 178, 182–185 (1992). For a critique on this approach, see generally Steven R. Ratner, *Drawing a Better Line:* Uti Possidetis *and the Borders of New States*, 90 AM. J. INT'L L. 509 (1996).

146. Namely, the EC's Guidelines referred to the traditional criteria by declaring "readiness to recognize [new states], subject to the *normal standards of international practice*," which seems to refer to the Montevideo criteria. HARRIS, *supra* note 126, at 148 (emphasis added) (stating that it will not recognize "entities which are the result of aggression").

147. Ryngaert & Sobrie, *supra* note 65, at 475.

148. Türk, *supra* note 142, at 72.

149. Ryngaert & Sobrie, *supra* note 65, at 472.

150. Croatian Serbs occupied one-third of the territory of Croatia and established the so called Republic of Srpska Krajina. *Id.* at 476.

151. *Id.*

ognized without an effective government in control of its territory.[152] On the other hand, Macedonia fulfilled all the criteria required by the EC Declaration, but was not recognized for some time due to Greek opposition.[153] Moreover, non-European states did not even justify their recognition of the former Yugoslav republic on the normative grounds developed by the EC.[154] These accounts challenge the normative force of the new requirements.[155]

Moreover, these accounts confirm that sometimes politics, not law, is the main force that motivates state practice in the realm of recognition of statehood.[156] This is an inevitable consequence of the fact that recognition of a new state still remains within the old state's discretion[157] and is affected by the "political realities" of each case. For this reason, recognition of states remains "a subject full of paradoxes and curiosities," as J.G. Starke noted in 1965.[158] The case of Kosovo's recognitions also confirms this point.

B. The Nature of Recognition in the Doctrine of International Law

Any discussion on recognition of states in international law commonly begins with the invocation of two theoretical frameworks developed in the doctrine on the topic: constitutive and declaratory. The constitutive theory views recognition as the legal act of state creation,[159] which is necessary for such an entity to enjoy the status of a state.[160] On the other hand, the declaratory theory claims recognition to be only a political act—not a legal transaction—acknowledging a pre-existing fact of the existence of a state,[161] while its state status is given by the operation of law.[162] Therefore, the declaratory theory denies that recognition is a legal transac-

152. *See* Türk, *supra* note 142, at 69. As in the case of Croatia, Bosnian Serbs controlled two-thirds of the territory and had previously established the Republic of Srpska.

153. Greece claimed that the name "Macedonia" implied territorial pretentions toward it, as its northernmost province was also named Macedonia. Sean D. Murphy, *Democratic Legitimacy and the Recognition of States and Governments*, 48 INT'L & COMPAR. L.Q. 545, 561 n.62 (1999).

154. Ryngaert & Sobrie, *supra* note 65, at 476–77.

155. *See id.* at 477–78.

156. *See* GRANT, *supra* note 6, at 105.

157. Brownlie, *supra* note 121, at 630, 635; MALCOM SHAW, INTERNATIONAL LAW 321 (7th ed. 2014).

158. J.G. STARKE, STUDIES IN INTERNATIONAL LAW 91 (1965).

159. *See, e.g.*, OPPENHEIM, *supra* note 7, at 125. Lauterpacht was a subtle proponent of the constitutive view. He claimed that state rights are dependent on recognition, but at the same time argued that there should be no discretion in deciding whether to recognize an entity, only a duty to do so. LAUTERPACHT, *supra* note 6, at 6; *see also* CRAWFORD, *supra* note 119, at 19–22 (championing the contitutive view).

160. MARTIN DIXON ET AL., CASES AND MATERIALS ON INTERNATIONAL LAW 158 (5th ed. 2011).

161. *See, e.g.*, CHEN, *supra* note 2, at 29; CRAWFORD, *supra* note 119, at 22–26.

162. *See* CRAWFORD, *supra* note 7, at 135. The Badinter Commission and *Institut de Droit International* both adopted declaratory views on recognition. Pellet, *supra* note 145, at 182.

tion,[163] while the constitutive theory views it as a legal act, which grants statehood to a new political entity. In other words, the wide gap between the two seems apparent: constitutive theory gives recognition a normative value, while declaratory theory does not.[164]

Both theories have their flaws and are prone to criticism. For example, declaratory theory is hard to reconcile with the rule of international law prohibiting recognition of a qualified entity that emerged after violations of *jus cogens* norms. On the other hand, constitutive theory makes the existence of a state relative because it makes it dependent on recognition.[165] This view is especially challenging when a qualified entity does not have universal recognition. The question that creeps in is how many states would need to recognize a qualified entity for it to be a state?[166]

While both international practice and doctrine largely reveal that the act of state recognition is only declaratory,[167] there are plenty of cases that do not fit neatly in these theoretical models because they have been accommodated in the international legal order[168] in a way that makes us question their usefulness. As Ian Brownlie claimed, these models failed to enhance the subject of recognition and create "a bank of fog on a still day."[169] Today, these theories are no longer self-contained or mutually exclusive,[170] and from the practical point of view, the differences between them have somewhat shrunk.[171] Proponents of the declaratory model must admit that without recognition, a new state cannot do much; it cannot establish diplomatic relations nor enter into treaties,[172] and it may have trouble becoming a member of international organizations. Adherents to the constitutive model would likewise not deny that there are certain rights that new effective entities enjoy regardless of recognition, such as the right against external aggression.[173]

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163. Verhoeven viewed recognition as a legal *fact*, not a legal *act*, that depends on the legal norm and not on the will of the state. *See* PRZEMYSŁAW SAGANEK, UNILATERAL ACTS OF STATE IN PUBLIC INTERNATIONAL LAW 484 (2015).

164. *See* Ryngaert & Sobrie, *supra* note 65, at 470.

165. *See* CRAWFORD, *supra* note 119, at 21.

166. *See* Jure Vidmar, *Territorial Integrity and the Law of Statehood*, 44 GEO. WASH. INT'L L. REV. 697, 737 (2012).

167. *See* CRAWFORD, *supra* note 119, at 22, 25; HARRIS, *supra* note 126, at 131; Ruda, *supra* note 120, at 450.

168. *See* Ryngaert & Sobrie, *supra* note 65, at 471; *see also* Vidmar, *supra* note 119, at 737.

169. Brownlie, *supra* note 121, at 627.

170. *See* GRANT, *supra* note 6, at 73.

171. *See* CRAWFORD, *supra* note 119, at 27–28; JORRI DUURSMA, FRAGMENTATION AND THE INTERNATIONAL RELATIONS OF MICRO-STATES?: SELF-DETERMINATION AND STATEHOOD 115 (1996).

172. *See* CRAWFORD, *supra* note 7, at 137–38.

173. *See* GRANT, *supra* note 6, at 72. Lauterpacht claimed there are some rights pertaining to the basic "rules of humanity and justice" when "expressly conceded or legitimately asserted." LAUTERPACHT, *supra* note 6, at 6.

C. Effects of Recognition on the Enjoyment of Rights

The legal effect of recognition on the creation of a new state and enjoyment of its rights differs from the standpoint of two theoretical models. A purely constitutive view holds that the state is created, and rights are afforded to states by virtue of recognition, while the declaratory view only acknowledges the existence of a state and that its rights exist by the simple operation of law once the statehood criteria have been fulfilled.[174]

However, if we take into consideration state practice, we see that recognition has a different effect on the two levels in which a new state can exercise its rights: (i) in the international realm, and (ii) in the realm of the domestic order of other states. This distinction between the rights that a recognized state may exercise on international and domestic levels becomes particularly relevant in the assessment of possible effects and limits of de-recognition, which will be discussed in Part IV below.

Using the discourse of two theoretical models, one can claim that recognition is only declaratory when it comes to the basic rights on the international plane, which are said to include sovereignty, equality, territorial integrity, dignity, independence, self-preservation, non-interference, and more.[175] Namely, irrespective of recognition, old states have duties "to respect [the] territorial sovereignty [of a qualified entity] and its property[,] to accept its right to grant nationality to persons and vessels[,] and to assume the responsibility flowing therefrom under international law."[176] In state practice, such entities were commonly objects of international claims by the states which did not recognize them.[177] For example, in 1968, the United States claimed that North Korea, which it did not recognize, violated rules of international law in attacking a U.S. vessel called *The Pueblo*.[178] Also, some states, even while not recognizing Israel, claimed it was responsible for violations of international law.[179]

On the other hand, in the realm of the domestic legal order of other

174. Ryngaert & Sobrie, *supra* note 65, at 469.

175. These rights can be derived from the principles embodied in the G.A. Res. 2131 (XX), Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (Dec. 21, 1965); and G.A. Res. 2526 (XXV), Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (Oct. 24,1970). For more information, see generally Int'l L. Comm'n, Draft Declaration on Rights and Duties of States, prepared by the International Law Commission, U.N. Doc. A/RES/375 (1949). However, the UNGA did not act further on this proposal.

176. RESTATEMENT (THIRD) FOREIGN RELATIONS LAW OF THE UNITED STATES § 202 cmt. c (AM. L. INST. 1987).

177. CRAWFORD, *supra* note 7, at 136.

178. *See The Pueblo Seizure and North Korean Intrusion*, U.S. STATE DEP'T (Feb. 23, 1968), http://usspueblo.org/Pueblo_Incident/US_Reactions/US_Dept._State.html [https://perma.cc/JZB8-HMLE].

179. For written statements of Tunisia, Morocco, Saudi Arabia, Syria, Malaysia, Lebanon, Cuba, and Yemen in the advisory proceeding before the International Court of Justice, see *Written Proceedings*, INT'L CT. JUST., https://www.icj-cij.org/en/case/131/written-proceedings [https://perma.cc/X7HM-EK7Q] (last visited June 22, 2021).

states, recognition seems to have a constitutive effect.[180] This does not mean that recognition creates a state, but that without it, a qualified entity[181] cannot always assume the legal position in the domestic legal order of other states.[182] Such a position includes the right to own property; carry on activities in the territory of that state, sue in its courts; enjoy immunity from suit or execution of judgement; and have a full effect of laws, decrees, judgments, and administrative acts[183] (except for acts such as registration of births, deaths, and marriages, which are deemed valid, regardless of non-recognition).[184]

State practices show that all these rights are afforded without contestation in the domestic legal system only upon recognition.[185] Without recognition, an entity may or may not, face challenges with respect to the full enjoyment of rights in the legal order of a non-recognizing state.[186] These challenges come in a unique interplay of domestic laws, constitutional structures, and different branches of government. While the issue of recognition falls within the prerogative of the executive, judicial, and legislative branches,[187] it also plays a role in granting or assessing effects of recognition or non-recognition in the domestic legal order of certain jurisdictions.

In many cases these effects will be seen in the administrative decisions, based on the certificate of the ministry in charge of foreign affairs, stating that a new state has been recognized. There would also be instances in which the rights of new states or the effect of its laws and other acts would be raised in judicial proceedings. While in this context, courts tend to defer to the executive, in some jurisdictions courts do afford rights to entities regardless of the lack of recognition by the executive.[188]

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180. SHAW, *supra* note 157, at 341.

