

NEW ZEALAND'S POLICY OF IMPLIED RECOGNITION OF STATES: ONE STEP AHEAD OR FALLING BEHIND?

STEFAN TALMON*

I. INTRODUCTION

With the unilateral declaration of independence of Kosovo and the secession of Abkhazia and South Ossetia the topic of recognition of States has again gained prominence in international law. One of the first actions of any newly declared State is to call on other States to recognise its sovereignty and independence. For example, only hours after the declaration of independence on 17 February 2008 the President and Prime Minister of Kosovo sent out 192 letters “formally inviting the Government of [...] to recognize the Republic of Kosovo as an independent state”.¹ At the same time, the Government of Serbia issued a plea to the international community not to recognise Kosovo.² Ever since, the “battle for the recognition of Kosovo” has been raging. Within days, the supporters of Kosovo’s independence formally declared their recognition of the new State. On 18 February 2008, United States President Bush wrote in a letter to Kosovo President Sejdiu: “On behalf of the American people, I hereby recognize Kosovo as an independent and sovereign state.”³ The letter was published not only on the White House website but also by numerous newspapers and news agencies. On the same day, British Prime Minister Brown wrote to President Sejdiu: “I am writing to record that the British Government formally recognises Kosovo as an independent sovereign state.”⁴ The British recognition of Kosovo was announced on the websites of Number 10 Downing Street and the Foreign and Commonwealth Office, and a statement to that effect was made in Parliament.

While in the 1980s, several States announced that they would no longer make formal statements with regard to the recognition of governments,⁵ the same States made clear that they would continue to formally recognise

* Professor of Public International Law, University of Oxford, and Fellow of St Anne’s College, Oxford.

1 A copy of Kosovo’s letter is on file with the author.

2 Republic of Serbia “Jeremic warns of consequences of independence” (press release, 17 February 2008).

3 Letter from President George W Bush to Fatmir Sejdiu, President of Kosovo, regarding recognition of the Republic of Kosovo (18 February 2008). A copy of the letter is on file with the author.

4 A copy of the letter, dated 18 February 2008, is on file with the author.

5 See Stefan Talmon “Recognition of Governments: An Analysis of the New British Policy and Practice” (1992) 63 BYBIL 231 at 247-248. See also Scott Davidson “Beyond Recognition” (1981) 32 NILQ 22; Clive R Symmons “United Kingdom Abolition of the Doctrine of Recognition: A Rose by Another Name” (1981) PL 249; Colin Warbrick “The New British Policy on Recognition of Governments” (1981) 30 ICLQ 568.

new States. In fact, the overwhelming majority of States seem to follow the practice of formally recognising States. It thus comes as a surprise to read, in the context of Kosovo, that “New Zealand’s normal practice is not to make a formal statement of recognition or non-recognition.”⁶ This was reiterated in December 2009 by a spokeswoman for the New Zealand Ministry of Foreign Affairs (MFAT), who, when asked about the recognition of Abkhazia and South Ossetia by Nauru, replied: “It is not New Zealand’s practice to make explicit statements concerning the recognition or non-recognition of states.”⁷ It was said that this was “a long standing practice” of New Zealand.⁸

The paper examines how the policy of not making formal recognition statements has worked in practice and tries to establish when it was first adopted. It asks whether New Zealand has abolished the recognition of States altogether or whether it has simply moved from express to implied recognition. The paper considers the consequences of the new policy for the judiciary and, finally, assesses its legal and political implications.

II. THE PRACTICE OF NOT MAKING FORMAL STATEMENTS ON THE RECOGNITION OF STATES

It is not exactly clear when the new practice of not making formal statements concerning the recognition or non-recognition of new States was first adopted. No formal statement announcing the new practice was made by the New Zealand Government. According to the New Zealand Ministry of Foreign Affairs and Trade the practice “developed since the 1970s” and has only been “departed from in exceptional and limited circumstances.”⁹ It seems surprising that the practice has gone unnoticed for almost forty years. When in March 1988 Foreign Minister Marshall set out New Zealand’s recognition policy with regard to new governments in a letter to the High Court in Wellington, he stated that the policy of not making formal statements in respect of new governments “is consistent with the policies and practices of most Western democratic countries as is described more fully in statements of United Kingdom policy on recognition made in the House of Lords.”¹⁰ However, most Western democratic countries continued, and

6 New Zealand Ministry of Foreign Affairs and Trade *Post-Election Brief* (November 2008) at 22 (emphasis added); available at <<http://www.mfat.govt.nz/downloads/media-and-publications/peb-nov2008.pdf>>.

