Derecognition 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 derecognition, i.e. 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 derecognition. It does so by examining a peculiar – indeed, genuinely strange – ongoing case study of a series of derecognitions of Kosovo as a state. Derecognitions are by any account an exceptional phenomenon in international practice. The recognition of a new state is, by contrast, perfectly commonplace. It is as 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 derecognition 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 plane.[3] While formal statements of recognition of government have fallen into disuse in modern times, they were a usual occurrence in situations of an unconstitutional regime change in a state (by the virtue of the use of force by an external power, revolution or *coup d'état*).[4] Even if formal statements of recognition (and derecognition) of government have fallen into disuse, difficult questions of state representation persist in

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

[2] While the recognition of a new state typically involves the recognition of its government, there was a curious case of the recognition of Albania in 1919 by the Allies without the recognition of its government. CHEN, TI-CHIANG, THE INTERNATIONAL LAW OF RECOGNITION: WITH SPECIAL REFERENCE TO PRACTICE IN GREAT BRITAIN AND THE UNITED STATES 102–103 (1951).

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

[4] CHEN, TI-CHIANG, THE INTERNATIONAL LAW OF RECOGNITION: WITH SPECIAL REFERENCE TO PRACTICE IN GREAT BRITAIN AND THE UNITED STATES 97 (1951). Since the 1960s, different states started abandoning 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 Martin John Dixon, *Recent Developments in United Kingdom Practice Concerning the Recognition of States and Governments*, 22 INTERNATIONAL LAWYER 555 (1988). See also STEFAN TALMON, *supra* note 3 at 3–14.

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international relations and law – for example, whether Nicolas Maduro or Juan Guaido 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 derecognition of *statehood*.

As noted above, while the recognition of states has provoked immense interest and debate in the doctrine of international law,[6] derecognition has never been discussed systematically. In addition to a smattering of tangents in traditional academic literature,[7] there is a relatively recent bit of treatment of the derecognition of states in a blog post.[8] This is, to an extent, only natural, since derecognition has been so uncommon[9] in state practice. Extant doctrinal views on derecognition have inevitably been built on the normative framework of recognition under international law, which takes the statehood criteria from the Montevideo Convention on Rights Duties of States[10] – population, territory, government and the capacity to enter into international relations – as its starting point. On this basis, the common doctrinal position, to the extent that such a position can be

[5] Fate of $1bn in Venezuelan Gold Hangs in Balance at High Court, THE GUARDIAN, June 20, 2020, https://www.theguardian.com/world/2020/jun/20/fate-of-1bn-in-venezuelan-gold-hangs-in-balance-at-high-court (last visited Jun 21, 2020).

[6] A number of books and hundreds of academic articles are written on the subject of recognition. See for example HERSCH LAUTERPACHT, RECOGNITION IN INTERNATIONAL LAW (1947); CHEN, TI-CHIANG, *supra* note 2; JEAN CHARPENTIER, LA RACONNAISSANCE INTERNATIONAL ET L'EVOLUTION DU DROIT DES GENS (1956); SATYAVRATA RAMDAS PATEL, RECOGNITION IN THE LAW OF NATIONS (1959); P.K. MENON, THE LAW OF RECOGNITION IN INTERNATIONAL LAW: BASIC PRINCIPLES (1994); THOMAS D. GRANT, THE RECOGNITION OF STATE, LAW AND PRACTICE IN DEBATE AND EVOLUTION (1999); MIKULAS FABRY, RECOGNIZING STATES, INTERNATIONAL SOCIETY AND THE ESTABLISHMENT OF NEW STATES SINCE 1776 (2010).

[7] HERSCH LAUTERPACHT, *supra* note 6 at 349–351; CHEN, TI-CHIANG, *supra* note 2 at 259–264; LASSA OPPENHEIM, INTERNATIONAL LAW 137 (4th ed. 1926); SATYAVRATA RAMDAS PATEL, *supra* note 6 at 105–110; P.K. MENON, *supra* note 6 at 165–169. 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 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 foreign policy of counter-recognition, but they do not mention revocations, as they did not enter the picture at the time. See 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 recognition of state can be undermined by charges of corruption of high officials of the recognizing state. See Abhimanyu George Jain, *Recognition of States in International Law: For Sale*, EJIL: TALK! (2014), https://www.ejiltalk.org/recognition-of-states-in-international-law-for-sale/ (last visited Jun 13, 2020).

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

[10] 165 LNTS 19 (1933).

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identified, has been to deny the possibility of derecognition, save in exceptional cases when statehood itself would objectively cease 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 derecognitions of Kosovo provide us with a unique opportunity for testing the validity of this thesis empirically.

Kosovo's statehood has been contested since it declared independence from Serbia in February 2008. Serbia opposes its independence, viewing Kosovo as a part of its territory. Attitudes of other states towards the issue of Kosovo's statehood have been sharply divided. The US and most European Union (EU) member states recognized it as an independent state within a few months of its declaration of independence,[12] while China, Russia, India and some other EU countries[13] have 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,[14] they appear to have reached 114 recognitions at their peak (for reference, the United Nations (UN) has 193 member states).[15]

On the other hand, Serbia has maintained active counter-secession efforts. Not only has it been trying to prevent further recognitions, as well as Kosovo's attempts to join international organizations, as of 2011, it has pursued a strategy of securing derecognitions of Kosovo.[16] In January 2013, the Serbian Ministry of Foreign Affairs announced the first derecognition of Kosovo (by Sao Tome and

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[11] See *infra* notes 220–223, 226.

[12] Ministry of Foreign Affairs of Kosovo, http://www.mfa-ks.net/al/politika/484/lista-e-njohjeve/484 (last visited May 10, 2020).

[13] Cyprus, Greece, Romania, Slovakia and Spain did not recognize it.

[14] JAMES KER-LINDSAY, *supra* note 7 at 47, n. 30. See also *infra* note 58 and the text accompanying *infra* note 59.

[15] This is the number stated in the European Commission Staff Working Document (Kosovo* 2019 Report of May 29, 2019, SWD(2019) 216 final, p. 90, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf (last visited May 10, 2020). However, the exact number of Kosovo's recognitions remains unclear, see the text accompanying *infra* notes 58, 59.

[16] JAMES KER-LINDSAY, *supra* note 5 at 84, 87.

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Principe[17]). As of March 2020, the Ministry has claimed an additional 17 states followed suit in withdrawing their recognition of Kosovo.[18]

However, it is very challenging to discern an accurate picture of Kosovo's derecognitions.[19] The authorities of Serbia and Kosovo have provided conflicting accounts. After derecognitions were announced, the de-recognizing states have mostly stayed silent on the issue. Some have even revoked their derecognitions, further adding to the confusion.[20] At first, Kosovo was denying that derecognitions were even taking place, portraying them as Serbia's propaganda and "fake news." They then started arguing that recognitions were irrevocable under international law, and, finally, accepted they are taking place.[21] On the other hand, Serbia was viewing derecognitions as political acts of tremendous importance in its struggle against Kosovo's independence.[22] 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 this muddled practice of Kosovo's derecognitions, using it to provide the first systemic account of the derecognition of statehood in international law. It will challenge the dominant doctrinal stance on the irrevocability of recognitions.

My primary claim is that, contrary to the dominant doctrinal position, state recognition is revocable under international law even when criteria for statehood are present, or at least when these criteria have not altered for the worse from the point in time at which the initial recognition of statehood was given. My secondary claim pertains to the possible effects of derecognition. I demonstrate that derecognition does not affect the existence of a state, nor the enjoyment of rights

[17] Ministry of Foreign Affairs of the Republic of Serbia, "Dačić čestitao Sao Tome i Principe na povlačenju priznanja kosova", January 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 (last visited May 10, 2020). However, Mr. Dačić also claimed in January 2019 that Sao Tome and Principe has revoked the recognition of Kosovo in 2018. See his New Year's Address on January 14, 2019 at http://mfa.gov.rs/en/press-service/statements/18477-new-years-reception-at-the-ministry-of-foreign-affairs (last visited May 10, 2020).

[18] Serbia Claims Sierra Leone Is Latest Country To Rescind Kosovo Recognition, RADIO FREE EUROPE, March 3, 2020, https://www.rferl.org/a/serbia-claims-sierra-leone-is-latest-country-to-rescind-kosovo-recognition/30466817.html (last visited Jun 8, 2020).

[19] JAMES KER-LINDSAY, *supra* note 7 at 47, n. 30. See also *infra* note 58 and the text accompanying *infra* note 59.

[20] See *infra* notes 85 and 86.

[21] See *infra* note 76.

[22] See for e.g. the statement of the Foreign Minister of Serbia, Mr. Ivica Dačić in response to Burundi's revocation of Kosovo's recognition, available at the website of the Ministry of Foreign Affairs, Minister Dačić thanked Burundi for revoking recognition of Kosovo, April 2, 2018, http://www.mfa.gov.rs/en/press-service/statements/17631-minister-dacic-thanked-burundi-for-revoking-recognition-of-kosovo (last accessed Jun 9, 2020).

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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 derecognition, or, at least, off-sets its adverse effects.

Part 1 of the paper will provide a factual and legal background of Kosovo's secession and Serbia's counter-secession efforts, in order to provide an overarching account of its recognitions and derecognitions. Part 2 will explore the nature of recognition and its effect on the enjoyment of rights, both on international and domestic planes, in order to frame the discussion on derecognition, which follows in Part 3. This part will start with an overview of state practice and doctrinal positions regarding derecognition to get to the analysis of the state practice of Kosovo's derecognition. On the basis of these findings, in Part 4, I will be arguing for revocability of recognition against the dominant doctrinal stance. This part will also assess the consequences of derecognition 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. Part 5 concludes.

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

As is well known, Kosovo declared its independence from Serbia on February 17th, 2008.[23] Immediately thereafter, Serbia rejected this declaration as unilateral, considering it contrary to international law and the domestic law of Serbia, and therefore, null and void.[24] Serbia views Kosovo as a part of its territory under the

[23] See Kosovo MPs proclaim independence, BBC News, February 17, 2008, http://news.bbc.co.uk/2/hi/europe/7249034.stm (last visited May 11, 2020). 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 UNSC, primarily due to Russia's opposition to it (See N. MacDonald, 'Russia rejects plan for Kosovo', *Financial Times*, July 13, 2007, http://www.ft.com/intl/cms/s/0/f3f09aae-30a0-11dc-9a81-0000779fd2ac.html#axzz1xqyDvwn9 (last visited May 11, 2020). Ahtisaari Plan envisaged internationally supervised independence of Kosovo (See *Comprehensive Proposal for the Kosovo Status Settlement*, see UN Doc. S/2007/168/Add.1 (March 26th,, 2007), which Serbia also rejected (C.S. Smith, 'Serbia Rejects Plan That Could Lead to Kosovo Independence', *New York Times*, February 3, 2007, available at http://www.nytimes.com/2007/02/03/world/europe/03kosovo.html?pagewanted=print (last visited May 11, 2020).

[24] See Decision on the Annulment of the Illegitimate Acts of the Provisional Institutions of Self-government in Kosovo and Metohija on their Declaration of Unilateral Independence, *Official Gazette of the Republic of Serbia*, No. 19/2008, http://www.srbija.gov.rs/kosovo-metohija/index.php?id=83040. For the text in English, see *Letter dated April 17th, 2008 from the Permanent Representative of Serbia to the United Nations addressed to the President of the*

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international regime established by the United Nations Security Council (UNSC) Resolution 1244.[25] 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.[26] The US and most of the EU member states recognized it as an independent state within a few months of its declaration of independence.[27] However, the rest, including China, Russia, India and some other EU countries,[28] criticized the declaration of independence, refused to recognize it, and warned that the Kosovo recognition creates a dangerous precedent.[29] There were also 'battleground states', those which stood in between two opposing camps of recognizers and non-recognizers.[30] However, these states were not a united front. Some of them had serious concerns about the implication the recognition would have for legitimizing secession, however, they did not wish to antagonize any of the opposing sides.[31] These countries appeared to be relenting, but needed further persuasion.[32] Other states were more willing to recognize it as an independent state, but did not want to rush into it.[33] The 'unique (*sui generis*) case argument' was provided to encourage 'battleground states' to recognize Kosovo, as it gave them comfort that the Kosovo's case would not have spill-over effects

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Security Council, UN doc. S/2008/260 (April 18th, 2008), at 19, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kos%20S%202008%20260.pdf (last visited May 11, 2020).

[25] UN doc. S/RES/1244 (June 10th, 1999). While Serbia was consistently claiming it will never recognize Kosovo as an independent state, recently that position has softened to it is "highly unlikely" they will recognize it (see https://www.spiegel.de/international/europe/interview-with-serbian-president-aleksandar-vucic-a-1297616.html), as Belgrade and Pristina started entertaining with an idea of border adjustment that might lead to an agreement, and consequently recognition of Kosovo by Serbia (see https://www.politico.eu/article/aleksandar-vucic-hashim-thaci-serbia-kosovo-balkans-eu-enlargement-alpbach-forum/) (last visited May 11, 2020). For the earlier statements excluding any possibility for recognition, see the statement from the former presidents of Serbia, Boris Tadić, to the UNSC of February 18, 2008, http://www.un.int/serbia/Statements/32.pdf and Tomislav Nikolić, 'President Discusses Kosovo, EU, Regional Ties', *B92*, January 16, 2013, http://www.b92.net/eng/news/politics-article.php?yyyy=2013&mm=01&dd=16&nav_id=84187; see also the Resolution of the National Assembly of the Republic of Serbia on General Principles for Political Negotiations with the Provisional Institutions of Self-government of Kosovo and Metohija of January 13, 2013, *Official Gazette of the Republic of Serbia*, No. 4/13, point 1(a), text in English available at http://www.b92.net/eng/insight/strategies.php?yyyy=2013&mm=01&nav_id=84141 (last visited May 11, 2020)

[26] JAMES KER-LINDSAY, *supra* note 7 at 47.

[27] http://www.mfa-ks.net/al/politika/484/lista-e-njohjeve/484

[28] Cyprus, Greece, Romania, Slovakia and Spain did not recognize it.

[29] James Ker-Lindsay, *Explaining Serbia's Decision to Go to the ICJ*, *in* MARKO MILANOVIĆ, MICHAEL WOOD (EDS.), THE LAW AND POLITICS OF THE KOSOVO ADVISORY OPINION 9–20, 11 (2015).

[30] *Id.* at 11.

[31] *Id.* at 11.

[32] *Id.* at 11.

[33] *Id.* at 11.