181. It can also affect the nationality rights of an individual associated with a non-recognized state. However, not all human rights are affected because of their reach. *See* Andrew Grossman, *Nationality and the Unrecognised State*, 50 INT'L & COMPAR. L.Q. 849, 876 (2001).

182. ROBERT JENNINGS & ARTHUR WATTS, OPPENHEIM'S INTERNATIONAL LAW 199 (9th ed. 1992).

183. RESTATEMENT (THIRD) FOREIGN RELATIONS LAW OF THE UNITED STATES § 202 cmt. c (AM. L. INST. 1987).

184. *See* Legal Consequences for States of the Continued Presence of South Africa in Namibia Notwithstanding Security Council Resolution 276, Advisory Opinion, 1971 I.C.J. 16, ¶ 125 (June 21).

185. § 202 cmt. c.

186. *See* RALPH WILDE ET AL., RECOGNITION OF STATES: THE CONSEQUENCES OF RECOGNITION OR NON-RECOGNITION IN UK AND INTERNATIONAL LAW 12–17 (2010), https://www.chathamhouse.org/sites/default/files/field/field_document/Meeting%20Summary%20Recognition%20of%20States.pdf [https://perma.cc/34C5-EUX4].

187. Courts may be presented with cases that demand them to take a position on whether formal recognition plays a role in affording rights to non-recognized entities. *See infra* notes 190?92 and accompanying text. In some jurisdictions, legislatures took steps to off-set adverse effects of the non-recognition of some entities. The case in point is the U.S. and its legislation on Taiwan. *See infra* note 191 and accompanying text.

188. As with the issue of state immunity, state practice differs when it comes to the immunity of representatives of a non-recognized entity. For example, Taiwan, as a non-recognized entity, does not enjoy diplomatic immunities in Greece, but it does in Poland. *See* INT'L L. ASS'N, RECOGNITION/NON-RECOGNITION IN INTERNATIONAL LAW, SECOND

Specifically, there were examples of domestic courts affording the right to immunity from a lawsuit or execution of judgement to a non-recognized entity, basing their decision on the assessment of statehood criteria independently from the position of their governments.[189] When the required criteria existed, courts were willing to extend immunity to non-recognized states (e.g., a French court granting an immunity of execution to East Vietnam, a non-recognized entity),[190] while in their absence, the immunity claim would be denied (e.g., the U.S. courts denying immunity to the Palestinian Liberation Organization).[191] At the same time, other domestic courts did not entertain such independent assessment, but rather deferred to the executive's position by viewing recognition as *sine qua non* for state immunity to be enjoyed (e.g., the Singapore courts denying immunity to Taiwan).[192]

The effects of laws, judgements, and administrative acts of a non-recognized entity also seem to be disregarded in the domestic legal order of the non-recognizing state.[193] However, there is also a reverse tendency to affect the matters of private law. Namely, some courts have distinguished between "external" and "internal" consequences of non-recognition,[194] as

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(INTERIM) REPORT 11–12 (2014), https://www.ila-hq.org/index.php/committees [https://perma.cc/Q5U8-TG33].

189. *See id.* at 13.

190. Clerget v. Banque Commerciale pour L'Europe du Nord and Banque du Commerce Extérieur du Vietnam, 52 I.L.R. 310 (1979); *see also* Julius H. Hines, *Why Do Unrecognized Governments Enjoy Sovereign Immunity—A Reassessment of the Wulfsohn Case*, 31 VA. J. INT'L L. 717, 726–27 (1991). For Canadian jurisprudence, see Parent and Ors v. Singapore Airlines Ltd., [2003] J.Q. 18068 (Can.); Margaret E. McGuinness, *Non-Recognition and State Immunities: Toward Functional Theory* 35–36 (St. John's Sch. L., Legal Stud. Rsch. Paper Series, 2018).

191. *See generally* Palestinian Liberation Organization: Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in Amministrazione Straordinaria, 937 F.2d 44 (2d Cir. 1991); Knox v. Palestinian Liberation Org., 306 F. Supp. 2d 424 (S.D.N.Y. 2004); Efrat Ungar et al. v. Palestine Liberation Org., 402 F.3d 274 (1st Cir. 2005). In the *Knox* case, the court also took into consideration the position of the executive towards Palestine, to say that "matters concerning who is recognized as the sovereign or government of a particular territory, and whether and to what extent comity is accorded to its acts and officials, are political questions uniquely within the domain and prerogatives of the executive branch." *Knox*, 306 F. Supp. 2d at 400. For a more in-depth analysis on this issue, see McGuinness, *supra* note 190, at 24–29. It should be noted that the case of Taiwan also raised numerous litigations before the U.S. court, but the issue of its rights as a non-recognized entity were dealt with in a separate legislation: the Taiwan Relations Act. This act gave Taiwan, while being a non-recognized entity, the right to enjoy the same status as a recognized state in the U.S. legal system. The example of Taiwan will be discussed later in this Article, as it specifically touches upon the issue of de-recognition. *See* Basque, Rousse v. Banque d'Espagne, Cour de Poitiers, July 26, 1937, *reprinted* 65 J. DU DROIT INT'L 52, 54–55 (1938); Hines, *supra* note 190, at 726–27.

192. *See, e.g.*, Woo Anthony v. Singapore Airlines Ltd., [2003] 3 S.L.R. 688; McGuinness, *supra* note 190, at 37–38. .

193. For examples from Australia, Italy, and Russia, see INT'L L. ASS'N, *supra* note 188, at 15–16. Additionally, for the Israeli Ministry of Education's refusal to recognize a degree obtained in the Turkish Republic of Northern Cyprus, see ; see also ALEX MILLS, THE CONFLUENCE OF PUBLIC AND PRIVATE INTERNATIONAL LAW: JUSTICE, PLURALISM AND SUBSIDIARITY IN THE INTERNATIONAL CONSTITUTIONAL ORDERING OF PRIVATE LAW 280 (2009).

194. *See* CRAWFORD, *supra* note 119, at 18 (stating in that in the case *Hesperides Hotels Ltd. v. Aegean Turkish Holidays Ltd.*, Lord Denning raised the question of "whether the

well as the private international law and the law or practice of foreign relations,[195] hinting that the effect of foreign law should not depend on recognition when it comes to private individuals.[196]

It should be noted that state practice in respect to rights of non-recognized entities is scarce but, nevertheless, shows that there is a huge difference between the positions of recognized and non-recognized entities. Only upon recognition, the new "qualified" state can be sure to assume in full its rights and have appropriate effects given to its laws, judgments, and other acts in the domestic realm of another state. Otherwise, it remains in a precarious position where all or some of these rights might be denied.

While without recognition a new state might not be able to fully assume its rights, it is still hard to view an act of recognition as a legal transaction, creating a specific legal obligation per se for a recognizing state.[197] It only establishes normal relations and contacts between states, not legal acts,[198] but may lead to the creation of legal obligations in future encounters between the two states. The rare example of a recognition having a legal transaction character, and thus creating a legal obligation per se, is when a parent state recognizes its secessionist entity.[199] This creates a waiver of its claim to territorial integrity over the territory which was seceded.[200] In all other cases, it is difficult to see an act of state recognition as a legal transaction.

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law of the 'Turkish Federated State of Cyprus' could be applied to a tort claim even though . . . the United Kingdom did not recognize that entity as a State: The executive is concerned with the *external* consequences of recognition, vis-à-vis other states. The courts are concerned with the *internal* consequences of it, vis-à-vis private individuals. So far as the courts are concerned, there are many who hold that the courts are entitled to look at the state of affairs actually existing in a territory, to see what is the law which is in fact effective and enforced in that territory, and to give such effect to it—in its impact on individuals—as justice and common sense require: provided always that there are no considerations of public policy against it."). For Lord Wilberforce's similar position, see Carl Zeiss Stiftung v. Rayner & Keeler Ltd., [1967] 1 AC 853, 954 (Eng.) (stating that in respect to private rights "the courts may, in the interests of justice and common sense, where no consideration of public policy to the contrary has to prevail, give recognition to the actual facts or realities found to exist in the territory in question").

195. CRAWFORD, *supra* note 119, at 18.

196. While a Rhodesian divorce decree was not considered valid before the U.K. courts, since this entity was not recognized by the U.K. (*see* Adams v. Adams [1971] P 188 at 15 (Eng.)), there are other examples in U.K. jurisprudence in which private acts were considered valid (*see generally* Emin v. Yeldag, [2002] 1 FLR 956 (Eng.)) because such decisions did not go contrary to the UK foreign policy or affected its diplomatic position. *See* Anahita Mathai, *The Effects of Non-Recognition of a State or Government by the UK in UK Courts*, KING'S STUDENT L. REV. (2012), http://www.kslr.org.uk/blogs/internationallaw/2012/02/21/the-effects-of-non-recognition-of-a-state-or-government-by-the-uk-in-uk-courts/#respond [https://perma.cc/SMF5-CGWL]; *see also* Grossman, *supra* note 181, at 855.

197. Some scholars claim that recognition creates a formal obligation for respecting the rights stemming from sovereignty of a new state, obligation to respect a new state and its dignity, accept is nationality, and abstain from giving assistance to an old state to regain control over its secessionist entity. *See* SAGANEK, *supra* note 163, at 499–503.

198. *See id.* at 500.

199. *See id.* at 503.

200. Vidmar, *supra* note 119, at 370.

III. De-recognition

A. De-recognitions in Practice

As already mentioned, de-recognition is an exceptional phenomenon in state practice. A rare example of a state expressly de-recognizing a previously recognized entity comes from the United States' 1920 revocation of its recognition of the Republic of Armenia, due to Armenia's loss of independence.[201]

While states rarely resort to de-recognition, this issue was discussed in relation to the dispute between Japan and China over Manchuria, a north-eastern province of the latter. In this case, Japan, through the use of force, established a puppet state called Manchukuo where Manchuria once was.[202] It was claimed that in 1931, and subsequent years, China ceased to be a state due to prolonged internal disorder,[203] which implied revocation of its recognition.[204] Similar arguments, on anarchy being a game-changer, were then made by Japan in 1932, when it claimed that China ceased to be an "organised people" within the meaning of the Covenant of the League of Nations.[205] However, these claims were raised not for the sake of revoking the recognition of China, but in order to argue that the formal recognition of the new state, Manchukuo, would not contravene international law.[206] In any case, The League of Nations rejected these claims[207] and denied Manchukuo recognition.[208]

States have not developed any specific rules on express de-recognition, which is not surprising given its infrequency. By implication, it can be concluded that the criteria relevant to recognition will also come into play if a state decides to resort to de-recognition. This would mean that states

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201. *See, e.g.*, CHEN, *supra* note 2, at 261.