7 “Nauru agrees to recognise rogue republics for \$70m” *The New Zealand Herald* (19 December 2009); available at <http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=10616494>.

8 Email from Europe Division, New Zealand Ministry of Foreign Affairs and Trade, to the author regarding New Zealand’s recognition policy (13 October 2010).

9 Email from Europe Division, New Zealand Ministry of Foreign Affairs and Trade, to the author regarding New Zealand’s recognition policy (22 October 2010).

10 See the letter of the New Zealand Minister of Foreign Affairs, Mr CR Marshall, dated 28 March 1988, in the case *Attorney-General for Fiji v Robt Jones House Ltd* [1989] 2 NZLR 69 at 72.

continue today, to accord formal recognition to new States. In one of the statements to the House of Lords, which was annexed to Foreign Minister Marshall's letter the British government declared: "we have decided that we shall no longer accord recognition to Governments. The British Government recognise States in accordance with common international doctrine."¹¹ The distinction between States and governments was picked up by Jeffries J in his judgment in *Attorney General for Fiji v Robt Jones House Ltd* (1988) when he stated that "it is worth emphasising the new policy does not alter the practice of recognition of statehood."¹²

In the early 1990s, New Zealand's recognition practice with regard to States still seemed to be rather unsettled. The New Zealand Government did not perform any formal acts of recognition with regard to Namibia, the Czech Republic and Slovakia or Eritrea.¹³ It also did not issue any formal recognition statements in relation to most States resulting from the break-up of the former USSR. However, the same was not true with regard to the three Baltic States Latvia, Lithuania and Estonia which New Zealand formally recognized on 28 August 1991.¹⁴ It also formally recognised three out of five successor States of the Socialist Federal Republic of Yugoslavia (SFRY): Croatia and Slovenia on 16 January 1992,¹⁵ and Bosnia and Herzegovina on 8 April 1992.¹⁶ But no formal recognition statements were made with regard to the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Republic of Macedonia.¹⁷ The latter declared independence from the Socialist Federal Republic of Yugoslavia on 8 September 1991 and called upon all States to recognise it. Due to objections by Greece to the country's constitutional name and

11 Ibid, at 73.

12 Ibid, at 74 per Jeffries J.

13 There seems to have been no public reaction on part of the New Zealand Government on the occasion of independence of Eritrea on 24 May 1993. New Zealand was one of the countries sponsoring the draft resolution providing for Eritrea's admission to the United Nations on 28 May 1993; see UN Docs A/47/L.61/Add.1 (28 May 1993) and A/47/PV.104 (28 May 1993) at 2.

14 New Zealand Prime Minister Jim Bolger declared on 28 August 1991: "They are in control of their own borders, in control of their own destiny and it's appropriate that they should be recognised by New Zealand as such." New Zealand had been one of the few Western countries to formally recognise the Soviet annexation of the Baltic States. See "New Zealand recognises Baltic States' independence" *Agence France Presse* (28 August 1991).

15 "New Zealand Recognizes Croatia, Slovenia" *Japan Economic Newswire* (16 January 1992). See also New Zealand Ministry of Foreign Affairs and Trade, Country Information Paper – Slovenia: "We were among the first countries to recognise Slovenia, after the EU, on 16 January 1992"; available at <<http://www.mfat.govt.nz/Countries/Europe/Slovenia.php>>. The date of recognition of the two countries was not identical with the establishment of diplomatic relations. New Zealand established diplomatic relations with Croatia on 25 February 1992 and with Slovenia on 20 March 1992.

16 "New Zealand recognises Bosnia-Herzegovina" *Agence France Presse* (8 April 1992).