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elsewhere in the world.[34] It was heavily used by the US and UK, who have launched serious diplomatic initiatives to persuade other countries to recognize Kosovo.[35]

Serbia was no bystander. Even before Kosovo declared independence, it was trying to counter the secession in different ways.[36] Serbia was trying to prevent, or at least, destabilize Kosovo's quest for statehood. There were different measures Serbia implemented to these ends. First, Serbia pushed and seceded in the UN General Assembly (UNGA) with the request for an advisory opinion (AO)[37] on Kosovo's declaration of independence from the International Court of Justice (ICJ). This was an admirable success,[38] as powerful states which recognized Kosovo were strongly against it.[39]

In any case, the ICJ proceedings provided a persuasive and legitimate argument aiding Serbia's effort to stall the tide of recognition of Kosovo within 'battlefield 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.[40] This would, in the mind of Serbian officials, ensure political support needed for the re-opening of status negotiations, which was initially one of the main goals of Serbia's foreign policy.[41] However, this did not happen. The ICJ concluded that Kosovo's declaration of independence was not made in violation of

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[34] *Id.* at 11.

[35] The British Foreign Office even had an officer in charge of coordinating Kosovo recognition efforts. *Id.* at 11, n. 15.

[36] There were aggressive efforts for delegitimizing Kosovo's representatives at the international level. Serbia insisted for a while that Kosovo could be only 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 integrations. (see for e.g. Warsaw Summit, see: J. Dempsey, 'Serbia Insists on Summit Boycott', *New York Times*, May 26th, 2011, http://www.nytimes.com/2011/05/27/world/europe/27iht-east27.html?_r=1 (last visited May 18, 2020)). See more in Tatjana Papić, *Fighting for a Seat at the Table: International Representation of Kosovo*, 12 CHINESE JOURNAL OF INTERNATIONAL LAW 543–570 (2013).

[37] Pursuant to Article 65 of the Statute of the International Court of Justice (ICJ), 33 UNTS 993 (1946).

[38] Serbian Foreign Minister at the time claimed that he spent 700 hours in air in 2008, to secure the support. See Serbia's busy foreign policy: Better troublesome than dull, THE ECONOMIST, October 22, 2009, http://www.economist.com/node/14710896 (last visited May 18, 2020).

[39] James Ker-Lindsay, *supra* note 29 at 14–15.

[40] See the Statement of Serbian president, Mr. Tadić, in International Court of Justice rules on Kosovo independence, RADIO FREE EUROPE, July 22, 2010, http://www.rferl.org/content/High_UN_Court_To_Rule_On_Kosovo_ Independence/2106373.html (last visited May 18, 2020). Statement of the prime minister, Mr. Mirko Cvetković, in Both Kosovo, Serbia confident on Eve of ICJ Opinion, BALKAN INSIGHT, July 21, 2010, https://balkaninsight.com/2010/07/21/both-kosovo-serbia-confident-on-eve-of-icj-opinion/ (last visited May 18, 2020).

[41] Tatjana Papić, *The Political Aftermath of the ICJ's Kosovo Opinion*, *in* MARKO MILANOVIĆ, MICHAEL WOOD (EDS.), THE LAW AND POLITICS OF THE KOSOVO ADVISORY OPINION 240–267, 248 (2015).

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international law, as there were no prohibitions imposed by general international law on such declarations nor did it contravene the United Nations Mission in Kosovo (UNMIK) legal framework.[42] The Court did not address legal consequences of Kosovo's declaration of independence, as the question posed was too narrow and specific.[43] Consequently, it gave no answer on whether Kosovo is a state nor the effects that the recognitions afforded to 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'.[44] 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 (that was preached by Kosovo officials), which could have major implications for the secessionist movements worldwide.[45] Also, it emphasized that Kosovo was a dangerous precedent (and not a unique case as claimed by many),[46] which could offer 'a universally applicable precedent that provide[s] a ready-made model for unilateral secession.'[47] On the other side, in Pristina, Kosovo's capital, the atmosphere was jubilant. The decision was viewed as a 'historic victory', with bottles of champagne cracked open.[48] 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 action, since 'Kosovo is a unique case'.[49]

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[42] International Court of Justice, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 ICJ Reports 403 (2010). 47 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 UN Doc. A/63/L.2 (September 23, 2008)). While the advisory proceeding was pending before the ICJ, 22 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.

[43] *Id.* at 52.

[44] President Reacts to ICJ Decision, B92 NEWS, July 22, 2010, http://www.b92.net/eng/news/politics.php?yyyy=2010&mm=07&dd=22&nav_id=68619 (last visited May 18, 2020).

[45] See 'Tadić: Teška odluka' ['Tadić: Difficult Decision'], BLIC, July 23, 2010, http://www.blic.rs/Vesti/Politika/199626/Tadic-Teska-odluka (last visited May 20, 2020). Vuk Jeremic, *Kosovo's disastrous precedent, Op-Ed*, WALL STREET JOURNAL, July 28, 2010, http://online.wsj.com/article/SB10001424052748703977004575392901873224526.html (last visited May 28, 2020).

[46] See Marko Milanović, *Arguing the Kosovo Case*, *in* MARKO MILANOVIĆ, MICHAEL WOOD (EDS.), THE LAW AND POLITICS OF THE KOSOVO ADVISORY OPINION 21–59 (2015).

[47] Jeremic, *supra* note 45

[48] Serbia and Kosovo react to ICJ ruling, BBC, July 22, 2020, https://www.bbc.com/news/world-europe-10733676 (last visited May 20, 2020).

[49] *Ibid*. See also Tatjana Papić, *supra* note 41 at 241.

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As to the other states, the ICJ decision resonated in accordance with their previous attitudes on Kosovo's independence; not a single state, on either of the opposing camps of the Kosovo independence line, saw a reason to change its mind.[50] Thus, the ICJ's advisory opinion did not have any effect, or it was marginal at best, on the previously held positions of other states on the issues of Kosovo's secession from Serbia. It soon became clear, as we will discuss below, that the outcome of the ICJ proceeding was not such a victory for Pristina as it was thought, nor was it a defeat for Belgrade as it initially appeared to be.[51]

Nevertheless, the ICJ advisory proceedings did have other positive effects, because they fulfilled their function as a UN instrument, helping calm down huge tensions surrounding the issue of Kosovo's declaration of independence by keeping it at the dock of the ICJ.[52] Additionally, the delivery of the AO offered possibilities for opening a new dialogue between Serbia and Kosovo.[53] Specifically, after the ICJ rendered its advisory opinion, the UNGA adopted the resolution,[54] vesting the responsibility for a dialogue between Serbia and Kosovo with the EU,[55] which is a supranational organization both wanted to join.

These negotiations started 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, as Kosovo continued to work to fortify it. Kosovo was working to gain more recognitions and join international institutions, while Serbia was trying to undermine both those

[50] *Id.* at 243–246.
[51] JAMES KER-LINDSAY, *supra* note 7 at 161.
[52] Tatjana Papić, "The Political Aftermath of the ICJ's Kosovo Opinion," 266.
[53] *Id.* at 265–266.
[54] Serbia initially tried to use the UNGA as a means of pressuring for the re-opening of negotiations on Kosovo's status. However, this was in direct opposition to the views of major EU member states, which recognized Kosovo (UK, Germany and France) and viewed its independence as irreversible. These states held the key to Serbia's EU aspirations, so it had to change its approach for the sake of its future in EU integrations. Thus, Serbia withdrew its first draft resolution and submitted a new one, co-sponsored with the EU states, which the UNGA adopted. See more in *Id.* at 247–252.
[55] Resolution 64/298, UN Doc. A/RES/64/298 (September 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. It states that the GA '*[w]elcomes* the readiness of the European Union to facilitate a process of dialogue between the parties; the process of dialogue in itself would be a factor for peace, security and stability in the region, and that dialogue would be to promote co-operation, *achieve progress on the path to the European Union* and improve the lives of the people' (second emphasis added), *ibid*., at 2.

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efforts. Specifically, Serbia was working on not only preventing further recognitions of Kosovo, but also on trying to secure revocations of those already given.[56] Furthermore, it was successfully obstructing Kosovo's attempts to join UNESCO and Interpol. Ultimately, this setting affected the Brussels' negotiations. They were halted in November 2018, when Kosovo introduced 100% import tariffs for all goods coming from Serbia and Bosnia and Herzegovina, which was a measure introduced as a reaction to Serbia's actions of preventing Kosovo from joining the Interpol for the third time.[57] The situation remains unchanged at the time of the completion of this article.

1.1. Kosovo recognition trajectory

The exact number of recognitions afforded to Kosovo remains unclear. Some of the recognitions were contested,[58] and the website of the Ministry of Foreign Affairs of Kosovo adds to the confusion. Its English version lists 114 recognitions, while Albanian version claims 116 of them.[59] 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, 35 states recognized it, including three permanent members of the UN SC (US, UK and France).[60] The membership in Bretton–Woods institutions (International Monetary Fund (IMF) and World Bank (WB)) followed in 2009.[61] In less than three years from

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[56] James Ker-Lindsay, *supra* note 29 at 87.

[57] Kosovo did not secure a two thirds positive vote on its application for membership; 68 states voted in favor, 51 against and 16 were abstaining. See Kosovo fails to join Interpol, PRISHTINA INSIGHT, November 20, 2018, https://prishtinainsight.com/kosovo-fails-to-join-interpol/ (last visited May 28, 2020).

[58] JAMES KER-LINDSAY, *supra* note 7 at 47, n. 30. See also São Tomé: Presidente da República declara inexistente reconhecimento do Kosovo, ARQUIVO.PT, January 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 (last visited Jun 12, 2020).

[59] Cf. http://www.mfa-ks.net/al/politika/483/njohjet-ndrkombtare-t-republiks-s-kosovs/483 and http://www.mfa-ks.net/en/politika/483/njohjet-ndrkombtare-t-republiks-s-kosovs/483 (last visited May 28, 2020).

[60] See *supra* note 12.

[61] See 'Kosovo Becomes the International Monetary Fund's 186th Member,' Press Release No. 09/240 (June 29, 2009), available at http://www.imf.org/external/np/sec/pr/2009/pr09240.htm and 'Kosovo Joins World Bank Group Institutions,' Press Release No. 2009/448/ECA (June 29, 2009), https://reliefweb.int/report/serbia/kosovo-joins-world-bank-group-institutions. 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 Tatjana Papić, *supra* note 36.

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the declaration of independence, Kosovo was able to secure 75 recognitions, which included one third of the UN member states.[62]

There was a remarkable absence of international law references in the announcements of Kosovo's recognitions, which may be seen as revelatory of a minor role of international law in the process.[63] Most of the recognizing states referred to political justification for recognition, such as a need for regional stability, peace, security and/or the fact that negotiation options on its status were exhausted.[64] On the other hand, international law was invoked, especially principles of sovereignty and territorial integrity, by those state which refused to recognize Kosovo. But since unilateral declaration of independence, as noted by the ICJ, is not prohibited in international law, it also seems that internal political considerations of non-recognizing states were in fact the predominant reason for withholding recognition.[65]

It was expected that the ICJ's Advisory Opinion in July 2010 will only boost further recognitions.[66] However, recognitions were not coming at an expected pace. After the ICJ decision on July 22, 2010 until June 2020, there were 47 recognitions (three in 2010, 12 in both 2011 and 2012, eight in 2013, and four in 2014).[67] 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 and (the first half of) 2020.[68] To make the picture gloomier for Kosovo, not only have recognitions been slowing down, but the number of recognitions is in decline. According to the Serbian Ministry of Foreign Affairs, 18 states have revoked their recognition of Kosovo from January 2013 until March 2020.[69]

The sharp decline of recognition of Kosovo can be explained by several reasons. First, as of 2014, Kosovo was absorbed by internal political crises, which

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[62] See the list of states which recognized Kosovo with dates of their recognitions at http://www.mfa-ks.net/al/politika/484/lista-e-njohjeve/484 (last visited May 28, 2020).

[63] Cederic Ryngeart, Sven Sobrie, *Recognition of States: International Law or Realpolitik? The Practice of Recognition in the Wake of Kosovo, South Ossetia, and Abkhazia*, 24 LEIDEN JOURNAL OF INTERNATIONAL LAW 467, 479 (2011).

[64] *Id.* at 480. For individual justifications of the first 70 recognitions of Kosovo, see Grace Balton, Gezim Visoka, *Recognizing Kosovo's Independence: Remedial Secession or earned sovereignty?*, Occasional Paper No. 11/10 SOUTH EAST EUROPEAN STUDIES AT OXFORD, 17–21, https://www.sant.ox.ac.uk/sites/default/files/recognizingkosovosindependence.pdf (last visited May 28, 2020).

[65] Cederic Ryngeart, Sven Sobrie, *supra* note 63 at 480.

[66] JAMES KER-LINDSAY, *supra* note 7 at 160.

[67] See the list of states which recognized Kosovo with dates of their recognitions at the Ministry of Foreign Affairs of Kosovo, http://www.mfa-ks.net/al/politika/484/lista-e-njohjeve/484 (last visited May 28, 2020).

[68] *Id.*

[69] Serbia Claims Sierra Leone Is Latest Country To Rescind Kosovo Recognition, *supra* note 18.

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left no room for pursuing new recognitions.[70] Second, the interest on the issue from international partners was in decline, also due to many disrupting occurrences in the world. Finally, utilizing these occurrences, Serbia took its chance to intensify counter-recognition campaigns, particularly embodied in securing derecognitions and preventing Kosovo from joining international organizations. This is an additional front in a "war of recognitions" [71] that is waged in the growingly polarized international community.[72]

1.2. Revocation Trend

The Serbian Foreign Ministry claimed the first derecognition of Kosovo happened in January 2013, by Sao Tome and Principe.[73] 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[74] and Guinea Bissau.[75] In 2018, the number of revocations continued to grow, as they were announced by nine states – Burundi,[76] Liberia,[77] Papua New Guinea,[78] Lesotho,[79] Dominica,[80] Grenada,[81] Comoros,[82]

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[70] GËZIM VISOKA, ACTING LIKE A STATE - KOSOVO AND EVERYDAY MAKING OF STATEHOOD 82 (2017).

[71] William Thomas Worster, *Law, Politics, and the Conception of the State in State Recognition Theory*, 27 BOSTON UNIVERSITY INTERNATIONAL LAW JOURNAL 115–171, 117 (2009).

