

Engaging with Contested States: How Much Interaction Constitutes Recognition?

Written by James Ker-Lindsay

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JAMES KER-LINDSAY, SEP 10 2013

The subject of state recognition is becoming increasingly important in International Relations. Long ignored by IR scholars, the issue has gained greater prominence following Kosovo's unilateral declaration of independence in February 2008, and Russia's decision, later that same year, to recognise South Ossetia and Abkhazia. What was once seen as a rather dry and theoretical subject, mainly of interest to scholarly international lawyers, has now become an issue of real practical significance on the world stage.

One question relating to recognition that has become especially important in the field, particularly for policy makers, is the degree to which third party states, in other words not the state from which the territory has seceded, can interact at a bilateral level (multilateral interaction is a rather different matter) with secessionist entities – variously called de facto states, unrecognised states, partially recognised states, and my personally preferred term, contested states – without actually recognising them, or giving the impression to the rest of the world that they have recognised them. This subject is important for three main reasons.

In the first instance, it is often valuable for states to be able to interact with contested states for peacemaking processes. They need to be able to talk to their leaders, but in doing so not be perceived to have endorsed the act of secession. Fortunately, in real terms, this form of engagement actually presents few problems. There seems to be general acceptance that engagement with a contested state for these purposes is not equated with recognition; although, as has been seen, the locations of such meetings, such as government offices, and titles used in such meetings can be problematic. Secondly, there are frequently occasions where the wider international community, or certain parts of it, may want to avoid isolating a contested state and thus prevent it from becoming even more reliant on its patron or, alternatively, reward it for some reason; for example, for taking a constructive position on talks. This is far trickier territory. While not wishing to force a contested state into the arms of another country, there is always the danger that in becoming more self-sufficient they will have less incentive to negotiate reunification with the parent state, as the country from which a seceding entity breaks away is most usually called. Thirdly, there are times where a state may wish to interact with a contested state, but may be prevented from formally interacting with it for either external reasons – such as a wish not to alienate a certain international ally or partner by formally recognising the contested state – or for internal domestic reasons.

Forms and Practices of Recognition

So, what exactly is the problem that states face when trying to interact with contested states? In essence, there is a fundamental question mark as to what exactly constitutes recognition. Put another way, at what point does a state cross the line from not recognising a territory to doing so? This is not perhaps as easy a question to answer as one might imagine. For a start, recognition comes in various guises. The most straightforward form, which presents few real problems, is explicit bilateral recognition. This occurs when a state openly announces that it has recognised another state. Although this can be done in a variety of ways, from issuing a press release through to sending a letter to a senior official of the state being recognised announcing the decision, the end result is a clear statement of recognition.

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The difficulty arises inasmuch as bilateral recognition can also be implicit. Rather than issue a formal statement of recognition, the international community is left to draw its own conclusions as to whether a particular state has recognised a contested state through its actions towards the contested state. However, this is further complicated by the fact that certain acts may or may not imply recognition of statehood, depending on the circumstances. For example, accepting certain official documents, or signing agreements with a contested state, may be indicative of recognition. However, equally, such actions may not necessarily constitute recognition.

While very few states adopt implied recognition as a default policy (New Zealand is one of the few that appears to have done so), its mere existence means that it can be used as an option by any country that wants to recognise a contested state without having to announce that they have done so. As a result, we are left in a situation in which steps that are not meant to be indicative of recognition can be readily misconstrued as such, if not wilfully presented as constituting recognition by the contested state or other outside parties. In particularly contentious cases, this can lead to a very high degree of scrutiny of every action a state takes towards a contested state (and it was perhaps for this very reason that New Zealand did formally recognise Kosovo). Fortunately, this potentially confusing situation is mitigated by the fact that intent is crucial. Simply put, while a state does not have to say that it has recognised a contested state in order to do so, it is equally the case that as long as it publicly states that it has not recognised the contested state then recognition has not occurred.