202. *See* GRANT, *supra* note 6, 203 n.62; *see also* LAUTERPACHT, *supra* note 6, at 350–51.

203. For arguments supporting this claim, see Thomas Baty, *Can an Anarchy Be a State,* 28 AM. J. INT'L L. 444, 453 (1934).

204. LAUTERPACHT, *supra* note 6, at 350 n.1.

205. *See* Appeal, Dated February 16th, 1932, Addressed to the Japanese Government by the President of the Council in the Name of the Members of the Council Other than the Representatives of China and Japan, 386, U.N. Doc. C.138.M.57.1932VII (Feb. 23, 1932); *see also* LAUTERPACHT, *supra* note 6, at 350 n.1.

206. *See* THE MANCHURIAN QUESTION, JAPAN'S CASE IN THE SINO-JAPANESE DISPUTE AS PRESENTED BEFORE THE LEAGUE OF NATIONS 65–73 (1933).

207. The League of Nations was called upon to deal with the situation in Manchuria when China submitted the dispute to the Council of the League of Nations under Article 11 of the Covenant of the League of Nations, which provided for submissions in "any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends." *League of Nations Assembly Report on the Sino-Japanese Dispute*, 27 AM. J. INT'L L. SUP. 119, 120 (1933). The League of Nations established the Enquiry Commission, led by Lord Lytton, to investigate and evaluate, inter alia, recognition claims of Manchuria. It found that Japanese actions were in violation of both the Covenant of the League of Nations and the Kellogg-Briand Pact. *See id.*

208. GRANT, *supra* note 6, at 130–31. It is not entirely clear how many states recognized Manchukuo. Some authors reported four (El Salvador, Germany, Italy and Hungary), while others added Poland, the Holy See, and the Dominican Republic to the list. *Id.* at 110 n.44.

that assess recognition on the basis of the Montevideo criteria (e.g., the United States, United Kingdom, and Canada), would presumably take into consideration that these criteria cease to exist when contemplating de-recognition. The United States did as much in 1920 with its de-recognition of Armenia.[209] It should also be noted that a temporary lack of the criteria of effectiveness has not resulted in de-recognitions. For example, in World War II, all the states that were conquered by Axis were regarded as occupied states not non-states.[210] Also, states continued to exist even lacking the effective central government.[211]A more recent example is the case of Somalia.[212] Thus, there seem to be a high threshold for considering that an entity ceases to exist as a state,[213] which—as I will demonstrate below—corresponds to the doctrinal opinions on irrevocability of recognition.

The Third Restatement on Foreign Relations of the U.S. briefly touches upon the issue of de-recognition in the following way:

> "The duty to treat a qualified entity as state also implies that so long as the entity continues to meet those qualifications its statehood may not be 'de-recognized.'"[214] [not a block quote]

This indicates that the Restatement shares the dominant doctrinal position, discussed in more detail below, holding that de-recognition is not allowed except when an entity loses statehood criteria. However, this statement could also be interpreted to mean that a de-recognition would not influence duties under international law towards a qualified entity, not necessarily that recognitions are irrevocable. While this reading is less convincing, it is more in line with the main position on recognition of the Restatement—that a formal recognition does not trigger duties towards a qualified entity, but that these duties exist regardless of recognition.[215]

The only other cases that could pertain to the issue of de-recognitions in recent state practice are Taiwan, Abkhazia, and South Ossetia. In 2001, the Former Yugoslav Republic of Macedonia, today known as the Republic of North Macedonia, de-recognized Taiwan, which it had recognized in 1999.[216] By the end of the 1990s and the beginning of the 2000s, many

209. *See supra* note 201 and accompanying text.

210. *See* CRAWFORD, *supra* note 119, at 73–76.

211. Crawford gives examples of China (1930-1935); Russia (1917-1921); Afghanistan (1989-1996); Bosnia and Herzegovina (1991-1994); Somalia (1991-2004); and Zaire/Congo (1997-2004). *See* CRAWFORD, *supra* note 119, at 694.

212. PETER MALANCZUK, AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW 77 (7th ed. 1997).

213. Ryngeart & Sobrie, *supra* note 65, at 488.

214. RESTATEMENT (THIRD) FOREIGN RELATIONS LAW OF THE UNITED STATES § 202 cmt. g (AM. L. INST. 1987).

215. § 202 cmt. b.

216. *See The Government of the Republic of China Deeply Regrets that the Government of the Republic of Macedonia Has Disregarded the Friendly Relations Existing Between the Two Countries and Acquiesced in the Pressure and Enticement of Mainland China*, MINISTRY FOREIGN AFFS. TAIWAN, https://web.archive.org/web/20110927020556/http://www.mofa.gov.tw/webapp/ct.asp?xItem=2284&ctNode=1902&mp=6 (last visited June 8, 2020).

Central American states de-recognized Taiwan as well.[217] Vanuatu (in 2013) and Tuvalu (in 2014) de-recognized secessionist provinces of Georgia, Abkhazia, and South Ossetia, which they had previously recognized.[218] However, this practice is not *stricto sensu* demonstrative of de-recognition, since there were legal obstacles in respect to the statehood of these entities. For this reason, they should be differentiated from Kosovo's case.

First, for decades, Taiwan claimed it was not a new state, but rather the only legitimate government of China,[219] so its case raised the issue of recognition of government, not recognition of state. After abandoning that assertion, Taiwan never declared its independence from China, without which there was not even a statehood claim to be recognized.[220] In contrast to that, Abkhazia and South Ossetia declared their independence from Georgia, but in these cases, force was used to create the new states. International law prohibits statehood recognition of entities that were born out of a violation of the rule against the use of force, which is a *jus cogens* rule. Therefore, the recognitions of Abkhazia and South Ossetia were illegal under international law.

Kosovo, on the other hand, declared its independence from Serbia and did not do so by use of force. Namely, at the time of its declaration of independence, Kosovo was in a clear legal status as an internationally run territory of Serbia by virtue of UNSC Resolution 1244.[221] The argument that the use of force by the North Atlantic Treaty Organization (NATO) against the Former Republic of Yugoslavia (which included Serbia during that time) was illegal[222] does not change this assessment, because the use of force preceded legally established international administration. It is hard to argue that the use of force by NATO in 1999 resulted in the illegal creation of Kosovo in 2008.[223] Even Serbia does not make this claim, instead it opposes Kosovo's recognition on other grounds.

Thus, at the time when Kosovo declared its independence from Serbia, it was in a different situation than Taiwan, Abkhazia, and South Ossetia.

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217. Johanna Mendelson Forman & Susana Moreira, *Taiwan-China Balancing Act in Latin America*, *in* CHINESE SOFT POWER AND ITS IMPLICATIONS FOR THE UNITED STATES: COMPETITION AND COOPERATION IN THE DEVELOPING WORLD 97–101 (Carola McGiffert ed., 2009).

218. *Tuvalu Retracts Recognition of Abkhazia, South Ossetia*, RADIO FREE EUR.: RADIO LIBERTY (Mar. 31, 2014), https://www.rferl.org/a/tuvalu-georgia-retracts-abkhazia-ossetia-recognition/25315720.html [https://perma.cc/4W4R-PM7G].

219. *See* Sigrid Winkler, *Biding Time: The Challenge of Taiwan's International Status*, BROOKINGS (Nov. 17, 2011), https://www.brookings.edu/research/biding-time-the-challenge-of-taiwans-international-status/ [https://perma.cc/6NZ5-MXPT].

220. CRAWFORD, *supra* note 119, at 219.

221. Jure Vidmar, *Legal Responses to Kosovo's Declaration of Independence*, 42 VAND. J. TRANSNAT'L L. 779, 820 (2009).

222. This was due to the lack of authorization by the UNSC. *See* Antonio Cassese, *Ex Iniuria Ius Oritur: Are We Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?*, 10 EUR. J. INT'L L. 23, 23–24 (1999).

223. Vidmar, *supra* note 221, at 826–27. The right to self-determination was also respected as it was the undisputable wish of all ethnic Albanians, who make up roughly 90% of Kosovo's population. For more discussion on that, see *id.* at 825–26.

Also, as I have already demonstrated, Kosovo, unlike Taiwan, Abkhazia, and South Ossetia, had an immensely positive recognition trajectory. For example, the gap is striking when one compares the five recognitions of Abkhazia with the more than 100 recognitions of Kosovo. Such a large number of recognitions undoubtedly served to support Kosovo's claim to statehood.

B. De-recognition in the Doctrine

As already mentioned, de-recognition is an under-explored subject in international law. Few authors[224] have touched upon this issue and if they did, they have only scraped the surface. This is a natural consequence of the fact that de-recognitions are unusual in state practice,[225] so it can only be assessed from a theoretical standpoint.

To the extent that the doctrinal positions can be identified, they commonly deny the possibility of de-recognition, save in exceptional cases when statehood itself would objectively cease to exist. Both proponents of the declaratory (i.e., Ti-Chiang Chen[226] and *Institute de Droit International*) and constitutive approach (i.e., Lassa Oppenheim[227] and Hersch Lauterpacht[228]) stood on this position. Lauterpacht claimed that expressing de-recognitions of states was almost unknown in state practice.[229] However, implicit de-recognitions are said to exist by virtue of another act of recognition of the new state or states, which emerges on the territory of the old state.[230] In any case, the lack of the practice of de-recognition enabled both sides to come to the same conclusion, that, once given, the recognition of state is irrevocable.[231] This position was further reflected by the

224. *See* Ruda, *supra* note 120, at 453. *See generally supra* note 7 and accompanying text.

225. The only example of de-recognition Chen gives is the U.S. revocation of its recognition of the Republic of Armenia in 1920. *See* CHEN, *supra* note 2, at 261. Some examples of de-recognition (such as France de-recognizing the Government of the Finnish Republic) discussed under the heading of the revocation of recognition of state, in fact pertain to de-recognition of government. *See id.* at 261–64; LAUTERPACHT, *supra* note 6, at 350–52.

226. *See* CHEN, *supra* note 2, at 262–63; *see also* Ruda, *supra* note 120, at 453.

227. *See* OPPENHEIM, *supra* note 7, at 137.

228. Although it should be noted that Lauterpacht was only a subtle proponent of the constitutive view. *See* LAUTERPACHT, *supra* note 6, at 6.

229. *See id.* at 158.

230. *See id.* at 351. Lauterpacht discusses the example of Britain's 1938 implied de-recognition of Ethiopia (known at the time as Abyssinia) by virtue of recognition of Italy's annexation of this state. *Id.* at 351–52; *see also* CHEN, *supra* note 2, at 262–64. In some cases, the diplomatic status of representatives of a state that ceased to exist was expressly withdrawn. This was the case when Montenegro became a part of the Kingdom of Serbs, Croats, and Slovenes in 1918 and when the Kingdom of the Two Sicilies was annexed to the Kingdom of Italy in 1861. *See* LAUTERPACHT, *supra* note 6, at 351 n.1.