[72] After Kosovo's widespread recognition among Western states, Russia afforded recognitions to the entities trying to secede from Georgia. Moscow's Possible Motives In Recognizing Abkhazia, South Ossetia, RADIO FREE EUROPE, September 24, 2014, https://www.rferl.org/a/Moscows_Possible_Motives_In_Recognizing_Abkhazia_South_Ossetia/1291181.html (last visited Jun 8, 2020).

[73] See *supra* note 17.

[74] Ministry of Foreign Affairs of the Republic of Serbia, "Suriname revokes its decision to recognize Kosovo", October 31, 2017, http://www.mfa.gov.rs/en/component/content/article/17111-suriname-revokes-its-decision-to-recognize-kosovo. For the text of the note see Šta sadrži diplomatska nota iz Surinama, BLIC, October 31, 2017, https://www.blic.rs/vesti/politika/sta-sadrzi-diplomatska-nota-iz-surinama/1dqzq6v (last visited Jun 8, 2020).

[75] Ministry of Foreign Affairs of the Republic of Serbia, "Government of the Republic of Guinea-Bissau revokes decision on recognizing Kosovo", November 21, 2017, http://www.mfa.gov.rs/en/statements-archive/statements2017/17193-government-of-the-republic-of-guinea-bissau-revokes-decision-on-recognizing-kosovo (last visited Jun 8, 2020). For the text of the note see Nota Gvineje Bisao Prištini o povlačenju priznanja, POLITIKA, November 21, 2017, http://www.politika.rs/sr/clanak/392988/Gvineja-Bisao-povukla-odluku-o-priznanju-Kosova (last visited Jun 8, 2020).

[76] Burundi revokes its Kosovo recognition, leaving Kosovo PM nonplussed, PRISHTINA INSIGHT, April 4, 2018, https://prishtinainsight.com/burundi-revokes-kosovo-recognition-leaving-kosovo-pm-nonplussed/ (last visited Jun 8, 2020). The note on Burundi's de-recognition of Kosovo can be found on the website of the Serbian Ministry for Foreign Affairs, http://www.mfa.gov.rs/en/component/content/article/17455-minister-dacic-stated-at-a-press-conference-that-burundi-has-revoked-its-recognition-of-kosovo (last visited Jun 8, 2020).

[77] 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-

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Madagascar[83] and Solomon Islands.[84] Liberian revocation of recognition was later explicitly withdrawn,[85] as was Guinea-Bissau's, by implication, by the virtue of the accreditation of Kosovo's ambassador to this country.[86] The year 2019 brought five new revocations, by Central African Republic (CAR),[87] Palau,[88] Togo,[89] Ghana[90] and Nauru.[91] At the beginning of March 2020 Sierra Leone de-recognized Kosovo.[92]

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serbian-contribution-to-dialogue-in-brussels-pristina-fake-news-number-of-recognition-will-grow/ (last visited Jun 8, 2020). The note on Liberia's de-recognition of Kosovo is found at the same link.

[78] 15 countries, and counting, revoke recognition of Kosovo, Serbia says, EURACTIV, August 27, 2019, https://www.euractiv.com/section/enlargement/news/15-countries-and-counting-revoke-recognition-of-kosovo-serbia-says/ (last visited Jun 8, 2020).

[79] Lesotho withdraws its Kosovo recognition, Serbia's FM says, N1, October 16, 2018, http://rs.n1info.com/English/NEWS/a428408/Lesotho-s-Government-withdraws-its-recognition-of-Kosovo-s-independence-Serbia-s-FM-says.html (last visited Jun 8, 2020).

[80] Ministry of Foreign Affairs of the Republic of Serbia, Commonwealth of Dominica revokes recognition of Kosovo, November 2, 2017, http://www.mfa.gov.rs/en/component/content/article/18306-commonwealth-of-dominica-revokes-recognition-of-kosovo (last visited Jun 8, 2020).

[81] Grenada retracts recognition of Kosovo, N1, November 4, 2018, http://rs.n1info.com/English/NEWS/a433192/Grenada-retracts-recognition-of-Kosovo.html (last visited Jun 8, 2020). Text of the note in available in Serbian at https://kossev.info/beograd-jos-jedno-povlacenje-priznanja-pristina-jos-jednom-lazne-vesti/ (last visited Jun 8, 2020).

[82] Serbia's FM: Union of Comoros annuls decision on Kosovo, N1, November 7, 2018, http://rs.n1info.com/English/NEWS/a434017/Another-African-country-withdraws-decision-on-recognising-Kosovo-s-independence-FM-says.html (last visited Jun 8, 2020). The first page of this note in available in Serbian at https://kossev.info/dacic-unija-komora-deseta-zemlja-koja-je-povukla-priznanje-nece-glasati-za-clanstvo-kosova-u-interpol-u/ (last visited Jun 8, 2020).

[83] Madagascar becomes the 12th state to revoke recognition of Kosovo, Belgrade says, N1, December 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 (last visited Jun 8, 2020).

[84] See The Solomon Islands annuls recognition of Kosovo: The first official annulment, KOSSEV, December 3, 2018, https://kossev.info/the-solomon-islands-annuls-recognition-of-kosovo-the-first-official-annulment/ (last visited Jun 8, 2020).

[85] See the statement published at the website of Liberian Foreign Ministry, http://mofa.gov.lr/public2/2press.php?news_id=3108&related=7&pg=sp&sub=44. 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/; Flare-Up Between Kosovo And Serbia After Liberian Gaffe, RADIO FREE EUROPE, June 22, 2018, https://www.rferl.org/a/flare-up-between-kosovo-and-serbia-after-liberian-gaffe/29314209.html (last visited Jun 8, 2020).

[86] The Ambassador of Kosovo to Senegal was also accredited as its ambassador Guinea-Bissau, residing in Dakar (Senegal) in June 2018. See the statement on the website of Kosovo's Embassy in Senegal of July 19, 2018, http://ambasada-ks.net/sg/?page=1,8,229 (last visited Jun 12, 2020).

[87] Centralnoafrička Republika poslala notu – ne priznaje Kosovo, RTS, July 27, 2019, https://www.rts.rs/page/stories/sr/story/9/politika/3604671/centralnoafricka-republika-poslala-notu--ne-priznaje-kosovo.html (last visited Jun 8, 2020).

[88] Republika Palau povukla priznanje Kosova?, KOSSEV, January 18, 2020, https://kossev.info/republika-palau-povukla-priznanje-kosova/ (last visited Jun 8, 2020); Palau drops Kosovo recognition in favour of Serbia, ONE PNG, January 22, 2019, https://www.onepng.com/2019/01/palau-drops-kosovo-recognition-in.html (last visited Jun 8, 2020).

[89] Dačić: Togo povukao priznanje Kosova, nastavićemo sa takvim aktivnostima, BETA, August 25, 2019, https://beta.rs/vesti/politika-vesti-srbija/115813-dacic-togo-povukao-priznanje-kosova-

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On the basis of these accounts and the accounts of the Foreign Ministry of Kosovo, one can see that in the last two years (as of 2018) there were more revocations of previously given recognitions of Kosovo than new recognitions afforded to it. There was only one recognition in 2018 and none since then. Moreover, Serbia insists it has fulfilled one of its foreign policy goals, which was for the number of recognitions afforded to Kosovo to drop to 96, which is below half the number of UN member states.[93]

Reactions from Pristina on news of derecognition taking place, at the time, were conflicting. The Foreign Ministry and its head, Mr. Behgjet Pacolli, were simultaneously dismissing derecognitions as fake news and propaganda by Belgrade,[94] while implicitly accepting that they were indeed taking place by claiming they had been secured in exchange of promises of financial aid, arms sale deals and visa waiver agreements,[95] or even by bribery.[96] On the other hand,

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nastavicemo-sa-takvim-aktivnostima (last visited Jun 8, 2020); Nit Tvit i šest predloga, PINK, August, 2019, https://pink.rs/vesti/150012/hit-tvit-i-sest-predloga-dacic-togo-15-zemlja-koja-je-povukla-priznanje-kosova (last visited Jun 11, 2020).

[90] Ghana Withdraws "Premature" Kosovo Recognition, RADIO FREE EUROPE, November 12, 2019, https://www.rferl.org/a/ghana-withdraws-premature-kosovo-recognition/30266937.html (last visited Jun 8, 2020). See also Ministry of Foreign Affairs of the Republic of Serbia, Ghana revokes recognition of Kosovo, November 11, 2019, http://www.mfa.gov.rs/en/press-service/statements/19074-ghana-revokes-recognition-of-kosovo (last visited Jun 8, 2020). A copy of the note on Ghana's de-recognition of Kosovo can be found on this link.

[91] Ministry of Foreign Affairs of the Republic of Serbia, The Republic of Nauru becomes the 17th country to revoke its recognition of Kosovo, November 22nd, 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 (last visited Jun 8, 2020). A copy of the note on Nauru's de-recognition can be found on this link.

[92] Serbia Claims Sierra Leone Is Latest Country To Rescind Kosovo Recognition, *supra* note 18.

[93] Togo withdraws recognition of Kosovo claims Serbia's foreign minister, PRISHTINA INSIGHT, August 26, 2019, https://prishtinainsight.com/togo-withdraws-recognition-of-kosovo-claims-serbias-foreign-minister/ (last visited Jun 8, 2020).

[94] Ghana Withdraws "Premature" Kosovo Recognition, *supra* note 90; 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 (last visited Jun 8, 2020)..

[95] Balkan Rift Deepens With Some Unexpected Help From... Togo, BLOOMBERG, August 28, 2020, https://www.bloomberg.com/news/articles/2019-08-28/balkan-rift-deepens-with-some-unexpected-help-from-togo (last visited Jun 8, 2020); Pacoli: Srbija podmićuje afričke zemlje da povuku priznanje Kosova, POLITIKA, January 22, 2019, http://www.politika.rs/sr/clanak/420896/Пацоли-Србија-подмићује-афричке-земље-да-повуку-признање-Косова (last visited Jun 8, 2020).

[96] MSP Kosova se ipak oglasilo: Diplomatske note izdate uz mito, odbačene naknadno, KOSSEV, August 26, 2019, https://kossev.info/msp-kosova-necemo-komentarisati-propagandu-i-falsifikovane-dokumente-dacica/ (last visited Jun 8, 2020); Da li je Dačić plaćao povlačenje priznanja Kosova?, RADIO FREE EUROPE, August 27, 2019, https://www.slobodnaevropa.org/a/da-li-je-dačić-plaćao-povlačenje-priznanja-kosova-/30131802.html (last visited Jun 8, 2020). The same claims were made by Serbia in respect to recognitions given to Kosovo. FM confirms: Two countries revoking Kosovo

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Kosovo's Prime Minister, Mr. Ramush Haradinaj, confirmed that derecognitions were taking place.[97] Deputy Prime Minister of Kosovo and a former foreign minister, Mr. Enver Hoxhaj, claimed he had information on ten more to come,[98] which was in turn denied by the Foreign Ministry.[99] It seems that Kosovo's officials were both refusing the possibility of derecognition under international law[100] and accepting it.[101]

There are many curiosities surrounding claims of revocations of Kosovo's recognition. First, the news about them were coming exclusively from the Serbian Ministry of Foreign Affairs. The Serbian Foreign Minister, Mr. Ivica Dačić, would appear in front of TV cameras, either at a press conference organized at the Ministry[102] or on a television show.[103] He would wave a paper in his hand claiming it to be a diplomatic note containing a concrete revocation.[104] Some of these diplomatic notes were published on the website of the Serbian Ministry of Foreign Affairs or in the media.[105] However, the states that were said to have de-recognized Kosovo were staying silent,[106] and Kosovo claimed it did not receive any communication about revocation[107] nor that it received notes of their

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recognitions, B92, September 8, 2011, https://www.b92.net/eng/news/politics.php?yyyy=2011&mm=09&dd=08&nav_id=76304.

[97] Statement by the Prime Minister, Mr. Ramush Haradinaj, Burundi revokes Kosovo recognition, leaving Kosovo PM nonplussed, *supra* note 76.

[98] Hodžaj: Još 10 zemalja može da povuče priznanje Kosova, RTS, September 6, 2019, https://www.rts.rs/page/stories/sr/story/9/politika/3652620/hodzaj-jos-10-zemalja-moze-da-povuce-priznanje-kosova.html (last visited Jun 8, 2020).

[99] Kosovo nije dobilo najavu nijedne države o povlačenju priznanja, B92, September 20, 2019, https://www.b92.net/info/vesti/index.php?yyyy=2019&mm=09&dd=10&nav_category=640&nav_id=1589438 (last visited Jun 8, 2020).

[100] Kosovo Says Suriname Can't Revoke Independence Recognition, BALKANINSIGHT, October 31, 2017, https://balkaninsight.com/2017/10/31/kosovo-claims-suriname-cannot-revoke-independence-recognition-10-31-2017/ (last visited Jun 8, 2020).

[101] Statement of the Prime Minister, Mr. Ramush Haradinaj, Burundi revokes Kosovo recognition, leaving Kosovo PM nonplussed, *supra* note 76._See also the position of the Minisitry of Foreign Affairs of Kosovo, Hodžaj: Moguće dalje povlačenje priznanja Kosova, RADIO KIM, September 10, 2019, https://www.radiokim.net/vesti/politika/hodzaj-moguce-dalje-povlacenje-priznanja-kosova.html (last visited Jun 8, 2020).

[102] See for e.g. the statement of Mr. Dacic, *supra* note 76.

[103] MPJ pas deklarimeve se Togo ka tërhequr njohjen: Serbia po përdorë ryshfet për ta kundërshtuar Kosovën, KOHA, August 26, 2019, https://www.koha.net/arberi/180953/mpj-pas-deklarimeve-se-togo-ka-terhequr-njohjen-serbia-po-perdore-ryshfet-per-ta-kundershtuar-kosoven/ (last visited Jun 8, 2020).

[104] Togo withdraws recognition of Kosovo claims Serbia's foreign minister, *supra* note 93.

[105] See *supra* notes 73–93.

[106] Notable exception is Ghana, who issued a statement to the press, Ghana Withdraws "Premature" Kosovo Recognition, *supra* note 90.

[107] Flare-Up Between Kosovo And Serbia After Liberian Gaffe, *supra* note 85.