Degrees of Engagement Without Recognition

So, how does all this operate in real terms? In some cases, the degree of general international interaction with a contested state is not open to misinterpretation. For example, there is relatively little engagement between the US and EU members states and Abkhazia and South Ossetia. More to the point, their strong stances against their attempts at secession leaves little room for doubt that any interaction is not in fact indicative of recognition. Rather, any efforts to engage with the two areas would be designed to try to foster a process of dialogue between the two territories and Georgia, the parent state, and to try to limit their reliance on Russia.

In other cases, the level of interaction may be higher, but there is still little doubt about the policy of states towards the contested state. For instance, there has quite clearly been a growing level of international interaction with the Turkish Republic of Northern Cyprus (TRNC), especially since the Turkish Cypriots voted in favour of reunification in 2004. While this is partly driven by the wish to foster further talks between the Greek and Turkish communities, it is also driven by the sense that the Turkish Cypriots deserve to have their isolation lifted somewhat. However, the existence of UN Security Council Resolution 541 calling on states not to recognise the TRNC has thus far prohibited any state, apart from Turkey, from doing so. Nevertheless, there is a growing degree of international interaction with Northern Cyprus. For example, the Organisation of Islamic Cooperation (OIC), which has accepted the 'Turkish Cypriot State' as an observer, has openly called on Muslim states to increase their level of 'solidarity' with the Turkish Cypriots, 'by closely associating with them, increasing and expanding their relations in all fields and exchanging high-level visits with the Turkish Cypriot State with a view to helping them materially and politically to overcome the inhuman isolation which has been imposed upon them.' But even in this case, there is no sense that these steps amount to recognition; although admittedly they do amount to a growing legitimisation of the TRNC that may eventually lead to recognition by some states.

At the other end of the spectrum, Kosovo has provided some very interesting insights into the furthest extent to which states can engage with a contested state without recognising it. Since it declared independence, Kosovo has been recognised by over 100 members of the UN (the exact number is, in itself, contested). However, many other states that do not feel ready to recognise Kosovo yet, have engaged with it in ways that one might ordinarily think constitute recognition. For instance, there are many countries that do not recognise Kosovo, and yet accept a Kosovo passport for purposes of travel. In these cases, the argument is made that it is a humanitarian decision designed to allow Kosovo citizens entry when no alternative form of documentation exists.

In other cases, there has been extensive engagement at an official level. Perhaps the most remarkable example of this has been between Kosovo and Greece. Despite being one of the five EU members that has not recognised Kosovo (along with Cyprus, Romania, Slovakia and Spain), Athens and Pristina maintain exceptionally cordial

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relations. This was highlighted when, in April this year, Enver Hoxhaj, the foreign minister of Kosovo was welcomed to the Greek Foreign Ministry and even referred to as Foreign Minister in an official press release covering their statements to the media after their meeting. This was especially significant insofar as the post of foreign minister is usually considered to be the one post that is indicative of sovereign statehood (there are, after all, prime ministers and even presidents of sub-state territorial units). And yet despite having used this title, the Greek government was careful to reiterate that it maintained its position regarding the recognition of Kosovo. As a result, despite the fact that this could clearly have been taken as indicating implied recognition, there is no confusion over the Greek position.

A Matter of Intention and Politics

The issue of engagement without recognition is an increasingly important area in international politics. However, despite the concerns that exist within states about the degree of bilateral engagement they can pursue with a contested state, there is in fact a high degree of latitude in terms of the scope of direct interaction, even to the point of recognising passports and holding meetings with senior officials on a range of issues. Ultimately, recognition is about intent. It is also shaped by the degree to which a state in question wants to interact with a contested state. If there is little desire to interact with the contested state, then the 'danger' of indicating recognition becomes a convenient reason (or perhaps excuse) to limit engagement. On the other hand, where there is a keen desire to build ties with the contested state, but full recognition is not politically possible, the reality is that a very high degree of contact, even to the point of what would usually be understood as recognition, can occur.

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