231. *See* LAUTERPACHT, *supra* note 6, at 349; Krzysztof Skubiszewski, *Unilateral Acts of States*, *in* INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS 221–40 (M. Bedjaoui ed., 1991); Ruda, *supra* note 120, at 453; STARKE, *supra* note 158, at 92; *see also* PATEL, *supra* note 6, at 109–10 (arguing that "[a] state may formally declare withdrawal of recognition and deny effect to the laws of the state the recognition of which is withdrawn and stop all such consequences of recognition ordinarily follow so far as they concern it or

Special Rapporteur on unilateral acts of states in the International Law Commission, Victor Rodriguez Cedeño, in 2003.[232]

In the first half of the twentieth century, some scholars argued for the revocation of recognition of delinquent states, which broke away from the rules of the international society, an example being Germany after the First World War and during Adolf Hitler's regime.[233] Antoine Pillet (in 1920) and Georg Schwarzenberger (in 1943) argued that Germany's recognition should be revoked since it was not fulfilling the obligations of a civilized state.[234] In this way, they linked de-recognition to the disappearance of what they viewed as the requisite statehood criteria. However, these were isolated views and were not followed in state practice.

So, the predominant view on the doctrine remains to this day, that without the factual disappearance of statehood criteria regarding a previously recognized state, recognition, once given, is irrevocable. Presumably, under this view, de-recognition would be allowed in circumstances when statehood criteria did not exist at the time of recognition, so by virtue of de-recognition, a state can admit it made an error in fact. In both scenarios, statehood criteria do not exist.

It should be noted that the view on irrevocability of recognitions does not sit comfortably with the declaratory theory, as it would imply that recognition creates a state and endows it with concrete rights that did not exist before recognition. This is incompatible with the declaratory theory's starting position that states exist regardless of recognition once they fulfill the statehood criteria, and that they have rights from the operation of law and not the act of recognition. The position that recognition is irrevocable corresponds to the starting premises of constitutive theory, as it implies that recognition created states and endowed them with certain rights and duties. To claim that de-recognitions threaten the stability and certainty of the international system is also in line with the constitutive thesis. On the other hand, the claim that recognition can be revoked in cases where statehood criteria cease to exist, resonates more with the declaratory theory, as it implies that the existence of the state is a factual matter.

To sum up, the normative framework of recognition under international law has been used in the doctrine for addressing the issue of de-recognition, allowing it *only* when the criteria for statehood ceased to exist. In these cases, express de-recognitions almost never took place, while implied de-recognitions were argued for on the basis of the recognition of a

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fall within its sphere to respect them or to allow them operation. . . . Of course such an act is not against international law, nor can a state be prevented for so acting.").

232. Cedeño shared the view that "an act of State recognition, while declarative, cannot be modified, suspended or revoked unilaterally unless [in cases] such as the disappearance of the State (object) or a change of circumstances." Rep. on the Unilateral Acts of States, *supra* note 120, ¶ 120. But he did not elaborate on what would encompass other relevant change of circumstances unrelated to the disappearance of criteria for statehood. *See id.*

233. LAUTERPACHT, *supra* note 6, at 350 n.2.

234. *See id.* (arguing that the Allied and Associated Powers should have included the States of Germany in the peace negotiations).

new entity or entities fulfilling the criteria for statehood and being established in the place of an old state that was no longer fulfilling the statehood criteria.[235] However, without state practice, scholars were just opining on *de lege ferenda*.

C. The Practice of Kosovo's De-recognition

1. Kosovo and Statehood Criteria

There are two different scenarios pertaining to statehood criteria in which Kosovo's de-recognition needs to be assessed against the background of existing doctrinal views: (1) whether it ceased to fulfill the statehood criteria, or (2) whether it never fulfilled them at all. In the latter case, de-recognition would be an admittance of an initial error in the recognizing state's factual assessment.

(a) Kosovo's Statehood Criteria Did Not Cease to Exist

Kosovo's de-recognitions do not fall within the situation of statehood criteria ceasing to exist. On the contrary, Kosovo had a stronger claim for statehood under international law at the time the de-recognitions came out than when the recognitions were initially given.

Namely, when it declared independence, Kosovo had only fulfilled the Montevideo statehood criteria requirement of territory and population.[236] Two remaining criteria—the government requirement, and the capacity to enter into international relations—were not yet present at that time. Specifically, the criterion of government requires not only its existence in the formal sense, but also a sovereign and effective government over a territory.[237] The fact that Kosovo was, and still is, under international administration,[238] which has a capacity to overrule the acts of its government, shows that this criterion was not fulfilled.[239] The same argument applies for the capacity to enter into international relations, which is a corollary to a sovereign government.[240]

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235. *Id.* at 351.

236. *See* Vidmar, *supra* note 221, at 818–27 (discussing whether Kosovo fulfilled the traditional Montevideo criteria and other additional criteria that had developed in practice in the case of the dissolution of former Yugoslavia).

237. *See id.* at 819.

238. *See id.* at 820. At the time of the declaration of independence, Kosovo had the Provisional Institutions of Self-Government (PISG), functioning under the Constitutional Framework for Self-Government adopted by the Special Representative of the Secretary General of the UN (SRSG). *See generally* U.N. MIK Reg. 2001/9 (May 15, 2001). Since 2001, the PISG were gradually taking over the international civilian presence in the legislative, executive, and judicial fields. *See id.* at ch. 5. At the same time, a number of areas remained in the hands of the SRSG (such as monetary policy, external relations, judicial appointments, cross-border transfers, etc.). *See id.* at ch. 8. Moreover, the authority of the international security presence did not change; it remained as vested under the Security Council's Resolution 1244. *See* chs., 5, 8, 13; Carsten Stahn, *Constitution Without a State? Kosovo Under the United Nations Constitutional Framework for Self-Government*, 14 LEIDEN J. INT'L L. 531, 548 (2001) (analyzing the Constitutional Framework).

239. *See* Vidmar, *supra* note 221, at 820.

240. *See id.* at 821.

These shortcomings strengthen the claim that political considerations dominated the process of recognitions of Kosovo. As was explained previously,[241] international law has "taken a back seat"[242] in this process. The EU, for example, unlike in the case of the former Yugoslav republics, did not come up with an elaborate normative framework, due to the lack of consensus among its members,[243] but only stated that "[M]ember [S]tates will decide, in accordance with national practice and international law on their relations with Kosovo."[244] The expression "national practice" was claimed to refer to political expediency.[245] In any case, the most frequent justifications of Kosovo recognition of both EU and non-EU states were of a political nature, such as regional peace and security, and exhaustion of negotiations on the final status.[246]

Subsequently, however, Kosovo got closer to fulfilling the international law statehood criteria that it was lacking at the time of its declaration of independence. First, the influence of international administration in the running of Kosovo has been steadily diminishing. International presence in Kosovo in different forms—UNMIK, European Union Rule of Law Mission in Kosovo (EULEX),[247] and International Civilian Office (ICO)[248]—has been substantially reduced (in the case of UNMIK and EULEX) or abolished (in the case of ICO). The declaration of independence had implications on the ability of UNMIK to perform its mandate, especially after Kosovo adopted its Constitution on June 15, 2009, which did not take the existence of UNMIK into account.[249] In June 2009, UNMIK started a reconfiguration and downsizing process.[250] Also, the EU—which initially strengthened its presence in Kosovo from December

241. *See* discussion *supra* Section I.1.

242. Ryngaert & Sobrie, *supra* note 65, at 479.

243. Cyprus, Greece, Romania, Slovakia, and Spain did not recognize Kosovo. Spain, which feared the effects of "Kosovo's declaration of independence" on its own secessionist movements in Basque and Catalonia, even lobbied against the recognition of Kosovo. KER-LINDSAY, *supra* note 7, at 105.

244. Press Release, Council of the European Union, General Affairs and External Relations (Feb. 18, 2008) (on file at https://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/98818.pdf [https://perma.cc/XPQ8-JPV2]).

245. *See* Ryngaert & Sobrie, *supra* note 65, at 480.

246. *See* Bolton & Visoka, *supra* note 66, at 19.

247. EULEX was established on by UNSC Resolution 1244. *See* Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, 2008 O.J. (L 42) 5, 6.

248. The ICO was established by the International Steering Group (consisting of twenty-five states that recognized Kosovo) soon after the declaration of independence on February 28, 2008. The ICO, with its head, the International Civilian Representative, had a mandate to fully implement the Ahtisaari's Plan. Kosovo's Constitution referred to the mandate of the International Civilian Representative (ICR). *See* U.N. Secretary-General, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, ¶ 5, U.N. DOC. S/2008/692 (Nov. 24, 2008) [hereafter S/2008/692].

249. *See id.* ¶ 21. Nevertheless, the Constitution has taken into account the ICR, who was the head of the ICO. Under Article 147 of the Kosovo Constitution, the ICR was "the final authority in Kosovo regarding interpretation of the civilian aspects of [Ahtisaari's Plan]." CONSTITUTION OF KOSOVO Apr. 7, 2008, art. 147 (Kosovo).

250. S/2008/692, *supra* note 248, ¶ 22.

2008,[251] until EULEX arrived[252]—has decreased its presence in later years.[253] In September 2012, the ICO's supervision ended, as it was concluded that its mandate was substantially implemented.[254]

Second, international actors' ability to reverse or annul decisions by Kosovo's authority was substantially reduced.[255] Third, from the moment of declaration of independence, Kosovo authorities started to lead external relations of Kosovo independently of UNMIK with states that recognized it,[256] and gradually gained independent representation in the regional context.[257] Finally, in December 2018, Kosovo moved to establish its army.[258] All this indicates Kosovo's attainment of the Montevideo criteria of government and the capacity to enter into international relations.

So, it cannot be claimed that Kosovo's de-recognitions fit into the doctrinal argument that they are permissible due to it ceasing to fulfill statehood criteria.

(b) Kosovo's Recognition Was Not a Factual Error"

Kosovo's case does not fit into the scenario that de-recognition is warranted when there is an error in the initial factual assessment of the existence of statehood criteria at the moment of recognition. While Kosovo indeed lacked two of the four requirements for statehood at the time of recognition, it has managed to reach them in the meantime. If Kosovo had not fulfilled these criteria, a claim that de-recognitions are due to the initial

251. *See* Statement by the President of Security Council, U.N. Doc. S/PRST/2008/44 (Nov. 26, 2008).

252. Initially, the EULEX functioned under the framework of UNSC Resolution 1244, with the mandate to "monitor, mentor and advise the competent Kosovo institutions on all areas related to the wider rule of law," but also with the authority to reverse or annul operational decisions taken by the competent Kosovo authorities in order to maintain and promote the rule of law, public order, and security. *See* Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, *supra* note 247, at arts. 3, 5.