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denouncement.[108] Second, it seems that substantial parts of at least some of the diplomatic notes on revocation of recognition were identical,[109] which signaled a coordinated action within the Serbian Foreign Ministry. Third, some of the revocations were later withdrawn, so there were even news of the revocation of derecognitions.[110] Finally, it seems that the revocations were secured through help from Russia. Namely, there is a concurrence in the conclusion of bilateral treaties between Russia and Suriname, Burundi, Dominica, Grenada, Madagascar and Palau, respectively, and their subsequent revocation of recognition of Kosovo.[111] 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 on military cooperation.[112] However, Serbian Foreign Minister denied Russia"s involvement in revocations of Kosovo's recognitions.[113] Also, he claimed that even if that was true, this does not differ from what the US was doing with respect to recognition of Kosovo in the first place.[114] Indeed, it is common knowledge that the US has shown open support for Kosovo's independence and has lobbied hard for recognitions of it.[115] This led some states to view Kosovo as a "US project", which may explain why many Arab and Asian states have steadfastly refused to recognize Kosovo."[116]

2. 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,[117] I still need to briefly look into these criteria in order to

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[108] MPJ pas deklarimeve se Togo ka tërhequr njohjen: Serbia po përdorë ryshfet për ta kundërshtuar Kosovën, *supra* note 103; MSP Kosova se ipak oglasilo: Diplomatske note izdate uz mito, odbačene naknadno, *supra* note 96.

[109] Da li je Dačić plaćao povlačenje priznanja Kosova?, *supra* note 96. See also *infra* notes *supra* note 271, 272 and text available on the link in *supra* note 82.

[110] See *supra* notes 85 and 86.

[111] Ruska veza' u navodnom povlačenju priznanja Kosova?, RADIO FREE EUROPE, July 25, 2018, https://www.slobodnaevropa.org/a/30073173.html (last visited Jun 8, 2020).

[112] *Id.*

[113] *Id.*

[114] See embedded audio recording in *Id.*

[115] JAMES KER-LINDSAY, *supra* note 7 at 112.

[116] *Id.* at 112.

[117] JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW (2nd ed. 2006); THOMAS D. GRANT, *supra* note 6; HERSCH LAUTERPACHT, *supra* note 6; CHEN, TI-CHIANG, *supra* note 2; Stefan Talmon, *The constitutive Versus the Declaratory Theory of Recognition: Tertium Non Datur?*, 75

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sketch the normative boundaries of these concepts under international law, and provide a background for discussion of derecognition in the next chapter.

2.1. Criteria for Statehood and Policy of Recognition

The act of recognition is a result of the free will of each state.[118] The practice of international law shows that there is no duty to recognize the new state, but that each state freely decides upon it.[119]

Still, international law has created the normative framework upon which the question of recognition of an emerging state needs to be assessed. The normative setting on state recognition in international law is built upon two pillars: 1) the criteria for statehood from the Montevideo Convention on Rights Duties of States[120] and 2) prohibition of recognition of an entity (otherwise fulfilling the criteria of statehood), which was created in violation of *jus cogens* norms, such as the prohibition of the use of force and the right to self-determination.[121]

The first pillar is traditional and it is based on the principle of effectiveness,[122] 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) government and (4) capacity to enter into relations with other states.[123] These criteria, often referred to as the "Montevideo criteria," are said to reflect customary international law.[124] In the past, states explicitly referred to their fulfillment when recognizing a new state. For example, the US Department of State issued a statement to the press on the criteria it applied in deciding whether or not to recognize a new state:

BRIT. Y.B. INT'L L. 101–181 (2005); Jure Vidmar, *Explaining the Legal Effects of Recognition*, 61 INT'L & COMP. L.Q. 361–387 (2012); Cederic Ryngeart, Sven Sobrie, *supra* note 63.

[118] Authors 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 449–465, 451-452. (1991). International Law Commission, *Sixth Report of the Special Rapporteur, Mr. Víctor Rodríguez Cedeño* 61, para. 52 (2003).

[119] Ian Brownlie, *Recognition in Theory and Practice*, *in* R. ST. J MACDONALD, DOUGLAS M. JOHNSTON (EDS.), THE STRUCTURE AND PROCESS OF INTERNATIONAL LAW: ESSAYS IN LEGAL PHYLOSOPHY DOCTRINE AND THEORY, 627–641, 635–636 (1983).

[120] See *supra* note 10.

[121] Cederic Ryngeart, Sven Sobrie, *supra* note 63 at 472–474.

[122] James Crawford, *The Creation of States in International Law*, 97. For effectiveness see Anne Peters, "Statehood after 1989: 'Effectivités' between Legality and Virtuality", *Proceedings of the European Society of International Law* 3 (2010), SSRN: https://ssrn.com/abstract=1720904.

[123] Art. 1, *supra* note 10. For the discussion of Montevideo criteria see Thomas D. Grant, *Defining Statehood: The Montevideo Convention and its Discontents*, 37 COLUM. J. TRANSNAT'L L. 403 (1999).

[124] DAVID HARRIS, CASES AND MATERIALS ON INTERNATIONAL LAW 99 (2004).

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> 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.[125]

However, this does not mean that in practice statehood is necessarily equated with effectiveness.[126] There were instances when entities were viewed as states, despite the lack of effectiveness, as will be discussed later in this chapter.[127]

The second pillar, which was established more recently, is embodied in the prohibition of recognition of entities emerging contrary to the peremptory (*jus cogens*) rule.[128] This pillar is based on the principle of legality[129] and its universal acceptance, going beyond a state recognition, which is embodied in Article 41(2) of the Draft Articles on State Responsibility.[130] This article 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.[131]

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[125] The statement also added that "[t]he United States has also taken into account whether the entity in question has attracted the recognition of the international community of states." Eleanor C. McDowell, *Contemporary Practice of the United States Relating to International Law*, 71 AM J. INT'L L. 337–349, 337 (1977). Similar statements have been also made by Canada and UK. See Cederic Ryngeart, Sven Sobrie, *supra* note 63 at 472–473, note 36.

[126] JAMES CRAWFORD, *supra* note 117 at 97.

[127] This the case with Ethiopia, Austria, Czechoslovakia, Poland, the Baltic States, in the period 1936 to 1940, when they had been unlawfully annexed, Guinea-Bissau from 1973 until 1974 when Portugal recognized it as state, or Kuwait in the period 1990 to 1991. *Id.* at 97. As well as with Croatia and Bosnia and Herzegovina, during the dissolution of the former Yugoslavia. See *infra* note 148–150.

[128] The origin of the rule can be traced back to 1932 when the US adopted a policy of non-recognition of states established by aggression, which was created in regard to the events in Manchuria (China), where Japan, by the use of force, established a puppet state of Manchukuo (see *infra* notes 198-204). This became known as the 'Stimson doctrine,' after the US Secretary of State, Henry Stimson, who had sent a note to Japan and China, stating the refusal of the US to accept the situation, treaty or an agreement as legal in situations which result from aggression, as it would impair the sovereignty, independence, and territorial integrity of China, and recognized that it is created contrary to the Briand-Kellogg Pact. See Quincy Wright, *The Stimson Note of January 7, 1932*, 26 AM J. INT'L L. 342–348 (1932). This doctrine was picked up by the League of Nations, see *infra* note 203. See also James Crawford, *The Creation of States in International Law*, 75; Thomas D. Grant, *The Recognition of State, Law and Practice in Debate and Evolution*, 203, n. 62 and references provided therein; Mikulas Fabry, *Recognizing States, International Society and the Establishment of New States Since 1776*, 135–37.

[129] See JAMES CRAWFORD, *supra* note 117 at 74–75.

[130] International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, submitted to the General Assembly as a part of the Commission's report covering the work of that session (UN Doc. A/56/10 (2001)).

[131] *Id.* at 114 and 115, para. 8.

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So, if an entity is established contrary to the *jus cogens* rules of international law, which arguably include the prohibition of the use of force, racial discrimination and apartheid, genocide and the right to self-determination, there is the obligation to withhold recognition of statehood of entities that are otherwise satisfying the effectiveness principle.[132]

States, both individually[133] and through actions within an international organization (particularly the UN[134]), consistently refused to recognize effective entities being born against the prohibition of the use of force, such were the cases with the Turkish Republic of Northern Cyprus and the Republic of Serbia.[135] Recently, states have done so in respect to Abkhazia and South Ossetia, two Georgian secessionist provinces,[136] 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 was in cases of Southern Rhodesia[137] and the South African Bantustans.[138]

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 was not created against human and minority rights and adherence to democracy.[139] These criteria can be found in the European Commission's (EC) Declaration on the Guidelines on the Recognition of New State in Eastern Europe and the Soviet Union (1991) adopted by the EC Arbitration Commission on Yugoslavia (so-called "Badinter Commission") in 1991.[140] It is, however, disputed in the doctrine if these are criteria for statehood or criteria for recognition.[141]

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[132] *Id.* See also JAMES CRAWFORD, *supra* note 117 at 97–157.
[133] See for example the statement of the UK's Secretary of State for Foreign and Commonwealth Affairs, Mr. Robin Cook, of 16 December 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." Reproduced in Geoffrey Marston, *United Kingdom Materials on International Law 1997*, 68 BRIT. Y.B. INT'L L. 467–654, 520 (1997).
[134] See UNSC resolution 541 (1983), concerning TRNC; and UNSC resolution 787 (1992), concerning the Republika Srpska.
[135] For more on the practice of the non-recognition in cases of the use of force see JAMES CRAWFORD, *supra* note 117 at 128–148.
[136] Even without UNSC resolution requiring such refusal.
[137] See UNSC resolutions 216 (1965) and 217 (1965).
[138] See General Assembly resolution 31/6 (1976), endorsed by the UNSC in resolution 402 (1976); General Assembly resolutions 32/105 (1977) and 34/93 (1979); see also the presidential statements of the UNSC S/13549 (1979) and S/14794 (1981).
[139] JAMES CRAWFORD, *supra* note 117 at 148–155. See also THOMAS D. GRANT, *supra* note 6 at 84-105.
[140] Adopted at an Extraordinary EPC Ministerial Meeting at Brussels on 16 December 1991. Text in annex of Danilo Türk, *Recognition of States: A Comment*, 4 EUR. J. OF INT'L L. 66–91, 72 (1993).
[141] See Thomas D. Grant, *The Recognition of State, Law and Practice in Debate and Evolution*, 83–106; Stefan Talmon, *supra* note 130 at 125–126; THOMAS D. GRANT, *supra* note 14 at 83–106.

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In any case, EC's Declaration aimed to provide "the normative ground for European states" for their practice of recognizing new states,[142] as it listed conditions which needed to be fulfilled for an entity to be recognized as a state.[143] It extended the traditional two pillars,[144] 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,[145] despite the fact that the Declaration accepted that "the political realities in each case"[146] 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 Guidelines was not consistently followed in the practice of states, neither from the point of the traditional requirements for statehood nor with regard to the new criteria.[147] For example, Croatia was recognized before it had the effective control of its territory[148] or provided minority protection.[149] Also, Bosnia and Herzegovina was recognized without an effective government in control of its territory.[150] On the other hand, Macedonia fulfilled all the criteria required by the Guidelines, but was not recognized for some time due to Greek opposition.[151] Moreover, non-European states did not even justify their recognition of the former Yugoslav republic on the

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[142] Cederic Ryngeart, Sven Sobrie, *supra* note 63 at 472.

[143] The Badinter's Commission also took the position that the principle of *uti possidetis juris* (maintaining borders existing at the time of independence, i.e. administrative borders that divided republics of the SFRY) should be applied, unless the states concerned agreed differently. See Alain Pellet, *The Opinions of the Badinter Arbitration Committee A Second Breath for the Self-Determination of Peoples*, 3 EUROPEAN JOURNAL OF INTERNATIONAL LAW 178–185, 182–185 (1992). For the critique on this approach see Steven R. Ratner, *Drawing a Better Line: Uti Possidetis and the Borders of New States*, 90 AM J. INT'L L. 509–624 (1996).

[144] 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. DAVID HARRIS, *supra* note 124 at 148. It explicitly stated it will not recognize "entities which are the result of aggression".

[145] Cederic Ryngeart, Sven Sobrie, *supra* note 63 at 475.

[146] Danilo Türk, *supra* note 140 at 72.

[147] Cederic Ryngeart, Sven Sobrie, *supra* note 63 at 472.

[148] Croatian Serbs occupied one-third of the territory in Croatia, and established so called Republic of Srpska Krajina. *Id.* at 476.

[149] *Id.* at 476.

[150] See Danilo Türk, *supra* note 140 at 69. As in the case of Croatia, Bosnian Serbs controlled two-thirds of the territory and had previously established the Republic of Srpska.

[151] 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 & COMP. L.Q. 545, 561, n. 62 (1999).

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normative grounds developed by the EC.[152] These accounts challenge the normative force of the new requirements.[153]

Also, these accounts confirm that sometimes politics, not law, is the main force that motivates state practice in the realm of recognition of statehood.[154] This is an inevitable consequence of the fact that recognition of a new state still remains within the old state's discretion[155] and is affected by "political realities" of each case. For this reason, recognition of states remains "a subject full of paradoxes and curiosities", as Starke noted back in 1965.[156] The case of Kosovo's recognitions also confirms this point.

2.2. The nature of recognition in 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,[157] which is necessary for such an entity to enjoy status of state.[158] On the other hand, 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,[159] while its state status is given previously by the operation of law.[160] Therefore, the declaratory theory denies recognition a character of the legal transaction,[161] while the constitutive theory views it as a legal act, which grants a status of state to a new political entity. In other words, the wide gap between the

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[152] Cederic Ryngeart, Sven Sobrie, *supra* note 63 at 476–477.
[153] *Id.* at 477–478.
[154] THOMAS D. GRANT, *supra* note 6 at 105.
[155] Ian Brownlie, *supra* note 119 at 630, 635. MALCOM SHAW, INTERNATIONAL LAW 321 (7th ed. 2014).
[156] J.G. Starke, *Studies in International Law* (Butterworths, 1965), 91.
[157] See for e.g. LASSA OPPENHEIM, *supra* note 7 at 125. Lauterpacht was a subtle proponent of constitutive view, as he was claiming that rights of state are dependent on recognition, but at the same time arguing that there should be no discretion in deciding whether to recognize an entity fulfilling statehood criteria, but rather that there is a duty to do so. HERSCH LAUTERPACHT, *supra* note 6 at 6.For other proponents see JAMES CRAWFORD, *supra* note 117 at 19-22.
[158] MARTIN DIXON, ROBERT MCCORQUODALE, SARAH WILLIAMS, CASES AND MATERIALS IN INTERNATIONAL LAW 158 (5th ed. 2011).
[159] See for e.g. CHEN, TI-CHIANG, *supra* note 2 at 29. For other proponents of declaratory school see JAMES CRAWFORD, *supra* note 117 at 22–26.
[160] JAMES CRAWFORD, *supra* note 7 at 135. The Badinter Commission and *Institute de Droit International* both adopted declaratory view on recognition. Alain Pellet, *supra* note 152 at 182; Institut De Droit International, *supra* note 29, Art. 1.
[161] 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 the discussion in PRZEMYSŁAW SAGANEK, UNILATERAL ACTS OF STATE IN PUBLIC INTERNATIONAL LAW 484.