17 On 8 May 1992, New Zealand Foreign Minister Don McKinnon was quoted as saying that New Zealand will take a wait-and-see attitude in whether to recognise the Federal Republic of Yugoslavia; see "NZ Foreign Minister Meets Slovenia Foreign Minister" *Xinhua General News Service* (8 May 1992).

its State symbols (which Greece regarded as implying claims to its own northern province of Aegean Macedonia), very few States initially extended recognition. The situation only changed on 8 April 1993 when the country was admitted to the United Nations under the compromise name of the Former Yugoslav Republic of Macedonia (FYRoM).¹⁸ New Zealand was one of the 34 original countries sponsoring the draft resolutions providing for the Former Yugoslav Republic of Macedonia's admission to the United Nations.¹⁹ Macedonia lists New Zealand as the fifth country having on 8 April 1993 established full diplomatic relations with it.²⁰ In response to a question as to when diplomatic relations between New Zealand and the Former Yugoslav Republic of Macedonia were established, the New Zealand Ministry of Foreign Affairs and Trade replied:²¹

New Zealand considers diplomatic relations (as opposed to "diplomatic representation") with other States to be established by any contacts at Ministerial or senior officials' level between two governments (for example through multilateral engagement in the UN). New Zealand, unlike some other countries, has not seen the conclusion of written Communiqués or similar formal documents as a necessary requirement in establishing diplomatic relations with other States. As such there is no formal date denoting New Zealand's establishment of diplomatic relations with FYRoM. New Zealand has *recognised* the country under its UN nomenclature since its accession to the UN in the 1990s.

Although diplomatic relations thus have existed for some 17 years, it was only in June 2010 that New Zealand conferred agrément for the Ambassador-Designate of the Former Yugoslav Republic of Macedonia to New Zealand (resident in Canberra). The Ambassador, HE Pero Stojanovski, presented his credentials to the Governor-General in Wellington on 5 August 2010. New Zealand has no plans at the present time to reciprocate with the accreditation of a New Zealand Ambassador to Skopje.²²

When the Republic of Palau became independent on 1 October 1994, again, no formal recognition statement was made. Associate Minister for Foreign Affairs Sir Robin Gray, who took part in the independence celebrations, simply stated that New Zealand was delighted to welcome Palau to the South Pacific Community of independent States and that it was ready

18 See *Admission of the Former Yugoslav Republic of Macedonia to Membership of the United Nations* GA Res 47/225, A/RES/47/225 (8 April 1993). The resolution was adopted by acclamation. The new Member State was welcomed by the representative of Iceland on behalf of all members of the Western European and Others Group of which New Zealand is a member; see UN Doc A/47/PV.98 (8 April 1994) at 6 and 13-14.

19 UN Doc A/47/L.54 (7 April 1993).

20 Republic of Macedonia Ministry of Foreign Affairs, Bilateral Relations, Established Full Diplomatic Relations of the Republic of Macedonia at <<http://www.mfa.gov.mk/default1.aspx?ItemID=310>>.

21 Email from Europe Division, New Zealand Ministry of Foreign Affairs and Trade, to the author regarding New Zealand's recognition policy (13 October 2010).

22 Ibid.

to forge diplomatic ties with the new country.²³ In December 1994, New Zealand co-sponsored the draft resolution on the admission of Palau to the United Nations.²⁴

Similarly, no formal statement was made when Timor-Leste became a sovereign and independent State on 20 May 2002. Prime Minister Helen Clark and Foreign Minister Phil Goff attended the independence celebrations, and the New Zealand Representative Office in Dili, which had been established in November 2000 to liaise with United Nations Transitional Administration in East Timor and the East Timorese members of the transitional National Consultative Council, was transformed into a Consulate-General.²⁵ On 31 May 2002, Foreign Minister Goff said that New Zealand had formalised its diplomatic relations with East Timor through the establishment of a Consulate-General and that it looked forward “to developing normal, friendly relations with East Timor”.²⁶ On 25 September 2002, New Zealand, together with 134 other States sponsored a draft resolution providing for the admission of Timor-Leste to the United Nations.²⁷ It was only in March 2004 that diplomatic relations between the two countries were upgraded to ambassadorial level.²⁸

After the national referendum on 21 May 2006 based on the Constitutional Charter of the State Union of Serbia and Montenegro, the Parliament of Montenegro on 3 June 2006 declared the independence of the country from the union with Serbia. At the same time, Montenegro requested international recognition. On 28 June 2006, Montenegro was admitted to membership of the United Nations.²⁹ Some three weeks later, on 17 July 2006, Foreign Minister Winston Peters sent a letter to his Montenegrin counterpart, Miodrag Vlahovic, stating:³⁰