253. For example, the EULEX had judges and prosecutors within Kosovo's justice system, but they were withdrawn in 2018 although they continued to monitor selected cases and trials in the criminal and civil justice systems. *See* U.N. Secretary-General, *United Nations Interim Administration Mission in Kosovo*, ¶ 9, U.N. Doc. S/2018/747 (July 30, 2018).

254. *See* Fatmir Aliu, *Era of Supervised Independence Ends in Kosovo*, BALKAN INSIGHT (Sept. 11, 2012, 9:08 AM), https://balkaninsight.com/2012/09/11/kosovo-supervision-lifted/ [https://perma.cc/9Z62-VRE7].

255. Today, EULEX's authority to overrule Kosovo is confined to "the areas of forensic medicine and police, including security operations and a residual Witness Protection Programme and the responsibility to ensure the maintenance and promotion of public order and security." *See* Council Decision (CFSP) 2018/856 Amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, art. 5, 2018 O.J. (L 146) 6.

256. Papić, *supra* note 38, at 567.

257. Such is the case in the Regional Cooperation Council, the Energy Community, the European Aviation Safety Agency, and various others.

258. Fatos Bytyci, *Kosovo Approves New Army Despite Serb Opposition, NATO Criticism*, REUTERS (Dec. 14, 2018), https://www.reuters.com/article/us-kosovo-army-idUSKBN1OD16S [https://perma.cc/552M-JSZT].

error in the assessment could be made under the existing doctrinal view on the possibility of de-recognition.

In any case, Kosovo met the statehood criteria to a greater extent at the time of de-recognitions than when the recognitions were initially afforded. Thus, de-recognitions cannot be justified by a change of the factual circumstances pertaining to statehood.

For these reasons, Kosovo's de-recognitions in both scenarios would be contrary to the doctrinal positions on irrevocability of recognition, save for the case of statehood criteria not being fulfilled. Nevertheless, from January 2013 until March 2020, eighteen states have de-recognized Kosovo, although two of these de-recognitions have been subsequently revoked.[259] Moreover, no one seemed to view these de-recognitions as contrary to international law.

2. *Reasons Offered for Kosovo's De-recognition*

The reasons behind the de-recognitions of Kosovo can be, to some extent, discerned from the text of the relevant diplomatic notes. Some of these notes are publicly available in their integral text,[260] while others have been only reported about in the media based on the statements from the Serbian Foreign Minister or Ministry.[261] It should be mentioned that all notes publicly available, in their integral form, were addressed to the Ministry of Foreign Affairs of Serbia, except for Guinea-Bissau's, which was addressed to Kosovo's respective Ministry.[262]

Most of the de-recognizing states invoked some reasons for the de-recognition, save Guinea-Bissau[263] and Suriname.[264] While the grounds invoked for de-recognition and the ways they were used to justify it vary, all

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259. *See Liberia Reaffirms Bilateral Ties with Kosovo*, *supra* note 87; Baumgartner & Vidishiqi, *supra* note 87; *Republika e Kosovës akrediton ambasador në Republikën Guinea Bissau*, *supra* note 88.

260. *See, e.g.*, Gashi, *supra* note 78. The notes of Comoros and Togo appeared only partially. *See Serbia's FM: Union of Comoros Annuls Decision on Kosovo*, *supra* note 84; *Dačić: Togo Povukao Priznanje Kosova, Nastavićemo sa Takvim Aktivnostima*, *supra* note 91.

261. This is the case with Palau, CAR, Sao Tome and Principe, Papua New Guinea, Dominica, Grenada, Lesotho, Togo, Solomon Islands, and Madagascar.

262. See *infra* note 263.

263. The relevant part of Guinea-Bissau's note from October 30, 2017 sent to Kosovo states:

> The Ministry of the Foreign Affairs of the Republic of Guinea-Bissau presents its compliments to the Ministry of the Foreign Affairs of the Republic of Kosovo and with reference to its letter dated January 10, 2011, wishes to inform that after careful consideration, the Government of the Republic of Guinea-Bissau has decided to revoke the recognition of Kosovo as an independent and sovereign state. The Ministry of the Foreign Affairs of the Republic of Guinea-Bissau avails itself of this opportunity to renew to the Ministry of the Foreign Affairs of the Republic of Kosovo the assurances of its highest consideration.

See Nota Gvineje Bisao Prištini o Povlačenju Priznanja, *supra* note 77. Interestingly, however, Guinea-Bissau continued to treat Kosovo as a state throughout this note by referring to it as "Republic of Kosovo," presenting "its compliments" and giving "assurances of its highest consideration." *Id.*

264. The relevant part of Suriname's note states:

the diplomatic notes agreed that de-recognition was not based on the claim that Kosovo was not fulfilling the statehood criteria.

In most cases, the states (Palau,[265] Liberia,[266] Lesotho,[267] Dominica,[268] Grenada,[269] Comoros,[270] Madagascar,[271] Solomon Islands,[272] CAR,[273] Ghana,[274] Nauru,[275] Sierra Leone,[276] Burundi,[277] and Togo[278])

> [T]he Ministry of Foreign Affairs of the Republic of Suriname, has the honor to convey the decision of the Government of the Republic of Suriname of it revocation of the recognition of Kosovo and Metohija as an independent and sovereign state per 27 October 2017. A diplomatic note has been sent to the Ministry of Foreign Affairs of Kosovo on 30 October 2017, informing of said decisions.

Suriname Revokes Its Decision to Recognize Kosovo, *supra* note 76.

265. *See Republika Palau Povukla Priznanje Kosova?*, *supra* note 90.

266. The relevant part of Liberia's note states:

> The Ministry of Foreign Affairs of the Republic of Liberia [. . .] considers its necessary to communicate the following consideration of its decision to recognize the independence of Kosovo. Liberia recognized the independence of Kosovo based on its realization that Belgrade was not prepared to negotiate a solution with its Southern Province Kosovo. Today, the dialogue between Belgrade and Pristina is taking place under umbrella of European Union. With this, it is only appropriate for Liberia to take a stance, which allows for a sustainable solution for citizens of Serbia and Province of Kosovo, as it being done through current negotiations. In the line with all mentioned above, [t]he Republic of Liberia annuls its letter of recognition of Kosovo. This decision remain in effect until the discussion and negotiations are completed under the European Union. The Republic of Liberia will respect fair results of negotiations, which will be achieved between Belgrade and Pristina. Furthermore, [t]he Republic of Liberia will give its full support to two sides by voting in favor of the agreed solution at [t]he United Nations General Assembly.

See Dačić Claims Liberia has Annulled Recognition of Kosovo, Saying It Is Due to Serbian Contributions to Dialogue in Brussels. Pristina: Fake News, Number of Recognition Will Grow, *supra* note 79. This de-recognition was later revoked. *See Liberia Reaffirms Bilateral Ties with Kosovo*, *supra* note 87.

267. *See* Srna, *supra* note 81.

268. *See Commonwealth of Dominica Revokes Recognition of Kosovo*, *supra* note 82.

269. *See Beograd: Još Jedno Povlačenje Priznanja; Priština: Još Jednom Lazne Vesti*, *supra* note 83.

270. *See Dačić: Unija Komora Deseta Zemlja Koja je Povukla Priznanje, Neće Glasati za članstvo Kosova u INTERPOL-u*, *supra* note 84.

271. *See Madagascar Becomes 12th State to Revoke Recognition of Kosovo, Belgrade Says*, *supra* note 85.

272. Media outlets who claimed to have had access to the note of Solomon Islands reported that it stated:

> The Ministry of Foreign Affairs and Trade of Solomon Islands has the honor to inform the Ministry of Foreign Affairs of the Republic of Kosovo that, after carefully considering and taking into account the continuation of negotiations between Belgrade and Pristina on the final status of Kosovo and UNSC Resolution 1244, the Solomon Islands Government decided to annul the recognition of Kosovo as an independent and sovereign country. This decision reached by the Solomon Islands will remain in force until the EU-mediated negotiations are completed . . . .

See The Solomon Islands Annuls Recognition of Kosovo: The First Official Annulment, *supra* note 86.

273. *See Centralnoafrička Republika Poslala Notu – Ne Priznaje Kosovo*, *supra* note 89.

274. The relevant part of Ghana's note states:

> The Government of Ghana has decided to withdraw Ghana's recognition of Kosovo as an independent state. This decision of the Government is informed by the following considerations: In 2012, Ghana decided to recognise Kosovo as

mentioned on-going negotiations between Belgrade and Pristina under the auspices of the EU as the reason for de-recognition, without explaining how this was relevant in the given context. Nine of these states (CAR, Ghana, Lesotho, Dominica, Grenada, Solomon Islands, Madagascar, Burundi, and Togo) afforded their recognition when the EU negotiations were already underway (they started in March 2011),[279] so they could not invoke them as a relevant change of circumstance, warranting an alteration of policy towards Kosovo.

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an independent state and sovereign state, leading to the establishment of the diplomatic relations between two countries. This recognition was in contravention of the Helsinki Final [A]ct and, more fundamentally, in contravention of the UNSC Resolution 1244 (1999). The decision to recognize Kosovo turned out to be premature in view of paragraph 10 of the UNSC Resolution 1244 (1999) which authorized the Secretary General to "establish an international civilian presence in Kosovo in order to provide an interim administration for Kosovo under which people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo.

Ghana Withdraws 'Premature' Kosovo Recognition, *supra* note 92.

275. The relevant part of Nauru's note states:

Nauru established diplomatic relations with Kosovo in 2011 based on the assumption that is deemed to reflect international peace and security. However, the decision to recognize Kosovo as an independent state was premature and viewed as contradicting the principles of the UNSC Resolution 1244 (1999). The Government of the Republic of Nauru considered the on-going dialogue between Serbia and Kosovo at resolving the status of the latter to be a sovereign and independent state and will support the process in allowing both parties to come to a peaceful resolution. In this connection, the Government of the Republic of Nauru has reviewed its decision of recognizing Kosovo and has decided to revoke the recognition of Kosovo as an independent state. Furthermore, the Department will terminate any communication documents issued by the Republic of Nauru forthwith until both parties complete the negotiation process and finalize the status of Kosovo as per the UNSC Resolution 1244 (1999).

The Republic of Nauru Becomes the 17th Country to Revoke Its Recognition of Kosovo, *supra* note 93.

276. Relevant part of Sierra Leone's note states:

The Government of the Republic of Sierra Leone has noted with concerns the continuing impasse between the Republic of Serbia and Kosovo on the question of the Independence of Kosovo, and that both parties are currently engaged in the dialogue on the matter. The Government of the Republic of Sierra Leone is of considered view that any recognition it had conferred (expressly or by necessary implication) to the Independence of Kosovo, may have been premature, bearing in mind the ongoing dialogue. Consequently, the Government of the Republic of Sierra Leone has decided to withdraw any such recognition of the Independence of Kosovo, out of the respect for the said ongoing dialogue, whilst looking forward to a mutually acceptable outcome.