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two seems apparent: constitutive theory gives recognition a normative value, while declaratory theory does not.[162]

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 which emerged after violation of *jus cogens*. On the other hand, constitutive theory, makes the question of the existence of a state relative, as it makes it dependent on recognition.[163] This view is especially challenging in a setting 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.[164]

While both international practice and doctrine to a large extent reveal that the act of state recognition is only declaratory,[165] there are plenty of cases that do not fit neatly in these theoretical models, as they have been accommodated in the international legal order[166] to make us question their usefulness. As Brownlie claimed, these models, seem to have failed not only to enhance the subject of recognition, but also create "a bank of fog on a still day".[167] Today, these theories are no longer self-contained or mutually exclusive,[168] and from the practical point of view the differences between them have somewhat shrunk.[169] 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,[170] and it may have trouble becoming a member of international organizations. Adherents to the constitutive model would likewise not deny there are certain rights that new effective entities enjoy regardless of recognition, such as the right against external aggression.[171]

2.3. Effects of recognition on the enjoyment of rights

[162] Cederic Ryngeart, Sven Sobrie, *supra* note 63 at 470.
[163] JAMES CRAWFORD, *supra* note 117 at 21.
[164] Jure Vidmar, *Territorial Integrity and the Law of Statehood*, GEO. WASH. INT'L L. REV. 697, 737–742 (2012).
[165] JAMES CRAWFORD, *supra* note 117 at 22, 25; DAVID HARRIS, *supra* note 124 at 131; José Maria Ruda, *supra* note 118 at 450.
[166] Cederic Ryngeart, Sven Sobrie, *supra* note 63 at 471. See also Jure Vidmar, *supra* note 117.
[167] Ian Brownlie, *supra* note 119 at 627.
[168] THOMAS D. GRANT, *supra* note 6 at 73.
[169] JAMES CRAWFORD, *supra* note 117 at 27–28; JORRI DUURSMA, FRAGMENTATION AND THE INTERNATIONAL RELATIONS OF MICRO-STATES : SELF-DETERMINATION AND STATEHOOD 115 (1996).
[170] JAMES CRAWFORD, *supra* note 7 at 137–138.
[171] THOMAS D. 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". HERSCH LAUTERPACHT, *supra* note 6 at 6.

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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 its rights are afforded to states by virtue of recognition, while the declaratory view only acknowledges the existence of state and that its rights exist by the simple operation of law once the statehood criteria have been fulfilled.

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 international realm and (ii) in the realm of domestic order of other states. This distinction between the rights that a recognized state may exercise on international and domestic level becomes particularly relevant in the assessment of possible effects and limits of derecognition, which will be discussed in chapter 4.

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, etc.[172] Namely, irrespective of recognition, old states have duties "to respect territorial integrity and property of a qualified entity, accept its rights to grant nationality to persons and vessels and to assume the responsibility flowing therefrom under international law."[173] In state practice, such entities were commonly objects of international claims by the states which did not recognize them.[174] For example, in 1968, the US claimed that North Korea, which it did not recognize, violated rules of international law in attacking a US vessel *The Pueblo*.[175] Also, some states, even while not recognizing Israel, claimed it was responsible for violations of international law.[176]

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[172] These rights can be derived from the principles embodied in the UNGA Resolution, Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the protection of their Independence and Sovereignty, UN Doc. A/RES/20/2131 (21 December 1965) and UNGA Resolution 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UN Doc. A/RES/25/2625 (24 October 1970). See also Draft Declaration on Rights and Duties of States, prepared by the International Law Commission (reproduced in the annex to the UNGA Resolution 375(IV) (6 December 1949)), back in 1949. However, the UNGA did not act further on this proposal.

[173] RESTATEMENT, THIRD, FOREIGN RELATIONS LAW OF THE UNITED STATES (REVISED), 79, paras. 202, comment 2 (1987).

[174] JAMES CRAWFORD, *supra* note 7 at 136.

[175] US State Department, February 23, 1968, The Pueblo Seizure and North Korean Intrusion, http://usspueblo.org/Pueblo_Incident/US_Reactions/US_Dept._State.html (last visited on May 12, 2020).

[176] See for example written statements of Tunisia, Marocco, Saudi Arabia, Syria, Malaysia, Lebanon, Cuba and Yemen in the advisory proceeding before the International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, ICJ Reports 13 (2004), available at https://www.icj-cij.org/en/case/131/written-proceedings (last visited May 12, 2020).

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On the other hand, in the realm of the domestic legal order of other states, recognition seems to have a constitutive effect.[177] This does not mean that recognition creates a state, but that without it, a qualified entity[178] cannot always assume the legal position in the domestic legal order of other states.[179] Such position will include 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[180] (except for acts such as registration of births, deaths and marriages which are deemed valid, regardless of non-recognition[181]).

Practice of states shows that all these rights are afforded without contestation in the domestic legal system only upon recognition.[182] 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.[183] 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[184] branches, 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

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[177] MALCOM SHAW, *supra* note 155 at 341.

[178] It can also affect some rights of an individual associated with nationality of a non-recognized state. However, not of all of them are affected due to the reach of human rights, which to an extent are unassociated with nationality. Andrew Grossman, *Nationality and the Unrecognised State*, 50 INT'L & COMP. L.Q. 849 (2001).

[179] ROBERT JENNINGS AND ARTHUR WATTS, OPPENHEIM'S INTERNATIONAL LAW 199 (9th ed. 1992).

[180] RESTATEMENT, THIRD, FOREIGN RELATIONS LAW OF THE UNITED STATES (REVISED), *supra* note 173 at 78, para.s 202(c) and 205.

[181] International Court of Justice, Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding UNSC Resolution 276, ICJ Reports 16, 56, para. 125 (1971).

[182] RESTATEMENT, THIRD, FOREIGN RELATIONS LAW OF THE UNITED STATES (REVISED), *supra* note 173 at 79, paras. 202, comment c.

[183] See Ralph Wilde, Andrew Cannon, Elizabeth Wilmshurst, *Recognition of States: The Consequences of Recognition or Non-Recognition in UK and International Law* 12–17 (2010), https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/Meeting%20Summary %20Recognitio n%20of%20States.pdf (last visited Jun 2, 2020).

[184] Courts can be presented with cases which demand they take the position on whether formal recognition plays a role in affording rights to non-recognized entities. See *infra 186*-188. In some jurisdictions, legislature took steps to off-set adverse effects of the non-recognition of some entities. The case in point is the US and its legislation on Taiwan. See *infra* note 187.

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jurisdictions they went to afford rights to entities regardless of the fact that they have not been recognized by the executive.[185] Specifically, there were examples of domestic courts affording 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. In the existence of the required criteria, they were willing to extend immunity to non-recognized states (French court granting an immunity of execution to East Vietnam, a non-recognized entity),[186] while in their absence, the claim for immunity would be denied (the US courts denying immunity to Palestinian Liberation Organization/Palestine).[187] At the same time, other domestic courts were not entertaining with such independent assessment, but rather deferring to the executive's position by viewing recognition as *sine qua non* for state immunity to be enjoyed (like Singapore courts denying immunity Taiwan).[188]

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[185] As with the issue of state immunity, practice of state differs when it comes to 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 INTERNATIONAL LAW ASSOCIATION, *Recognition/Non-recognition in International Law, Second (Interim) Report* 11–12 (2014), https://www.ila-hq.org/index.php/committees (last visited May 26, 2020).

[186] Clerget v. Banque Commerciale pour L'Europe du Nord and Banque du Commerce Extdrieur du Vietnam, Court of Appeal of Paris, 7 June 1969, reprinted in 52 Int'l L. Rep. 310 (1979). See more in Julius H. Hines, *Why do Unrecognized Governments Enjoy Sovereign Immunity--A Reassessment of the Wulfsohn Case*, 31 VA. J. INT'L L. 717, 726–727 (1991). For Canadian jurisprudence, see Parent and Ors v. Singapore Airlines Ltd, 2003 IIJ Can. 7285 (QC CS), ILDC 181 (CA 2003), 22 October 2003. See more in Margaret E. McGuinness, *Non-Recognition and State Immunities: Toward a Functional Theory*, ST. JOHN'S SCHOOL OF LAW LEGAL STUDIES RESEARCH PAPER SERIES, 35–36 (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3188916 (last visited May 22, 2020).

[187] See case immunity of 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. PLO, 306 F. Supp. 2d 424 (S.D.N.Y. March 2, 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*, p. 400. For more in-depth analysis see Margaret E. McGuinness, *supra* note 186 at 24–29. It should be noted that the case of Taiwan raised numerous litigations before the US 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 US legal system. The example of Taiwan will be discussed in the subsequent section, as it specifically touches upon the issue of de-recognition. See also a French court denying immunity to Basque, Rousse v. Banque d'Espagne, Cour de Poitiers, 26 July 1937, reprinted in 65 Journal du Droit International 52, 54-55 (1938), see more in Julius H. Hines, *supra* note 186.

[188] Woo Anthony v. Singapore Airlines Limited (Civil Aeronautics Administration, Third Party), (2003) 3 SLR 688; 2003 SGHC 190 and Civil Aeronautics Administration v. Singapore Airlines Limited, [2004] SGCA 3; [2004] 1 SLR 570, ILDC 86 (SG 2004) (appeals decision). Margaret E. McGuinness, *supra* note 186 at 37–38. These are Singapore cases involving Taiwan.

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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.[189] 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,[190] as well as the private international law and the law or practice of foreign relations,[191] hinting that the effect of foreign law should not depend on recognition when it comes to private individuals.[192]

It should be noted that state practice in respect to rights of non-recognized entities is scarce, but nevertheless, shows there is a huge difference in 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, in which 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

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[189] INTERNATIONAL LAW ASSOCIATION, *supra* note 79 at 15–16, for examples from Australia, Italy and Russia. See also example of the Israelis Ministry of Education refusal to recognize a degree obtained in the TRNC as equivalent to an academic degree in Israel. *Id.* at 19, note 98. 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).

[190] In the case Hesperides Hotels Ltd v Aeean Turkish Holidays Ltd ((1977), 1 QB 205), Lord Denning raised the question if the law of the 'Turkish Federated State of Cyprus' could be applied to a tort claim even though UK 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." See JAMES CRAWFORD, *supra* note 117 at 18. See also the position of Lord Wilberforce in the case Carl Zeiss Stiftung v. Rayner & Keeler Ltd. ((No. 2) [1967] 1 A.C. 853), 954 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'.

[191] District Court of Kyoto, Judgment of 7 July 1956, quoted in *Id.* at 18, para. 70.

[192] While Rhodesian divorce decree was not considered valid before the UK courts, since this entity was not recognized by the UK (see Adams v. Adams ([1971] P. 188; 52 ILR, p. 15), there are other examples in the UK jurisprudence in which private acts were considered valid (*Emin v Yeldag* [2002] 1 FLR 956) as such decisions did not go contrary to the UK foreign policy or affected its diplomatic position (*Caglar v Bellingham* 108 ILR, p. 510). For a short overview of the effects of non-recognition in the UK jurisprudence see Anahita Mathai, *The Effects of Non-Recognition of a State or Government by the UK in UK Courts*, KING'S STUDENT LAW REVIEW (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 (last visited May 26, 2020). See also Andrew Grossman, *supra* note 178 at 855.

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specific legal obligation *per se* for a recognizing state.[193] It only establishes normal relations and contacts between states, not legal acts,[194] but may lead to the creation of legal obligations in future encounters between 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.[195] This creates a waiver of its claim to territorial integrity over the territory which was seceded.[196] In all other cases, it is challenging to see an act of state recognition as a legal transaction.

3. Derecognition

3.1. Derecognitions in practice

As already mentioned, derecognition is an exceptional phenomenon in the state practice. There is a rare example of a state expressly de-recognizing a previously recognized entity is from 1920, when the US revoked its recognition of the Republic of Armenia, due to its loss of independence.[197]

While states are rarely resorting to derecognition, this issue was discussed in relation to the dispute between Japan and China over Manchuria, a north-eastern province of the latter, where Japan, by using force, established a puppet state called the "State of Manchukuo."[198] It was claimed that in 1931, and subsequent years, China ceased to be a state due to prolonged internal disorder,[199] which implied revocation of its recognition.[200] Similar arguments, on anarchy being a game-changer, were then made by Japan in 1932, when it claimed that China ceased to be an "organized people" within the meaning of the Covenant of the League of

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[193] Some authors have claimed 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 for giving assistance to an old state to regain control over its secessionist entity. For an overview of some positions on the legal effect of state recognition see PRZEMYSŁAW SAGANEK, *supra* note 161 at 499–503.

[194] *Id.* at 500.

[195] *Id.* at 503.

[196] Jure Vidmar, *supra* note 117 at 370.

[197] See more on this case in CHEN, TI-CHIANG, *supra* note 2 at 261.

[198] See Thomas D. Grant, *The Recognition of State, Law and Practice in Debate and Evolution*, 203, n. 62 and references provided therein. See also HERSCH LAUTERPACHT, *supra* note 6 at 350–351.

[199] For the arguments which would support this claim see Thomas Baty, *Can an Anarchy Be a State, 28 Am J. Int'l L. 444*, 28 AM J. INT'L L. 444–455 (1934).

[200] HERSCH LAUTERPACHT, *supra* note 6 at 350, n. 1.

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Nations.[201] However, these claims were raised not for the sake of revoking recognition of China, but in order to argue that the formal recognition of the new state, Manchukuo, would not contravene international law.[202] In any case, these claims were rejected by the League of Nations,[203] and Manchuria was denied recognition.[204]

States have not developed any specific rules on express derecognition, which is unsurprising given its infrequency. By implication it can be concluded that the criteria relevant in respect to recognition would also come into play if a state decides to resort to derecognition. This would mean that states (such as the US, UK and Canada), that assess recognition on the basis of the Montevideo criteria, would presumably take into consideration that these criteria cease to exist when contemplating derecognition. The US has done so in 1920 in respect to Armenia.[205] Also, it should be noted that a temporary lack of criteria of effectiveness has not resulted in derecognitions within the state practice, as is evident from the cases with all the states in WWII that had been conquered by Axis, which were regarded as occupied states, not non-states.[206] More recent example is the case of Somalia.[207] States seem to put a high threshold for claiming that an entity ceases to exist as a state,[208] which – as I will demonstrate below – corresponds to the doctrinal opinions on irrevocability of recognition.