- 23 “New Zealand considers diplomatic ties with Palau” *Xinhua News Agency* (1 October 1994).
- 24 *Admission of the Republic of Palau to Membership of the United Nations* GA Draft Res A/49/L.58 (12 December 1994). Australia, speaking on behalf of the nine member States of the South Pacific Forum which are also United Nations members, including New Zealand, most warmly welcomed Palau as a member of the United Nations: see UN Doc A/49/PV.89 (15 December 1994) at 4-5.
- 25 Stephen Hoadley “Diplomacy, Peacekeeping, and Nation-Building: New Zealand and East Timor” in Anthony L Smith (ed) *Southeast Asia and New Zealand: A History of Regional and Bilateral Relations* (Institute of Southeast Asian Studies, Singapore, 2005) 124 at 137.
- 26 Phil Goff “NZ establishes Consulate-General in East Timor” (press release, 31 May 2002).
- 27 GA Draft Res A/57/L.3 (25 September 2002). The resolution was adopted by consensus: see UN Doc A/57/PV.20 (27 September 2002) at 2.
- 28 On 29 March 2004, Timor-Leste accredited its first Ambassador to New Zealand. See Ministry of Foreign Affairs and Cooperation of Timor-Leste “The First Ambassador of Timor-Leste to New Zealand” (press release, 29 March 2004). The first New Zealand Ambassador to Timor-Leste presented her credentials only in December 2005.
- 29 See UN Doc A/60/PV.91 (28 June 2006), at 6. Unlike 72 other countries from all parts of the world, New Zealand had not co-sponsored the draft resolution providing for Montenegro's admission to the United Nations: *Admission of the Republic of Montenegro to Membership in the United Nations* GA Draft Res A/60/L.58/Add.1 (28 June 2006).
- 30 A copy of the letter is on file with the author.

The New Zealand Government congratulates the Republic of Montenegro on its entry into the United Nations, following the successful referendum on independence held by your country on 21 May.

This referendum was legitimate, free and fair, and allowed the Montenegrin people to express their will of independence. New Zealand welcomes the Republic of Montenegro's commitment to observing the principles of international law, advocacy of peace, and respect for universal human rights, and was pleased to see your country join the United Nations General Assembly as its 192nd member on 28 June.

We look forward to constructive future dialogue with your country on international issues of mutual interest.

The New Zealand Government did not issue any statement on Montenegro and the relationship between the two countries did not feature at all in the New Zealand press. In October 2010, New Zealand still had not established formal diplomatic relations with Montenegro by accrediting a diplomatic representative to the country.³¹

When Kosovo on 17 February 2008 unilaterally declared its independence from Serbia, New Zealand stated publicly for the first time that its "normal practice is not to make a formal statement of recognition or non-recognition."³² Stressing that the declaration of independence was a divisive issue internationally and that it was not clear to her that all European States would want to recognise it, Prime Minister Helen Clark told reporters on 18 February 2008:³³

It's never been the New Zealand Government's position to recognise in such circumstances. We will neither recognise nor not recognise. Over time the way in which we deal with those who govern in the territory will I suppose imply whether there is recognition but we are not intending to make a formal statement.

This was echoed on the same day by Foreign Minister Winston Peters who said during a press conference with his South African counterpart in Pretoria:³⁴

We do not make statements of recognition of countries or new nations as a result of domestic declarations. Our regard for them can be inferred by the way our connections or relations with them develop over the years but we do not jump in on day one and make that decision on day one even though this was perhaps a likely probability given the trend of developments over the last few years.

Almost a year after the Republic of Kosovo had issued its first passports, the New Zealand Department of Labour announced on 5 June 2009 that the "Kosovo passport meets the definition of a passport as specified under Section

31 See Montenegro Ministry of Foreign Affairs, Dates of Recognition and Establishment of Diplomatic Relations at <<http://www.mip.gov.me/en/index.php/Bilateral/dates-of-recognition-and-establishment-of-diplomatic-relations.html>>.