Serbia Claims Sierra Leone Is Latest Country to Rescind Kosovo Recognition, *supra* note 20.

277. Gashi, *supra* note 78.

278. *See Dačić: Togo Povukao Priznanje Kosova, Nastavićemo sa Takvim Aktivnostima*, *supra* note 91; Gashi, *supra* note 78.

279. The CAR recognized Kosovo in July 2011, Ghana in January 2012, Dominica in December 2012, Grenada in August 2013, Lesotho in February 2014, Solomon Islands in August 2014, and Madagascar in November 2017. *See List of Recognitions*, *supra* note 14.

Some states asserted that their recognition of Kosovo was premature (Ghana, Nauru, Sierra Leone).[280] Five states also referred to UNSC Resolution 1244 (Ghana, Nauru, Comoros, Burundi and Togo).[281] Other grounds for de-recognition under international law included the principle of the sovereignty of Serbia,[282] the UNGA resolution,[283] and the ICJ's AO.[284]

Out of eighteen de-recognizing states, only Ghana and Nauru[285] seemed to view their previous recognition of Kosovo as contrary to international law (i.e., UNSC Resolution 1244).[286] In these two cases, the de-recognitions of Kosovo may be warranted as a way to remedy that situation. While Nauru did not try to explain its previous decision,[287] Ghana claimed its recognition of Kosovo "at the time must have, however, been inspired by the quest for peace and harmony."[288]

On the other hand, Burundi, Comoros, and Togo—whose diplomatic notes are textually identical[289]—did not claim they violated international law by affording recognition to Kosovo, but stated that Kosovo's declaration of independence did violate international law because it was aimed at establishing Kosovo's institutions without any political settlement with Serbia.[290] They did not, however, explain why this was not a relevant consideration at the time of their recognition of Kosovo.[291]

None of the notes stated that Kosovo was no longer a state nor that the reason for de-recognition was Kosovo's unfulfillment of the statehood crite-

280. *See Ghana Withdraws 'Premature' Kosovo Recognition*, *supra* note 92; *The Republic of Nauru Becomes the 17th Country to Revoke Its Recognition of Kosovo*, *supra* note 93; *Serbia Claims Sierra Leone Is Latest Country to Rescind Kosovo Recognition*, *supra* note 20.

281. *See Ghana Withdraws 'Premature' Kosovo Recognition*, *supra* note 92; *The Republic of Nauru Becomes the 17th Country to Revoke Its Recognition of Kosovo*, *supra* note 93; *Dačić: Togo Povukao Priznanje Kosova, Nastavićemo sa Takvim Aktivnostima*, *supra* note 91.

282. *See Centralnoafrička Republika Poslala Notu – Ne Priznaje Kosovo*, *supra* note 89.

283. Dominica did not specify to which concrete resolution it was referring to, but in all likelihood, it meant Resolution 64/298, adopted subsequently to the ICJ's advisory opinion, which vested the authority for commencing a dialogue between Belgrade and Pristina to the EU. *See generally* G.A. Res. 64/298 (Sept. 9, 2010).

284. *See Commonwealth of Dominica Revokes Recognition of Kosovo*, *supra* note 82.

285. While claiming that its recognition of Kosovo was premature, Sierra Leone did not maintain that this violated international law. *See Serbia Claims Sierra Leone Is Latest Country to Rescind Kosovo Recognition*, *supra* note 20.

286. Ghana also mentioned that recognition "was in contravention of the Helsinki Final [A]ct." *Ghana Withdraws 'Premature' Kosovo Recognition*, *supra* note 92.

287. *See The Republic of Nauru Becomes the 17th Country to Revoke Its Recognition of Kosovo*, *supra* note 93.

288. *See Ghana Withdraws 'Premature' Kosovo Recognition*, *supra* note 92.

289. *Compare* Gashi, *supra* note 78, *and Dačić: Togo Povukao Priznanje Kosova, Nastavićemo sa Takvim Aktivnostima*, *supra* note 91, *with Serbia's FM: Union of Comoros Annuls Decision on Kosovo*, *supra* note 84. Note, however, that only a portion of the note is publicly available.

290. They claimed that the declaration of independence of Kosovo also violated the Helsinki Final Act. *See* Gashi, *supra*, note 78; *Dačić: Togo Povukao Priznanje Kosova, Nastavićemo sa Takvim Aktivnostima*, *supra* note 91; *Serbia's FM: Union of Comoros Annuls Decision on Kosovo*, *supra* note 84.

291. *See List of Recognitions*, *supra* note 14.

ria.[292] To some extent, the claims of Ghana, Nauru, and Sierra Leone that their recognitions were premature might hint in that direction. However, the fact that Kosovo, in the meantime, has managed to fulfill the requirements for statehood it was missing at the time it was recognized by these states,[293] undermines that argument. Due to the same reason, other de-recognizing states could not simply rely on the fact that at the time of their recognition, Kosovo did not fulfill the statehood criteria to justify their de-recognitions. An argument about factual changes, specifically about the statehood criteria ceasing to exist, would clearly be contrary to the reality at the time of de-recognition.

It is indisputable that de-recognizing states felt the need to offer some explanation for the reversal in their attitudes towards Kosovo's statehood, presumably in order to show that their de-recognitions of Kosovo were not done arbitrarily. While some of these de-recognitions were partially explained by the references to the international law documents and principles, they were ultimately justified by political arguments, specifically the political context of the ongoing EU negotiations between Serbia and Kosovo. As mentioned, these negotiations are by far the most invoked justification in the notes on de-recognition.

In any case, de-recognizing states did not seem to view themselves as having any concrete legal obligation towards Kosovo after they afforded it recognition.[294] Moreover, it seems that they were all—except for Ghana and Nauru who argued that their recognitions of Kosovo were contrary to international law[295]—viewing both their recognitions and de-recognitions exclusively as political acts, in nature and effect. This also appears to be the position of other states, including Serbia, which claimed that de-recognitions were political acts.[296] Obviously, Serbia could not claim that these de-recognitions stripped Kosovo of its status as a state, as it argues

292. It should also be noted that Liberia's and Guinea-Bissau's later de-recognitions of Kosovo were not pertaining to permissibility of de-recognition nor the statehood criteria. Liberia's withdrawal was due to the fact that the de-recognition was given by foreign ministers without consultation with their government or heads of state, while Guinea-Bissau's withdrawal was unjustified because it was given by implication. *See Liberia Reaffirms Bilateral Ties with Kosovo*, *supra* note 87; *Republika e Kosovës Akrediton Ambasador në Republikën Guinea Bissau*, *supra* note 88.

293. *See List of Recognitions*, *supra* note 14.

294. De-recognizing states also did not issue any statement regarding their de-recognitions within the framework of the financial institutions (i.e, the International Monetary Fund and the World Bank) to which they are members along with Kosovo. In the case of Sao Tome and Principe, this statement applies only to the membership in the World Bank, as this state is not a member of the International Monetary Fund. All derecognizing states, except Nauru (which became a member of both institutions in 2016), were already members of these financial institutions when Kosovo joined. *See List of Members*, INT'L MONETARY FUND, https://www.imf.org/external/np/sec/memdir/memdate.htm [https://perma.cc/4T5N-7TGV] (last visited June 22, 2021); *Member Countries*, WORLD BANK, https://www.worldbank.org/en/*about*/leadership/members [https://perma.cc/F7NC-NESK] (last visited June 22, 2021).

295. *See Ghana Withdraws 'Premature' Kosovo Recognition*, *supra* note 92; *The Republic of Nauru Becomes the 17th Country to Revoke Its Recognition of Kosovo*, *supra* note 93.

296. *See Minister Dačić Thanked Burundi for Revoking Recognition of Kosovo*, *supra* note 24.

that Kosovo did not have that status to begin with.[297] As for Kosovo, while it first argued that recognitions were irrevocable under international law, it subsequently took the position of not giving any legal relevance to de-recognitions.[298]

Finally, the lack of reactions from third states must be taken into account. As is well known, the issue of state silence and how to interpret it is one of the general questions of international law, which is particularly important in the process of the creation of customary international law[299] as it can serve as "practice . . . [or] evidence of acceptance as law."[300] However, it seems that in the context of state de-recognition, the silence of states may be taken to support the argument that revocation of recognition is possible, rather than the opposite. While not all states can be expected to always react to all events, one would at least expect some reaction from three particular categories of states on the matter of the de-recognitions of Kosovo: (a) those states that were strong proponents of Kosovo's independence, (b) those states that were recently established, or (c) states which have an acute issue with secession. However, there is no record that any such state reacted to de-recognitions of Kosovo, apart from the statements made by the U.S. ambassador of Kosovo who said that the "independence of Kosovo is irrevocable."[301] This was, however, said in the political context of reiterating U.S. support for Kosovo's independence, and not from an international law analysis. Specifically, the U.S. ambassador did not claim that the de-recognitions violated international law.

For all these reasons, it seems that the practice of states in respect to Kosovo's de-recognitions gives support to the proposition that recognition is revocable, leaving the consequences of such acts to lay exclusively in the political realm.

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297. See Tatjana Papić & Vladimir Djerić, *On the Margins of Consolidation: The Constitutional Court of Serbia*, 10 HAGUE J. RULE L. 59, 74–75 (2018).

298. *See* Morina, *supra* note 102; Gashi, *supra* note 78.

299. State silence has played a very important role in legal discussions on changing the rules of the use of force. *See* Paulina Starski, *Silence Within the Process of Normative Change and Evolution of the Prohibition on the Use of Force– Normative Volatility and Legislative Responsibility* 45 (Max Planck Inst. Compar. Pub. L. & Int'l L., Rsch. Paper No. 2016-20, 2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2851809 [https://perma.cc/6AYN-9W3A]; Dustin A. Lewis et al., *Quantum of Silence: Inaction and* Jus ad Bellum, HARV. L. SCH. (2019), https://dash.harvard.edu/handle/1/40931878 [https://perma.cc/AZ64-CXXH]; Elisabeth Schweiger, *Listen Closely: What Silence Can Tell Us About Legal Knowledge Production*, 6 LONDON REV. INT'L L. 391, 391 (2018).

300. This was discussed in detail regarding identification of customary international law within the International Law Commission. *See* Rep. of the G.A., at 9, U.N. Doc. A/CN.4/682 (2015).

301. *Američka Ambasada: Nezavisnost Kosova Neopoziva* [*U.S. Embassy: Kosovo's Independence Irrevocable*], RADIO FREE EUR.: RADIO LIBERTY (Nov. 1, 2017), https://www.slobodnaevropa.org/a/28829610.html [https://perma.cc/4X4G-EWSR].

IV. Arguing Revocability of Recognition

There are strong reasons for the claim that recognition may be revoked beyond the stringent rules for de-recognition offered in the doctrine, which are embodied in situations where the criteria of statehood ceases to exist.