The Third Restatement on Foreign Relations of the US briefly touches upon the issue of derecognition in the following way:

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[201] See the Japan, *Statement of the Japanese Government*, 13 LEAGUE OF NATIONS – OFFICIAL JOURNAL 387, 7 (1932). See also other references provided in HERSCH LAUTERPACHT, *supra* note 6 at 350, n. 1.

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

[203] 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. This provided a possibility in the case of "any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends." See League of Nations Assembly Report on the Sino-Japanese Dispute reproduced in 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.

[204] THOMAS D. GRANT, *supra* note 6 at 130–131. It is not entirely clear how many states recognized Manchukuo. Some authors reported four (El Salvador, Germany, Italy and Hungary), while other also added Poland, the Holy See, and the Dominican Republic to the list. *Id.* at 110, n. 44.

[205] See *supra* note 197.

[206] See JAMES CRAWFORD, *supra* note 117 at 73–76.

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

[208] Cederic Ryngeart, Sven Sobrie, *supra* note 63 at 488.

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> 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 'derecognized'."[209]

This indicates that the Restatement shares the dominant doctrinal position, holding that derecognition is not allowed except when an entity loses statehood criteria. However, this statement could also be interpreted that a derecognition 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 they exist regardless of recognition.[210]

The only other cases that could pertain to the issue of derecognitions 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.[211] By the end of the 1990s and the beginning of the 2000s, many Central American states de-recognized Taiwan as well.[212] Vanuatu (in 2013) and Tuvalu (in 2014) de-recognized secessionist provinces of Georgia, Abkhazia and South Ossetia, which they had previously recognized.[213] However, this practice is not *stricto sensu* demonstrative of derecognition, since there were legal obstacles in respect to statehood of these entities. For these reasons, 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,[214] so its case raised 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

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[209] RESTATEMENT, THIRD, FOREIGN RELATIONS LAW OF THE UNITED STATES (REVISED), *supra* note 173 at 79, chap. 1, paras. 202, comment e.
[210] *Id.* at 77, paras. 202, comment b.
[211] See the archives of the Ministry of Foreign Affairs of Taiwan, https://web.archive.org/web/20110927020556/http://www.mofa.gov.tw/webapp/ct.asp?xItem=2284&ctNode=1902&mp=6 (last visited Jun 8, 2020).
[212] Johanna Mendelson Forman, Susana Moreira, *Taiwan-China Balancing Act in Latin America*, *in* CAROLA MCGIFFERT (ED.), CHINESE SOFT POWER AND ITS IMPLICATIONS FOR THE UNITED STATES: COMPETITION AND COOPERATION IN THE DEVELOPING WORLD, 97–101 (2009), http://csis.org/files/media/csis/pubs/090403_mcgiffert_chinesesoftpower_web.pdf (last visited Jun 8, 2020).
[213] Tuvalu Retracts Recognition of Abkhazia, South Ossetia, RADIO FREE EUROPE, March 31, 2014, https://www.rferl.org/a/tuvalu-georgia-retracts-abkhazia-ossetia-recognition/25315720.html (last visited Jun 8, 2020).
[214] See more in SIGRID WINKLER, *Biding Time: The Challenge of Taiwan's International Status* (2011), https://www.brookings.edu/research/biding-time-the-challenge-of-taiwans-international-status/ (last visited Jun 13, 2020).

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claim for statehood to be recognized.[215] In contrast to that, Abkhazia and South Ossetia declared their independence from Georgia, but in these cases, force was used in an attempt to create a new state. The international law prohibits recognition of statehood of entities that were born out of a violation of the rule against using force, which has a status of a *jus cogens* rule, therefore, their recognitions were illegal from the view of the international law.

Kosovo, on the other hand, declared its independence from Serbia and did not do so by illegal violation of the *jus cogens* rule of international law. Namely, at the time of its declaration of independence, Kosovo was in a clear legal status of an internationally run territory of Serbia by virtue of the UNSC Resolution 1244. The argument that the use of force by NATO against FR Yugoslavia (which included Serbia during that time) was illegal[216] 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 back in 1999 resulted in illegality of the creation of Kosovo in 2008.[217] Even Serbia does not make such claim, but opposes Kosovo's recognition on different grounds.

Thus, at the time when Kosovo declared its independence from Serbia, it was in a different situation than Taiwan, Abkhazia and South Ossetia. 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 five recognitions of Abkhazia with more than 100 recognitions of Kosovo. Such a large number of recognitions undoubtedly served to support Kosovo's claim to statehood.

3.2. Derecognition in the doctrine

As already mentioned, derecognition is an under-explored subject in the doctrine of international law. Few authors[218] have touched upon this issue and if they did, they have only scraped the surface. This is a natural consequence of the

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[215] JAMES CRAWFORD, *supra* note 117 at 219.
[216] Due to the lack of authorization by the UNSC. Antonio Cassese, *Ex Iniuria Ius Oritur: Are We Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?*, EUR. J. OF INT'L L. 23, 24 (1999).
[217] Jure Vidmar, *Legal Responses to Kosovo's Declaration of Independence*, 42 VANDERBILT JOURNAL OF TRANSNATIONAL LAW 779–851, 826–827 (2009). The right to self-determination was also respected as it was the undisputable wish of all ethnic Albanians, who roughly make 90% of Kosovo's population. For more discussion on that see *Id.* at 825–826.
[218] See *supra* note 7. See also José Maria Ruda, *supra* note 119 at 453.

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fact that derecognitions are unusual in state practice,[219] so it could only be assessed from the theoretical standpoint.

To the extent that the doctrinal positions can be identified, they commonly deny the possibility of derecognition, save in exceptional cases when statehood itself would objectively cease to exist. Both proponents of the declaratory (Chen[220] and *Institite de Droit International*[221]) and constitutive approach (Oppenheim[222] and Lauterpacht[223]) stood on this position. Lauterpacht claimed that expressing derecognitions of states was almost unknown in state practice. However, implicit derecognitions are said to exist by the virtue of another act of recognition of the new state or states, which emerges on the territory of the old state.[224] In any case, the lack of practice of derecognition enabled the same conclusion across theoretical aisles – that once given, the recognition of state is irrevocable.[225] This position was further reflected by the Special Rapporteur on unilateral acts of states the International Law Commission, Rodrigez Cedeño, in 2003.[226]

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[219] The only example of de-recognition Chen gives is the US revoking the recognition of the Republic of Armenia in 1920. See *supra* note 9. 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 HERSCH LAUTERPACHT, *supra* note 6 at 350–352; CHEN, TI-CHIANG, *supra* note 2 at 261–264.

[220] CHEN, TI-CHIANG, *supra* note 2 at 262–263. See also José Maria Ruda, *supra* note 118 at 453.

[221] Institut De Droit International, *supra* note 160 at 184, Art. 5.

[222] LASSA OPPENHEIM, *supra* note 7 at 137.

[223] While it should be noted that Lauterpacht was only a subtle proponent of constitutive view. See *supra* note 157.

[224] HERSCH LAUTERPACHT, *supra* note 6 at 349–351. He discusses the example of Britain's 1938 implied de-recognition of Ethiopia (known at the time as Abyssinia) by the virtue of recognition of Italian annexation of this state. *Id.* at 351–352. For discussion of this case see also CHEN, TI-CHIANG, *supra* note 2 at 262–264. In some cases the diplomatic status of representatives of a state that ceased to exist, was being 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 HERSCH LAUTERPACHT, *supra* note 6 at 151, n. 1.

[225] HERSCH LAUTERPACHT, *supra* note 6 at 349. Krzysztof Skubiszewski, *Unilateral Acts of States*, *in* M. BEDJAOUI, INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS 221–240 (1991). José Maria Ruda, *supra* note 118 at 453. J.G. Starke, *supra* note 156 at 92. Institut De Droit International, *supra* note 160. See also SATYAVRATA RAMDAS PATEL, *supra* note 6 at 110. While he held the common doctrinal stance on the irrevocability of recognition, he also argued 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 fall within its sphere to respect them or to allow them operation. Obviously such a course of action cannot be ruled out. Of course such an act is not against international law, nor can a state be prevented for so acting." *Id.* at 109.

[226] He has 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." He did not elaborate on what would encompass other relevant change of circumstances unrelated to the disappearance of criteria for statehood. International Law Commission, *supra* note 118 at 69, para. 120.

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In the first half of the 20th century, some authors argued for the revocation of recognition in respect to delinquent states, which broke away from the rules of the international society, i.e. in respect to Germany, after the First World War and during Hitler's regime.[227] Pillet (in 1920) and Schwarzenberger (in 1943) argued that Germany's recognition should be revoked since it was not fulfilling its obligations of a civilized state.[228] In this way, they also linked derecognition to disappearance of what they viewed as statehood criteria. However, these were isolated views, and were not followed in state practice.

So, the predominant view in 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, derecognition would be allowed in circumstances when statehood criteria did not exist at the time of recognition, so by the virtue of derecognition, 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 its 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 indeed created states and endowed them with certain rights and duties. To claim that derecognitions are threatening 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 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 derecognition, allowing it *only* in the case when the criteria for statehood cease to exist. In these cases, express derecognitions were almost never taking place, while implied derecognitions were argued on the basis of the recognition of a new entity or entities fulfilling the criteria for statehood, and being established in the place of an old state that was no

[227] HERSCH LAUTERPACHT, *supra* note 6 at 350, n. 2.
[228] See Pillet and Schwarzenberger references in *Id.* at 350, n. 2. Due to this, Pillet was arguing that the Allied and Associated Powers ought to have conducted the peace negotiations after the First World War with representatives of the individual states of Germany. Ibid.

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longer fulfilling the statehood criteria.[229] However, without state practice the scholars were just opining on *de lege ferenda*.

3.3. The Practice of Kosovo's derecognition

3.3.1. Kosovo and statehood criteria

There are two different scenarios pertaining to statehood criteria in which Kosovo's derecognition 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 case of the latter, the statehood criteria would not cease to exist, but never existed in the first place, in which case the derecognition would be an admittance of an initial error in the factual assessment.

(1) Kosovo's derecognitions do not fall within the situation that the statehood criteria ceased to exist. On the contrary, Kosovo had a stronger claim for statehood under international law at the time of derecognitions than when the recognitions were given.

Namely, at the time of the declaration of independence, Kosovo had only fulfilled the Montevideo statehood criteria embodied in the requirement of territory and population.[230] Two remaining criteria – requirements of the government and the capacity to enter into international relations – were not present at the 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.[231] The fact that Kosovo was, and still is, under international administration,[232] which has a

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[229] *Id.* at 351.

[230] For further discussion of whether Kosovo fulfilled the traditional 'Montevideo' criteria and additional ones developed in practice in the case of the dissolution of former Yugoslavia see Jure Vidmar, *supra* note 217 at 818–827.

[231] Vidi Vidmar notes 136-39.

[232] Vidi Vidmar notes 136-39. 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 SRSG on the basis of the Resolution 1244. See UNMIK/REG/2001/9 (15 May 2001). Since 2001, the PISG were gradually taking over the international civilian presence (SRSG) competences from the Resolution 1244, in the legislative, executive and judicial fields (UNMIK/REG/2001/9, 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.) (UNMIK/REG/2001/9, ch. 8). Moreover, the authority of the international security presence (KFOR) did not change; it remained as vested under the Resolution 1244. See chapters, 5, 8 and 13 of the Constitutional Framework. For the analysis of the

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capacity to overrule acts of its government, shows that this criterion was not fulfilled.[233] The same argument applies for the capacity to enter into international relations, which is a corollary to the sovereign government.[234]

These shortcomings related to the requirements of the government and the capacity to enter into international relations strengthen the claim that political considerations dominated in the process of recognition of Kosovo. As have been explained previously,[235] international law has "taken a back seat"[236] in this process. The EU, for example, unlike in the case of former Yugoslav republics, did not come up with an elaborate normative framework, due to the lack of consensus among its members,[237] but only stated that each "Member State will decide, in accordance with national practice and international law on their relation with Kosovo".[238] The expression "national practice" was claimed to refer to political expediency.[239] In any case, the most frequent justifications of Kosovo recognition of both EU and non-EU states were of political nature, such as regional peace and security and exhaustion of negotiations on the final status.[240]

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)[241] and International Civilian Office (ICO)[242] – has been substantially reduced (UNMIK and EULEX) or abolished (in the case of ICO). The declaration of independence had implications on the ability of the UNMIK to perform its mandate, especially after

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Constitutional Framework see Carsten Stahn, *Constitution without a State? Kosovo under the United Nations Constitutional Framework for Self-Government*, 14 LEIDEN J. INT'L L. 531 (2001).

[233] Jure Vidmar, *supra* note 217 at 820.

[234] *Id.* at 821.

[235] Section 1.1.

[236] Cederic Ryngeart, Sven Sobrie, *supra* note 63 at 479.

[237] 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. JAMES KER-LINDSAY, *supra* note 7 at 105.

[238] See Council of the European Union, Press Release of February 18, 2008, No. 6496/08 (Presse 41), https://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/98818.pdf

[239] Cederic Ryngeart, Sven Sobrie, *supra* note 63 at 480.

[240] See the overview provided in the table in Grace Balton, Gezim Visoka, *supra* note 64 at 19.

[241] Established on the basis of the UNSC Resolution 1244. See Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo (EULEX KOSOVO), L 42/92, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008E0124&from=EN.

[242] The ICO was established by the International Steering Group (consisting of 25 states which 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 ICR, see *infra* note 243.

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Kosovo adopted its Constitution on June 15, 2009, which did not take the existence of UNMIK into account.[243] In June 2009, UNMIK started a reconfiguration and downsizing process.[244] Also, the EU – which initially strengthened its presence in Kosovo as of December 2008,[245] through the EULEX[246] – has been decreasing its presence over subsequent years.[247] In September 2012, the ICO's supervision ended, as it was concluded that this plan was substantially implemented.[248]

Second, the ability of international actors to reverse or annul decisions of Kosovo's authority was substantially reduced.[249] 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,[250] and gradually gained independent representation in the regional context.[251] Finally, in December 2018, Kosovo moved to establish its army.[252] All this indicates Kosovo's attainment of the Montevideo criteria of government and capacity to enter into international relations.