First, the lack of international law rules prohibiting de-recognition seriously undermines the argument on the irrevocability of recognition. The lack of such rules suggests that states are free to de-recognize because they were free to recognize in the first place. Namely, if one is to apply the *Lotus* principle[302]—understood as everything that is not prohibited is permitted under international law—states are free both to afford and revoke the recognition of another state. State practice, including the lack of reactions from other states pertaining to Kosovo's de-recognitions, provides an argument that this is indeed so.

Second, stringent rules on de-recognition would not be in line with state practice on recognition itself, which is seen as a discretionary *political* act. Namely, stringent rules on de-recognition would imply that recognition is a legal transaction. This would create a state and impose concrete legal obligations on recognizing states, such as a duty not to de-recognize, which do not exist under international law *de lege lata*. It has been demonstrated that states are not created by the virtue of recognition. Also, their rights are not triggered by the act of recognition, but stem from general international law and exist regardless of recognition. Since an act of recognition does not create a *concrete* legal obligation for a recognizing state,[303]

302. *See generally* S.S. Lotus Case (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7) (developing the principle). For more on the principle, see Ole Spiermann, *Lotus and the Double Structure of International Legal Argument*, *in* INTERNATIONAL LAW, THE INTERNATIONAL COURT OF JUSTICE AND NUCLEAR WEAPONS 131, 131 (Laurence Boisson de Chazournes & Philippe Sands eds., 1999); An Hertogen, *Letting Lotus Bloom*, 26 EUR. J. INT'L L. 901, 901 (2015). This principle, however, offers various interpretative possibilities apart from the one mentioned in the text. *See* Hugh Handeyside, *The The Lotus Principle in ICJ Jurisprudence: Was the Ship Ever Afloat?*, 29 MICH. J. INT'L L. 71, 72 (2007).

303. The issue of whether a concrete unilateral act creates legal obligations or not was very important in the work of the International Law Commission (ILC) when it dealt with the topic of unilateral acts of states. From the very beginning, the work on the topic was bumpy, as it proved to be a complex and unchartered territory in which competing and inconsistent rules were emerging from state practice. In many cases, a state's conduct is surrounded with uncertainty regarding both the nature and the scope of the act it is formulating. Due to all of these issues, there was a split within the ILC and the Sixth (Legal) Committee of the UNGA on the approach in the matter. *See* Rep. on the Unilateral Acts of States, *supra* note 120, ¶¶ 2–3. The majority view in both bodies was that this topic can be dealt with as an exercise in a codification and progressive development, while others viewed that it was too early for such a study. In order to overcome the split, the ILC decided to refrain from the codification and progressive development, and instead developed a set of guidelines on unilateral acts that produce legal obligations, which states could consult in the future, thereby consolidating state practice on the matter. *See generally* Int'l L. Comm'n, Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations, U.N. Doc. A/61/10 (2006). For an overview of the differing views expressed within the ILC, see Int'l L. Comm'n, Ninth Report on Unilateral Acts of States, by Mr. Víctor Rodríguez Cedeño, Special Rapporteur, U.N. Doc. A/CN.4/569, ¶¶ 2–7 (2006).

it cannot be a unilateral *legal* act.[304] Additional international rights and duties to those stemming from general international law can be established after recognition, but that occurs through separate transactions of a *legal* character, such as treaties and other agreements, not by virtue of recognition. The only instance in which the act of recognition can be viewed as creating a legal obligation per se is when a parent state recognizes its secessionist entity. This creates a waiver of its claim to territorial integrity over the territory which seceded.[305] In all other cases, recognition does not seem to be a legal transaction.

The position that considers state recognition to be irrevocable under international law is also problematic from another perspective. It expects international law to do the unimaginable—to manage controversial social realities, such as contested statehood. Moreover, it diminishes the possibilities of solving such controversies, as it infuses rigidity and limits negotiators.[306] Thus, from a policy perspective, a rule banning revocations of recognition would have had undesirable consequences.

In contrast to that, viewing state recognition as revocable—based on the absence of any legal rule to the contrary[307]—recognizes the limits of international law and the fact that it is not about specific outcomes that should be reached, but about which tools should be used to reach them.[308] When statehood is not contested, as was the case with Montenegro's independence in 2006, legal and political aspects of recognition easily blend, and international law seamlessly regulates international relations of the newly emerged state. However, when a claim for statehood is contested,[309] it cannot be realistically expected that international law will step in, translate political controversies into legal questions, and ultimately resolve them. It is unlikely that such controversies will ever be resolved by legal means, except in situations of an emergent state that threatens the very foundations of international law, such as secession procured through the use of force by an outside power or a violation of self-determination. Apart from these situations, it seems that international law should remain silent on contested statehood, while enabling its principles, processes, and mechanisms to contribute to the solution, which ultimately must be reached within a political process.

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304. SAGANEK, *supra* note 163, at 503.

305. Vidmar, *supra* note 119, at 370.

306. Steven Ratner made the same argument regarding the application of the *uti possidetis* rule beyond the decolonization context. *See* Ratner, *supra* note 145, at 618.

307. *See* Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 478, ¶¶ 8, 9 (July 22) (separate opinion by Simma, J.) (discussing the possibility of going beyond binary understandings of permissive and prohibitive rules of international law); *see also* Anne Peters, *Does Kosovo Lie in the Lotus-Land of Freedom*, 24 LEIDEN J. INT'L L. 95–108 (2011).

308. Frédéric Mégret, *International Law as Law*, *in* THE CAMBRIDGE COMPANION TO INTERNATIONAL LAW 65, 67 (James Crawford & Martti Koskenniemi eds., 2012).

309. *See* Worster, *supra* note 73, at 168.

A. Examining Consequences of De-recognition

Taking the position that de-recognition is permissible under international law, I will now proceed to explore its possible effects on: (1) the existence of de-recognized states, (2) the rights of de-recognized states on the international plane, and (3) the rights of de-recognized states in the domestic sphere of the de-recognizing states.

First, if the lack of recognition cannot diminish a state's existence, an act of de-recognition cannot either. In other words, if a qualified political entity can assume the status of state under international law, regardless of recognition, its status will also be unaffected by the act of de-recognition. The practice of Kosovo's de-recognitions supports this point.

Second, an act of de-recognition does not seem to affect the rights of a de-recognized state at the international level. This flows from the fact that these rights have not been conferred by virtue of recognition, but existed through operation of law, so they cannot be denied through de-recognition. Reactions to de-recognitions of Kosovo are in line with this claim. So, a state's discretion to recognize, not recognize, or de-recognize does not affect enjoyment of the rights of an entity at the international level.

Here, it is important to note that ending diplomatic relations is different from de-recognition,[310] even though both occurrences result in the same consequences (i.e., no diplomatic relations) between states. Presumably, the act of de-recognition affects bilateral diplomatic relations between the de-recognizing state and the de-recognized state. However, this will not amount to violation of any right of the de-recognized state at the international level, as there is no international right to diplomatic relations. Diplomatic relations between states are voluntary and based on mutual consent.[311] These characteristics of diplomatic relations are evident, both in the procedure of the appointment of diplomatic representatives as well as in the termination of their mandates. Namely, a receiving state agrees on a specific head for the diplomatic mission (by virtue of affording said person with an *agrément*),[312] and is allowed to proclaim any member of the diplomatic mission from the sending state as *persona non grata*, without specific explanation.[313] The rupture of diplomatic relations is not uncommon in state relations, although it usually happens outside of the de-recognition context. In any case, both occurrences result in the same consequence which, in both cases, falls outside of the legal realm. In both contexts, a state's rights remain unaffected.

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310. CHEN, *supra* note 2, at 262. The break of diplomatic relations can occur in a situation of unconstitutional changes of government, which can end by recognition of the new government. This does not cast doubt on the existence of that state nor influences its status as a state, as previously stated. *See id.* However, the examples given in the literature often mistake the revocation of recognition of *government* for the revocation of recognition of *state*. *See, e.g.*, LAUTERPACHT, *supra* note 6, at 350–52.

311. Vienna Convention on Diplomatic Relations art. 2, Apr. 18, 1961, 500 U.N.T.S. 95.

312. *Id.* at art. 4.

313. *Id.* at art. 9.

Finally, however, a state's decision to de-recognize another may affect the enjoyment of rights of the de-recognized state in the domestic sphere. These rights, inter alia, include the right to own property, sue before the court of another state, and enjoy immunity, which are generally dependent on recognition.[314] As already explained in the previous chapter, courts in some jurisdictions deferred to the executive's position on recognition of an entity when deciding on the existence of its rights. On the other hand, in other jurisdictions, the existence of some rights was not made independent of recognition, but rather assessed based on the Montevideo criteria. So, unlike rights in the international sphere, rights from the domestic realm can depend on recognition.

Since there is no practice in this respect regarding Kosovo, the case of Taiwan, despite being different than Kosovo, can be used as an example to demonstrate uncertainties facing a non-recognized entity in the domestic realm of other states. Namely, cases in various jurisdictions show the different approaches courts took regarding Taiwan's rights, which were mandated by domestic legislation or other rules demanding deference to the position on recognition taken by their executive.[315]

The United States regulated the status of Taiwan in its legal order using a separate legislation, the Taiwan Relations Act (TRA),[316] which was adopted after the United States de-recognized Taiwan in 1979 and formally recognized the People's Republic of China.[317] The TRA gave legal status to Taiwan, under U.S. law, and provided a basis for U.S.-Taiwan relations to continue without being categorized as diplomatic. By virtue of this, Taiwan, while being a non-recognized entity, enjoys the same status as a recognized state in the U.S. legal system.[318] The TRA remains the only domestic act that substantially regulates the rights of non-recognized entities in the domestic realm, not just in the United States, but worldwide.[319] It was aimed at minimizing the effects of the de-recognition of Taiwan by enabling the laws of the United States to continue applying as before.[320] Without the TRA, it would be questionable to what extent Taiwan could enjoy previously existing rights in the U.S. legal order.

In other jurisdictions, like the United Kingdom and Canada, which did not adopt legislation resembling the TRA,[321] courts were also inclined

314. RESTATEMENT (THIRD) FOREIGN RELATIONS LAW OF THE UNITED STATES § 202 cmt. c (AM. L. INST. 1987).

315. *See* CRAWFORD, *supra* note 119, at 205.

316. *See* 22 U.S.C. § 3301 (1979).

317. *See Subjects of International Law*, DIG. U.S. PRAC. INT'L L., 1978, at 14, 71.

318. *See* Pasha L. Hsieh, *An Unrecognized State in Foreign and International Courts: The Case of the Republic of China on Taiwan*, 28 MICH. J. INT'L L. 765, 774–75 (2007).

319. *See id.* at 775.

320. CRAWFORD, *supra* note 119, at 202.

321. The U.K. has adopted the Foreign Corporations Act of 1991, but it only deals with the status of Taiwanese corporations, which are recognized under U.K. law as having "legal status, as entitled to own property and to be a party to litigation, and the law of Taiwan is treated as the law of a recognized State in determining the existence and capacity of such corporations." *Id.* at 202–203. Australia has similar legislation. *See id.* at 203 n.32.

to afford state immunity from lawsuit to Taiwan, either on the basis of the common law (as the U.K. did), or on the basis of a separate analysis that deemed it a state based on the Montevideo criteria (as Canada did), thereby achieving the same result the TRA achieves before the U.S. courts.[322] On the other hand, there are courts (e.g., Singapore's courts), which denied the right of state immunity in the domestic legal order to Taiwan, due to it not being recognized as a state.[323]

Thus, it is evident that the position of an entity which is not recognized is more precarious in the domestic realm of a non-recognizing state than in the international realm and can ultimately result in the denial of rights for both the entity and individuals associated to it by virtue of their nationality.[324] This even applies to an entity like Taiwan that has a strong economic stature and trade ties, which Kosovo lacks.

B. Possibilities of Legal Protection in the Case of De-recognition

In the case where the rights of a de-recognized state in the domestic realm of a de-recognizing state are denied upon de-recognition, it seems that the actual consequences will depend on whether these rights have been previously consummated or not. In other words, the scope of the effect of de-recognition on enjoyment of these rights will depend on whether the prerogatives obtained after the recognition were put in use prior to de-recognition. If they were, this would be in good faith reliance with the act of recognition, which would create a legal claim, so the concept of estoppel could be used to limit detrimental consequences on the de-recognized state. This can, in part, explain why the separate legislation on Taiwan was adopted in the United States, as substantial relations existed before de-recognition.

For example, imagine that a recognized state bought a property in a recognizing state for the purposes of serving both as an embassy and the residence of the future ambassador once the two countries establish diplomatic relations. Now imagine the recognizing state revokes the recognition of that state. This revocation happens before the previously recognized state entered into possession of the property, but after it paid the agreed price in full. While states do not need to afford the right to sue to unrecognized entities, should states in these circumstances be left with no protection for its property and no protection before the courts of the recognizing state that suddenly revoked its recognition? The answer should be a resounding no. There was a good faith reliance by the new state on the act of recognition, and it should not suffer the consequences of de-recognition in this situation.

This, however, does not mean that a de-recognized state will be able to enjoy these rights in the future after the act of de-recognition, but only that it can have some legal protection in respect to the rights it had already

322. Hsieh, *supra* note 318, at 782–88.
323. *Id.* at 791.
324. Grossman, *supra* note 181.

exercised. The answer about the scope and substance of such protection cannot be universal but will depend on the specifics of each domestic legal system.

If a de-recognized state did not use its rights in the domestic realm of the recognizing state prior to de-recognition, then there would no detrimental reliance, and thus, no legal claim. Kosovo seems to be in this position with respect to the states that de-recognized it because none of the rights it could have enjoyed in the domestic legal order of these states were used. Namely, after their recognitions were announced and posted on the website of Kosovo's Foreign Ministry, nothing further happened to establish cooperation between Kosovo and these states: no diplomatic missions were opened,[325] no bilateral treaties were concluded,[326] and no legal rights were exercised in the domestic legal orders of recognizing states. In addition, the lack of substantial economic and trade relations with the states that de-recognized Kosovo reduces the possibility of future litigations in which these issues can be addressed.

If recognition was "consummated" through the exercise of rights in the legal order of recognizing states, some legal protection against the effects of de-recognition in the domestic legal realm would likely exist. This also applies to additional rights in the international sphere created by bilateral treaties, apart from those it is enjoying by virtue of general international law.

In any case, more interaction prior to de-recognition, provides more potential for shielding de-recognized states against adverse consequences. Namely, through substantial engagement, especially the conclusion of bilateral treaties, a newly recognized state builds a spider web of different relations with the recognizing state, which would include rights and obligations on both sides. Substantial engagement may also result in a bilateral agreement on friendly relations that could potentially include an arbitration clause for all disputes between the parties. In that case, there may even be a legal venue to pursue in the event of a de-recognition and, therefore, an instrument to fend off its adverse effects.

It could even be claimed that a substantial previous engagement protects a new state from the very act of de-recognition happening at all. It is certainly harder to justify a recognizing state, due to a simple foreign pol-

325. *See Ambasadat e Republikës së Kosovës* [*Embassies of the Republic of Kosovo*], MINISTRY FOREIGN AFFS. KOSOVO, http://www.mfa-ks.net/en/misionet/493/ambasadat-e-republiks-s-kosovs/493 [https://perma.cc/66QW-UZSN] (last visited June 22, 2021) (listing Kosovo's diplomatic missions). After the de-recognition by Guinea-Bissau in 2017, Kosovo's Ambassador to Senegal was also accredited to Guinea-Bissau. *See Republika e Kosovës Akrediton Ambasador në Republikën Guinea Bissau*, *supra* note 88. Kosovo's Foreign Minister, Behget Pacolli, also announced it would open the embassy in Ghana after Ghana had revoked its recognition of Kosovo. *See* Behgjet Pacolli (@pacollibehgjet), TWITTER (Feb. 19, 2019, 11:32 AM) https://twitter.com/pacollibehgjet/status/1097896726998990848/ [https://perma.cc/YYJ9-G8WZ].

326. In the case of Ghana, recognition was afforded by implication in the form of an agreement on diplomatic relations, but this was not followed by any other treaty to the author's knowledge.

icy shift, deciding to interrupt and cut all relations and escape such a dense web without any consequences, legal or otherwise.

Failure to cultivate relations, after recognition, may also result in the lack of support for future international efforts of the recognized state, which could amount to a significant political setback. That is exactly what happened to Kosovo when it tried to join UNESCO in 2015. Ten states which had previously recognized Kosovo, but without any substantial engagement following the recognition,[327] decided to abstain from voting.[328] This effectively prevented Kosovo from joining UNESCO, since it was three votes short.[329]

Conclusion

There is no denying the novelty, nor the importance, of the de-recognitions of Kosovo. These developments challenge the long-standing doctrinal claim that, once given, recognitions of statehood are irrevocable, save in those cases in which the criteria for statehood have ceased to exist. This claim was always largely theoretical. But without state practice to the contrary, it has survived until the present day. However, I submit that the substantial number of de-recognitions of Kosovo put this claim into question and warrant its re-examination.

The absence of any rule clearly prohibiting de-recognitions corroborates the position that they are permissible, regardless of whether the entity in question satisfies the statehood criteria. Moreover, the argument supporting the revocability of recognitions can be found in the theoretical insights about the declaratory and political nature of the act of recognition, which is also grounded in state practice. There is no duty to recognize an entity fulfilling statehood requirements; for example, Iraq does not have to recognize Israel, and vice versa. This is an issue left entirely to states' discretion. States should, likewise, be free to revoke recognition, as they were

327. Except for Japan, where Kosovo opened its embassy in 2010. *See About Embassy*, REPUBLIC KOSOVO: EMBASSY REPUBLIC KOSOVO TOKYO, http://www.ambasada-ks.net/jp/?page=2,50 [https://perma.cc/6FYV-4PVR] (last visited June 22, 2021).

328. These ten states include Antigua and Barbuda, Burundi, Comoros, Egypt, Guinea-Bissau, Japan, Peru, Poland, CAR, and the Republic of Korea. *Kosovo Falls Three Votes Short in UNESCO Bid*, U.N. TRIBUNE (Nov. 9, 2015), http://untribune.com/kosovo-falls-three-votes-short-in-unesco-bid/ [https://perma.cc/P7KK-NDT5]. Demonstrations of the uncertainty of Kosovo's position are also in the following accounts: Suriname, which voted against Kosovo's UNESCO bid, went on to recognize it in 2016 and then to de-recognize it in 2017. Nauru, which voted for Kosovo's membership in the UNESCO in 2015, de-recognized it in 2019. On the other hand, Singapore and Bangladesh, which voted against Kosovo's UNESCO bid, recognized it, in 2016 and 2017, respectively. *See id.*

329. For the success of its UNESCO bid, not being a member of the U.N., Kosovo needed—after securing recommendation of the UNESCO's Executive Board—a two thirds majority from the members present and voting. *See* UNESCO, BASIC TEXTS 7, 52 (2012). Concretely, Kosovo's bid needed ninty-five votes in favor, but received only ninety-two: fifty against and twenty-nine abstentions. *See Kosovo Fails in UNESCO Membership Bid*, GUARDIAN (Nov. 9, 2015, 9:58 AM), https://www.theguardian.com/world/2015/nov/09/kosovo-fails-in-unesco-membership-bid [https://perma.cc/2T7D-M6K6].

free to afford it in the first place. To think otherwise would presuppose that an act of recognition is a legal transaction, which it is not.

The act of recognition does not create a state, nor does it by itself create international legal obligations. To again use the example, Iraq and Israel are mutually bound by the prohibition of the use of force in their international relations, even if one of them refuses to recognize the other's statehood. By the same token, de-recognition does not affect the existence of a state, nor its enjoyment of rights in the international sphere that stem from statehood. The practice of Kosovo's de-recognition corroborates this point. However, de-recognition can deny the future enjoyment of the rights in the domestic legal order of de-recognizing states, which may be dependent on recognition. Still, the actual consequences of de-recognition will, to a large extent, depend on whether these rights have been previously consummated or not. If they were, there may be a good faith reliance on the act of recognition, which could create a domestic legal entitlement. In the opposite case, if a de-recognized state did not use its rights in the domestic realm of the recognizing state prior to de-recognition, there would be no detrimental reliance, and thus, no legal claim. It seems that Kosovo has not put in operation any of the rights it could have enjoyed in the domestic legal order of the de-recognizing states prior to their de-recognition declarations.

Finally, viewing state recognition as revocable recognizes the limits of international law in managing controversial social realities, such as contested statehood.[330] Namely, in such situations, it cannot be expected that international law will step in, translate political controversies into legal questions, and somehow magically solve them. It is prudent for international law to remain silent on such controversies—except in situations of emergent statehood that jeopardize the very foundation of international law, such as secession procured through the use of force by an outside power or in violation of self-determination. Moreover, staying silent gives more flexibility to negotiators. The solution for contested statehood can only be reached within a political process, while principles, processes, and mechanisms of international law can contribute to it. De-recognitions are also part of this political process, as are (or were) recognitions.

That said, the de-recognition of states cannot turn the clock back and unmake a state, when nothing has factually changed. However, it can help in gaining or losing leverage in a dispute on statehood and its final settlement. This seems to be precisely what Serbia hopes to achieve by countering recognitions of Kosovo from individual states and by preventing Kosovo's membership to international institutions. It is simply a political fact that Kosovo's statehood stands precariously on a tipping point. And it is also a fact that Kosovo's contested statehood can, ultimately, only be resolved politically.

330. *See generally* Worster, *supra* note 73.