So, it cannot be claimed that Kosovo's derecognitions fit into the doctrinal argument to be permissible due to it ceasing to fulfill statehood criteria.

(2) The scenario in which derecognition is warranted due to an error in the initial factual assessment of the existence of statehood criteria in the moment of

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[243] See S/2008/692, para. 21. Nevertheless, the Constitution has taken into account the International Civilian Representative, who was the head of the ICO. Under the art. 147 of the Kosovo Constitution, the ICR was "the final authority in Kosovo regarding interpretation of the civilian aspects of the [Ahtisaari's Plan]. No Republic of Kosovo authority shall have jurisdiction to review, diminish or otherwise restrict the mandate, powers and obligations..."

[244] S/2008/692, para. 22.

[245] In accordance with the UNSC's presidential statement of November 26, 2008 (S/PRST/2008/44)

[246] Initially, the EULEX functioned under the framework of the 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 Art. 3 of the Council Joint Action, *supra* note 241.

[247] For example, the EULEX had judges and prosecutors within Kosovo's justice system, but they were withdrawn in 2018, except they continued to monitor selected cases and trials in the criminal and civil justice (See S/2018/747, p. 10, point 1).

[248] See https://balkaninsight.com/2012/09/11/kosovo-supervision-lifted/.

[249] Today, the EULEX's authority to overrule Kosovo authorities are 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 including". See Council Decision (CFSP) 2018/856 of 8 June 2018 amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo * (EULEX KOSOVO), Art. 3, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018D0856&from=GA.

[250] Tatjana Papić, *supra* note 36 at 554–567.

[251] For example in the Regional Cooperation Council, the Energy Community, the European Aviation Safety Agency etc .

[252] Kosovo approves new army despite Serb opposition, NATO criticism, REUTERS, December 14, 2018, https://www.reuters.com/article/us-kosovo-army-idUSKBN1OD16S (last visited Jun 8, 2020).

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recognition, also does not seem to fit Kosovo's case. While Kosovo indeed lacked two out of four requirements for statehood at the time of recognition, it has managed to reach them in the meantime. If it had not fulfilled the criteria, a claim that derecognitions are due to the initial error in the assessment could be made to fit the existing doctrinal view on the possibility of derecognition.

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

For these reasons, Kosovo's derecognitions in both scenarios would go contrary to the doctrinal positions on irrevocability of recognition save in the case statehood criteria are not fulfilled. Nevertheless, from January 2013 until March 2020, 18 states have de-recognized Kosovo, while two of these recognition have been subsequently revoked.[253] And no one seemed to view these derecognitions as contrary to international law.

3.3.2. Reasons offered for Kosovo's derecognition

The reasons behind derecognition 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,[254] while others have been only reported about in the media based on the statements from the Serbian Foreign Minister or Ministry.[255] 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.[256]

Most of the de-recognizing states invoked some reasons for the derecognition, save Guinea-Bissau[257] and Suriname[258]. While the grounds invoked for

[253] See *supra* note 110.
[254] This is the case with notes of Burundi, Ghana, Guinea-Bissau, Liberia, Nauru, Sierra Leone, while the notes of Comoros and Togo appeared only partially (the first page of the note of Comoros, see *supra* note 82 and the second page of Togo's note, see supra note 89).
[255] This is the case with Palau, CAR, Sao Tome and Principe, Papua New Guinea, Dominica, Grenada, Lesotho, Togo, Solomon Islands and Madagascar.
[256] See *infra* note 257.
[257] The relevant part of Guinea-Bissau's note from October 30, 2017 (referenced as DN 171/17) 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

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derecognition and the way there were used to justify it vary, all diplomatic notes agreed that derecognition was not based on the claim that Kosovo was not fulfilling the statehood criteria.

In majority of cases, the states (Palau,[259] Liberia,[260] Lesotho,[261] Dominica,[262] Grenada,[263] Comoros,[264] Madagascar,[265] Solomon Islands,[266] CAR,[267] Ghana,[268]

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assurances of its highest consideration." This note is available on the link in *supra* note 75. Interestingly, however, Guinea-Bissau continued to treat Kosovo as a state, throughout this note on de-recognition, by referring to it as "Republic of Kosovo", presenting "its compliments" and giving "assurances of its highest consideration".

[258] The relevant part of Suriname's note states: "[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." This note in available on the link in *supra* note 74.

[259] See *supra* note 88.

[260] 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 *supra* note 77. This de-recognition was later revoked. Revocation of revocation: See the statement published at the website of Liberian Foreign Ministry, http://mofa.gov.lr/public2/2press.php?news_id=3108&related=7&pg=sp&sub=44.

[261] See *supra* note 79.
[262] See *supra* note 80.
[263] See *supra* note 81.
[264] See *supra* note 82.
[265] See *supra* note 83.
[266] Media 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 *supra* note 84.
[267] See *supra* note 87.
[268] The relevant part of Ghana's note (referenced OHM/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 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 act and, more fundamentally, in contravention of the UNSC Resolution 1244 (1999). The decision to recognize

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Nauru,[269] Sierra Leone,[270] Burundi,[271] Togo[272]) mentioned on-going negotiations between Belgrade and Pristina under the auspices of the EU as the reason for

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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". This note is available on the link in *supra* note 90.

[269] The relevant part of Nauru's note (referenced 702/2019) 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 had 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 negotiation process and finalize the status of Kosovo as per the UNSC Resolution 1244 (1999)." This note is available on the link in *supra* note 91.

[270] Relevant part of Sierra Leone's note (referenced 3079/39/DG) 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." This note is available on the link in *supra* note 92.

[271] The relevant part of Burundi's note says: "Ayant constaté que la déclaration unilatérale d'indépendance du Kosovo de février 2008 est en contradiction avec l Acte Final d'Helsinki, entre autres en ses principes 3 et 4 et, plus fondamentalement, s'oppose à la Résolution 1244 (1999) du Conseil de Sécurité de l'ONU, adoptée sous le chapitre VII de la Charte de l'ONU;

Relevant qu'aux termes du paragraphe 10 de la Résolution 1244 (1999), le Conseil de Sécurité autorise le Secrétaire Général "...à établir une présence internationale civile au Kosovo afin d'y assurer une administration intérimaire dans le cadre de laquelle la population du Kosovo pourra jouir d'une autonomie substantielle au sein de la République Fédérale Yougoslavie." La République de Serbie étant le successeur juridique de l'ex-République Fédérale de Yougoslavie;

Vu qu'au paragraphe 11, f, de ladite résolution, le Conseil de Sécurité de l'ONU décide que la Force internationale aura entre autres responsabilités "à un stade final (de) superviser le transfert des pouvoirs des institutions provisoires du Kosovo aux institutions qui auront été établies dans le cadre d'un règlement politique." Ayant appris que le dialogue pour un règlement politique se poursuit entre la République de Serbie et les autorités du Kosovo, que les premières ne reconnaissent pas comme Etat indépendant; Le Gouvermement de la République du Burundi,

1. conclut que les institution auxquelles fait référence la résolution 1244 au paragraphe 11 ne sont pas encore mises en place;

2. considère que la déclaration unilatérale d'indépendance du Kosovo de Février 2008 constitue une manoeuvre visant à établir les institution envisagées par la Résolution 1244 (1999), en dehors de tout règlement politique avec la République de Serbie;

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derecognition, 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),[273] so they could invoke them as a relevant change of circumstance, warranting an alteration of policy towards Kosovo.

Some states asserted that their recognition of Kosovo was premature (Ghana, Nauru, Sierra Leone).[274] Five states also referred to the UNSC Resolution 1244 (Ghana, Nauru, Comoros, Burundi and Togo),[275] but it is unclear how this document was relevant for derecognition. Other grounds referring to international law included the principle of sovereignty of Serbia (CAR),[276] UNGA resolution[277] and ICJ AO (Dominica).[278]

Out of 18 de-recognizing states, only Ghana and Nauru[279] seemed to view their previous recognition of Kosovo as contrary to international law, i.e. the UN SC Resolution 1244 (1999).[280] In these two cases, acts of derecognition of Kosovo can be viewed as warranted in order to remedy that situation. While Nauru did not try to explain its previous decision,[281] Ghana claimed its recognition of Kosovo "at the time must have, however, been inspired by the quest for peace and harmony."[282]

On the other hand, Burundi, Comoros and Togo – whose diplomatic notes are textually identical[283] – did not claim they violated international law by affording recognition to Kosovo, but stated that the declaration of independence of Kosovo did, as it aimed at establishing Kosovo's institutions without any political

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3. révoque la reconnaissance du Kosovo." This note in available on the link in *supra* note 76.

[272] The text of Togo's note is identical to Burundi's. Cf. the screenshot of Togo's note (*supra* note 89) and *supra* note 271.

[273] 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 *supra* note 12.

[274] See *supra* notes 268, 269 and 270.

[275] See *supra* notes 268, 269, 271 and 272.

[276] See *supra* note 87.

[277] 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 AO, which vested the authority to the EU for commencing a dialogue between Belgrade and Pristina. See *supra* note 55.

[278] See *supra* note 80.

[279] While claiming that its recognition of Kosovo was premature, Sierra Leone did not maintain that this violated international law. See *supra* note 270.

[280] Ghana also mentioned that recognition "was in contravention of the Helsinki Final Act". See *supra* note 268.

[281] See *supra* note 269.

[282] See *supra* note 268.

[283] Cf. *supra* note 271, 272 and text available on the link in *supra* note 82. Note, however, this can be claimed only for the first page of the note of Comoros (available in Serbian on the link in *supra* note 82), as the other part of the note is not publicly available. Cf. *supra* note 82, 271 and 272.

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settlement with Serbia.[284] They did not, however, explain why this was not a relevant consideration at the time of their recognition of Kosovo (Burundi in 2012, Comoros in 2009 and Togo in 2014).[285]

None of the notes stated that Kosovo was no longer a state nor that the reasons for derecognition was that it was not fulfilling statehood criteria.[286] 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 (Nauru and Sierra Leone in 2008 and Ghana in 2012),[287] would undermine such an 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 derecognitions. An argument about factual changes, specifically about the statehood criteria ceasing to exist, would clearly be contrary to the reality at the time of derecognition.

It is undisputable that de-recognizing states felt the need to offer some explanations for a U-turn in their attitude towards Kosovo's statehood, presumably in order to show that their derecognitions of Kosovo were not pursued arbitrarily. While some of these derecognitions were partially explained by the references to the international law documents and principles (Ghana, Nauru, Burundi, Togo, Comoros, CAR, Dominica), they were ultimately justified by political arguments, specifically the political context of the on-going EU negotiations between Serbia and Kosovo. As mentioned, these negotiations are by far the most invoked justification in the notes on derecognition.

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.[288]

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[284] They claimed that the declaration of independence of Kosovo also violated the Helsinki Final Act. See *supra* notes 271, 272 and 82.
[285] See *supra* note 12.
[286] It should be also noted that the Liberia's and Guinea-Bissau's later withdrawals of their de-recognitions of Kosovo were not pertaining to permissibility of de-recognition nor the statehood criteria. Liberia's was due to the fact that the de-recognition was given by foreign ministers without consultations with their governments or heads of state, while Guinea-Bissau's withdrawal of de-recognition did not have any justification as it was given by implication. See *supra* note 110.
[287] See *supra* note 12.
[288] De-recognizing states also did not issue any statement regarding their de-recognitions within the framework of the financial institutions (IMF and WB) to which they are members alongside with Kosovo. In the case of Sao Tome and Principe, this statement applies only to the membership in the WB, as this state is not a member of the IMF. All derecognizing states, except Nauru (which became a member of the IMF and WB in 2016), were already members of these financial institutions when Kosovo joined. See the list of the members of the IMF at

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Moreover, it seems that they were all, except Ghana and Nauru (which argued their recognitions of Kosovo were contrary to international law),[289] viewing both their recognitions and derecognitions exclusively as political acts, in nature and effect. This also appears to be the position of other states, including Serbia, which claimed that derecognitions were political acts.[290] Obviously, Serbia could not claim that these derecognitions stripped Kosovo of its status as a state, as it argues that Kosovo did not have that status to begin with.[291] As for Kosovo, while it first argued that recognitions were irrevocable under international law, subsequently took the position of not giving any legal relevance to derecognitions.[292]

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 creation of customary international law[293] as it can serve as "practice and/or evidence of acceptance as law"[294]). However, it seems that in the context of state derecognition, the silence of states may be taken to support the argument that revocation of recognition is possible, rather than the other way around. While all states cannot be expected to react to all events at all times, one would at least expect some reaction from three particular categories of states on the matter of derecognitions of Kosovo: (a) those states which were strong proponents of Kosovo's independence; (b) those states that were recently established, or (c) the states which have an acute issue with secession. However, there is no record that any of these states reacted to derecognitions of Kosovo, apart from the statement by the U.S.

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https://www.imf.org/external/np/sec/memdir/memdate.htm and the list of the members of the WB at https://www.worldbank.org/en/about/leadership/members (last visited Jun 14, 2020).

[289] See *supra* 268 and 269.

[290] See *supra* note 22.

[291] See Tatjana Papić, Vladimir Djerić, *On the Margins of Consolidation: The Constitutional Court of Serbia*, 10 HAGUE J. RULE OF L. 59–82, 74–75 (2018).

[292] See *supra* notes 100 and 101.

[293] State silence has played a very important element in legal discussions on the change of rules on 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*, MAX PLANCK INSTITUTE FOR COMPARATIVE PUBLIC LAW & INTERNATIONAL LAW (MPIL) RESEARCH PAPER NO. 2016-20 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2851809 (last visited Jun 8, 2020); Dustin A. Lewis, Naz K. Modirzadeh & Gabriella Blum, *Quantum of Silence: Inaction and Jus ad Bellum*, THE HARVARD LAW SCHOOL PROGRAM ON INTERNATIONAL LAW AND ARMED CONFLICT (HLS PILAC) (2019), https://dash.harvard.edu/handle/1/40931878 (last visited Jun 8, 2020); Elisabeth Schweiger, *Listen Closely: What Silence Can Tell Us About Legal Knowledge Production*, 6 LONDON REV. OF INT'L L. 391 (2018).

[294] This was discussed in detail regarding identification of customary international law within the International Law Commission, see International Law Commission, *Third report on identification of customary international law by Michael Wood, Special Rapporteur* 9–14 (2015).

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ambassador of Kosovo who stated that "independence of Kosovo is irrevocable".[295] This was, however, uttered in the political context of reiterating the U.S. support for Kosovo's independence, and not from the perspective of an international law analysis. Specifically, the US ambassador did not claim that the derecognitions violated international law.

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

4. Arguing revocability of recognition

There are strong reasons for the claim that recognition may be revoked beyond stringent rules for derecognition offered in the doctrine, embodied in the criteria of statehood ceasing to exist.

First, the lack of international law rules prohibiting derecognition seriously undermines the argument on irrevocability of recognition. The lack of such rules suggests that states are free to de-recognize as they were free to recognize in the first place. Namely, if one is to apply the *Lotus* principle[296] – understood as everything that is not prohibited is permitted under international law – states are indeed free both to afford and revoke the recognition of another state. The state practice, including the lack of reactions from other states pertaining to Kosovo's derecognitions, provides an argument that this is indeed so.

Second, stringent rules on derecognition would not be in line with the state practice on recognition itself, which is seen as a discretionary *political* act. Namely, stringent rules on derecognition would imply that recognition has a character of 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

[295] Američka ambasada: Nezavisnost Kosova neopoziva, RADIO FREE EUROPE, November 1, 2017, https://www.slobodnaevropa.org/a/28829610.html (last visited Jun 8, 2020).
[296] This principle has been developed on the basis of the judgement of the Permanent Court of International Justice, SS Lotus Case (France v. Turkey), 1927 PCIJ Reports (1927). For more on the principle see Ole Spiermann, *Lotus and the Double Structure of International Legal Argument*, *in* LAURENCE BOISSON DE CHAZOURNES AND PHILIPPE SANDS (EDS), INTERNATIONAL LAW, THE INTERNATIONAL COURT OF JUSTICE AND NUCLEAR WEAPONS 131 (1999); An Hertogen, *Letting Lotus Bloom*, 26 EUR. J. OF INT'L L. 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 Principle in ICJ Jurisprudence: Was the Ship Ever Afloat?*, 29 MICH. J. INT'L L. 71 (2007).

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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. As an act of recognition does not create a *concrete* legal obligation for a recognizing state,[297] it cannot be a unilateral *legal* act.[298] 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 to create 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.[299] 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 ties the hands of negotiators.[300] Thus, from the policy perspective, a rule on irrevocability of recognition would have had undesirable consequences.

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[297] The issue 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 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 (which discusses general international law issues) on the approach in the matter. See International Law Commission, *supra* note 124 at 55. paras. 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 is too early for a topic of unilateral acts to be a part of such a study. In order to overcome the split, the ILC decided to refrain from the codification and progressive development, but developed a set of guidelines on unilateral acts which produce legal obligations, which the states can consult in future, so the practice on the matter can be consolidated. International Law Commission, *Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto* (2006), text adopted by the 58th session of the ILC in 2006, and submitted to the General Assembly (UN Doc. A/61/10). The report, which also contains commentaries on the draft articles, appears in Yearbook of the International Law Commission, 2006, vol. II, Part Two. For an overview of different views expressed within the ILC, see International Law Commission, *Ninth report on unilateral acts of States, by Mr. Víctor Rodríguez Cedeño, Special Rapporteur* 151–152, paras. 2-7 (2006).

[298] PRZEMYSŁAW SAGANEK, *supra* note 161 at 503.

[299] Jure Vidmar, *supra* note 117 at 370.

[300] The same was argued by Ratner regarding the application of the *uti possidetis* rule beyond the decolonization context. See Steven R. Ratner, *supra* note 143 at 618.

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In contrast to that, viewing state recognition as revocable – based on the absence of any legal rule to the contrary[301] – 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.[302] 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, in a situation when a claim for statehood is contested,[303] 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 law and legal means, except in situations of an emergent statehood that threatens the very foundations of the rule-based international order, such as secession procured through the use of force by an outside power or in 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.

4.1. Examining consequences of derecognition

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

(1) If the lack of recognition cannot diminish a state's existence, nor can an act of derecognition. 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 derecognition. The practice of Kosovo's derecognitions supports this point.

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[301] For a discussion of the possibility of going beyond binary understanding of permissive and prohibitive rules of international law, in the context of the analysis of the legality of the declaration of independence of Kosovo, see Declaration of Judge Simma, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 210 ICJ Reports 478, 480–481, paras. 8 and 9 (2010). See also Anne Peters, *Does Kosovo Lie in the Lotus-Land of Freedom, 24 LJIL 95 (2011).*, 24 LEIDEN JOURNAL OF INTERNATIONAL LAW 95–108 (2011).

[302] Frédéric Mégret, *International Law as Law*, *in* JAMES CRAWFORD, MARTTI KOSKENNIEMI (EDS.), THE CAMBRIDGE COMPANION TO INTERNATIONAL LAW 65–92, 67 (2012).

[303] See more in William Thomas Worster, *supra* note 69.

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(2) An act of derecognition does not seem to affect the existence of 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 derecognition. Reactions to derecognitions of Kosovo are in line with this claim. So, a state's discretion to recognize, non-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 a discontinuation of diplomatic relations should be differentiated from derecognition,[304] even though both occurrences result in the same consequences – no diplomatic relations – between states. Presumably, the act of derecognition will affect bilateral diplomatic relations between a de-recognizing state and a de-recognized state. However, this will not amount to violation of any right of the de-recognized state on international level, as there is no international right to diplomatic relations. Diplomatic relations between states are voluntary and based on mutual consent.[305] 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 mandate. Namely, a receiving state agrees on a specific head for the diplomatic mission (by the virtue of affording him/her with an *agrément*),[306] and is allowed to proclaim any member of the diplomatic mission from the sending state as *persona non grata*, without specific explanation.[307] The rupture of diplomatic relations is not uncommon in state relations, while it usually happens outside of the derecognition 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.

(3) On the other hand, a state's decision to de-recognize another may affect the enjoyment of rights of the de-recognized state on a domestic plane. 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.[308] 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

[304] CHEN, TI-CHIANG, *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 do not cast doubt on the existence of that state nor influences its status as a state, as previously stated, see *supra* note 2. However, the examples given in the literature often mistake the revocation of recognition of government for the revocation of recognition of *state*. See for e.g. HERSCH LAUTERPACHT, *supra* note 6 at 350–352 and all notes.
[305] VIENNA CONVENTION ON DIPLOMATIC RELATIONS, 500 UNTS 95, (1961), Art. 2.
[306] *Id.*, Art. 4.
[307] *Id.*, Art. 9.
[308] RESTATEMENT, THIRD, FOREIGN RELATIONS LAW OF THE UNITED STATES (REVISED), *supra* note 173 at 79, paras. 202, comment c.

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rights. On the other hand, in other jurisdictions, the existence of some rights was not made independent of recognition, but rather assessed on the basis of the Montevideo criteria. So, unlike with rights on the international plane, that states view to exist regardless of recognition, rights from the domestic realm can depend on it.

Since there is no practice in this respect regarding to Kosovo, the case of Taiwan, despite being different than Kosovo, can be used as a parallel to demonstrate uncertainties facing a non-recognized entity in the domestic realm of other states. Namely, litigations in different jurisdictions show the different approaches courts took for Taiwan's rights, mandated by the domestic legislation or other rules demanding deference to the position on recognition taken by their executive.[309]

The US regulated the status of Taiwan in its legal order using a separate legislation, the Taiwan Relations Act (TRA),[310] which was adopted after the US de-recognized Taiwan in 1979 and formally recognized the People's Republic of China.[311] This Act gave legal status to Taiwan, under the U.S. law, and provided basis for US-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 US legal system.[312] The TRA remains the only domestic act that substantially regulates the rights of non-recognized entities in the domestic realm, not just in the US, but worldwide.[313] It was aimed at minimizing the effects of the derecognition on Taiwan, by enabling the laws of the United States to continue applying as before. [314] Without the TRA, it would be questionable to what extent Taiwan could enjoy previously existed rights in the US legal order.

In other jurisdictions, like the UK and Canada, which did not adopt legislation resembling TRA,[315] courts were also inclined to afford state immunity from lawsuit to Taiwan, either on the basis of the common law (UK) or separate analysis that deem it as state on the basis of the Montevideo criteria (Canada), to

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[309] JAMES CRAWFORD, *supra* note 117 at 205.
[310] 22 U.S.C. § 3301 et. seq. (1988).
[311] Joint Communique on the Establishment of Diplomatic Relations Between the United States of America and the People's Republic of China, in Dep't of St., 1978 Dig. of U.S. Prac. in Int'l L. 71.
[312] 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, 774–775 (2007).
[313] *Id.* at 775.
[314] JAMES CRAWFORD, *supra* note 117 at 202.
[315] The UK has adopted the Foreign Corporations Act 1991 (UK), but it only deals with the status of Taiwanese corporations, which are recognized under UK 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. There is also similar legislation in Australia, see *Id.* at 203, note 32.

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achieve the same result the TRA achieves before the US courts.[316] On the other hand, there are courts (Singapore), which denied the right of state immunity in the domestic legal order to Taiwan, due to it not being recognized as a state.

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.[317] This even stands for an entity such as Taiwan, which has strong economic stature and trade ties, which Kosovo lacks.

4.2. Possibilities of legal protection in the case of derecognition

In the case where rights of a de-recognized state in the domestic realm of a de-recognizing state are denied upon derecognition, 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 derecognition on enjoyment of these rights will depend on whether the prerogatives obtained after the recognition were put in use prior to derecognition. If they were, this would be in a good faith reliance to 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 US, as substantial relations existed before derecognition.

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 for 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 of its property and no protection before courts of the recognizing state, that suddenly revoked its recognition? For sure, the answer should be – no. There was a good faith reliance of the new state on the act of recognition given and it should not suffer the consequences of derecognition 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 derecognition, but only that it can have some legal protection in respect to the rights it has already exercised. The answer

[316] Pasha L. Hsieh, *supra* note 312 at 782–788.
[317] Andrew Grossman, *supra* note 178.

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about the scope and substance of such protection cannot be universal, but will depend on the mechanisms provided in each domestic legal system.

In the case that a de-recognized state did not use its rights in the domestic realm of the recognizing state prior to derecognition, then there would no detrimental reliance, and thus, no legal claim. Kosovo seems to be in such 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 put into operation. Namely, after their recognitions have been announced and posted on the website of the Kosovo's Foreign Ministry, nothing further happened to establish cooperation between Kosovo and these states: no diplomatic missions were opened,[318] no bilateral treaties were concluded,[319] and, apparently, no legal rights were exercised in the domestic legal order of Kosovo. In addition, the lack of substantial economic and trade relations with states that de-recognized Kosovo reduces the possibility of future litigations in which these issues can be addressed.

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

In any case, more engagement prior to derecognition, provides more potential for shielding the de-recognized state against adverse consequences. Namely, by substantial engagement, especially by 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. The 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 regards to derecognition 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 derecognition happening at all. It is certainly harder to justify a recognizing state, due to a simple foreign policy shift, deciding to

[318] See the list of Kosovo's diplomatic missions at http://www.mfa-ks.net/en/misionet/493/ambasadat-e-republiks-s-kosovs/493 (last visited Jun 12, 2020). After the de-recognition by Guinea-Bissau in 2017, Kosovo's Ambassador to Senegal was also accredited to Guinea-Bissau. See *supra* note 86. Kosovo's Foreign Minister, Mr. Pacolli, also announced it will open the embassy in Ghana, after this state revoked its recognition of Kosovo. See https://twitter.com/pacollibehgjet/status/1097896726998990848/ (last visited Jun 12, 2020).

[319] 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.

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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 in future international efforts of the recognized state, that could even amount to a significant political setback. That is exactly what happened to Kosovo when it tried to join UNESCO in 2015. Ten states which have previously recognized Kosovo without any substantial engagement to follow recognition,[320] decided to abstain from voting.[321] This has effectively prevented Kosovo to join UNESCO, as it was three votes short of becoming a member of this organization.[322]

5. Conclusion

There is no denying the novelty, nor the importance, of the derecognitions 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 derecognitions of Kosovo put this claim into question, and warrant its re-examination.

The absence of any rule clearly prohibiting derecognitions corroborates the position that they are permissible, regardless of whether the entity in question satisfies the statehood criteria. Moreover, the argument in support of revocability of recognitions can be found in the theoretical insights about the declaratory and

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[320] Except for Japan, where Kosovo opened its embassy in 2010. See http://www.ambasada-ks.net/jp/?page=2,50 (last visited Jun 14, 2020).

[321] These ten states include Antigua and Barbuda, Burundi, Comoros, Egypt, Guinea-Bissau, Japan, Peru, Poland, CAR and Republic of Korea. Kosovo Falls Three Votes Short in UNESCO Bid, UN TRIBUNE, November 9, 2015, http://untribune.com/kosovo-falls-three-votes-short-in-unesco-bid/ (last visited Jun 14, 2020). Demonstration of the uncertainty of Kosovo's position are also in the following accounts. Suriname which voted against Kosovo's UNESCO bid, went to recognized 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.

[322] For the success in its UNESCO bid, not being a member of the UN, Kosovo needed – after securing recommendation of the UNESCO's Executive Board – a two third majority from the members present and voting. See Article II.2 of the UNESCO Constitution and Rule 85 of the Rules of Procedure of the General Conference in UNESCO, Basic Texts, 2012 edition, available at https://unesdoc.unesco.org/ark:/48223/pf0000216192 (last visited Jun 15, 2020). Concretely, Kosovo's bid needed 95 votes in favor, but received only 92, 50 against and 29 abstentions. See Kosovo fails in UNESCO membership bid, THE GUARDIAN, November 9, 2015, https://www.theguardian.com/world/2015/nov/09/kosovo-fails-in-unesco-membership-bid (last visited Jun 14, 2020).

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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 entirely left to states' discretion. States should, likewise, be free to revoke recognition, as they were 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 same 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, derecognition does not affect the existence of a state, nor its enjoyment of rights on the international plane which stem from statehood. The practice of Kosovo's derecognition corroborates this point. However, derecognition 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 derecognition 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 legal entitlement domestically. In the opposite case, if a de-recognized state did not use its rights in the domestic realm of the recognizing state, prior to derecognition, 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 derecognition declarations.

Finally, viewing state recognition as revocable recognizes the limits of international law in managing controversial social realities, such as contested statehood.[323] 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 jeopardizes the very foundation of the rule-based international order, 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. Derecognitions are also part of this political process, as are (or were) recognitions.

That said, the derecognition of states cannot turn the clock back and unmake a state, when nothing has factually changed. However, it can help in gaining or

[323] See more in William Thomas Worster, *supra* note 69.

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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.

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