32 See New Zealand Ministry of Foreign Affairs and Trade, above n 6.

33 "Kosovo: PM explains why no formal statement from NZ" *The New Zealand Herald* (18 February 2008); available at <http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10493183>.

34 "South Africa; Country; New Zealand Discuss Kosovo Independence" *Africa News* (18 February 2008); "Analyst questions SAfrica's indecision over Kosovo's secession" *BBC Monitoring Africa – Political* (23 February 2008).

2 of the Immigration Act.” All Kosovo passports issued by the Republic of Kosovo, both standard and diplomatic, were considered acceptable travel documents and thus valid for travel to New Zealand if the holder met immigration policy.³⁵ Five months later the New Zealand Ministry of Foreign Affairs and Trade sent the following Note Verbale to the Ministry of Foreign Affairs of the Republic of Kosovo:³⁶

PRD/KOS1/2
NOTE No: 2009/180

The Ministry of Foreign Affairs and Trade presents its compliments to the Ministry of Foreign Affairs of the Republic of Kosovo and has the honour to refer to Note 170/09 seeking the agrément of the Government of New Zealand to the appointment of Dr Muhamet Hamiti as Ambassador Extraordinary and Plenipotentiary of Kosovo to New Zealand, resident in London.

The Ministry is pleased to advise that the New Zealand Government agrees to this appointment. The Ministry should be grateful if the Ministry would convey to the Minister of Foreign Affairs, H.E. Mr Skender Hyuseni, that agrément has been granted. The Ministry of Foreign Affairs and Trade takes this opportunity to renew to the Ministry of Foreign Affairs of Kosovo the assurances of its highest consideration.

Ministry of Foreign Affairs and Trade
Wellington
9 November 2009

On 25 February 2010, Kosovo's non-resident Ambassador to New Zealand, HE Muhamet Hamiti, submitted his credentials to the Governor-General of New Zealand Sir Anand Satyanand. New Zealand does not have a diplomatic accreditation to Kosovo and its “relations with Kosovo are limited”.³⁷

The recognition of Bosnia and Herzegovina on 8 April 1992 thus seems to have been the last case when the New Zealand Government made a formal statement on the recognition of a new State.

III. FROM FORMAL RECOGNITION STATEMENT TO IMPLIED RECOGNITION

The new practice does not signify the “abolition” of the doctrine of recognition of States by New Zealand.³⁸ What has been abolished is the making of formal or explicit statements of recognition or non-recognition of States. Thus, the Ministry of Foreign Affairs and Trade wrote in November 2008: “New Zealand's normal practice is not to make a *formal statement* of

35 New Zealand Department of Labour “Kosovo passport acceptable for travel to New Zealand” in Internal Administration Circular No 09-03 (5 June 2009); available at <<http://www.immigration.govt.nz/>>.

36 A copy of the Note Verbale is on file with the author.

37 See New Zealand Ministry of Foreign Affairs and Trade, Foreign Relations, Republic of Kosovo at <<http://www.mfat.govt.nz/Countries/Europe/Kosovo.php>>.

38 On the question of the “abolition” of recognition, see MJ Peterson “Recognition of Governments Should Not Be Abolished” (1983) 77 AJIL 31.

recognition or non-recognition.”³⁹ According to information provided by the Ministry of Foreign Affairs and Trade, New Zealand “has *recognised* [the Former Yugoslav Republic of Macedonia] under its UN nomenclature since its accession to the UN in the 1990s”,⁴⁰ In 2007, the MFAT replied to the question of whether New Zealand recognised a State of Palestine: “In the case of a future Palestinian state, recognition will be considered when the Palestinian leadership has formally declared statehood.”⁴¹ That New Zealand continues to recognise new States is also evidenced by the fact that, for example, Statistics New Zealand still defines the term “country” as including “independent countries *recognised* by the New Zealand Government”.⁴² Immigration New Zealand in its Operational Manual, effective 15 December 2006, states that that travel documents from the following countries are unacceptable “because they are issued by regimes that the New Zealand Government *does not recognise*: Turkish Republic of Northern Cyprus, Taiwan: diplomatic and official passports”.⁴³ In Rules on “New Zealand Honours” promulgated in July 2007 by Prime Minister Helen Clark it says that a proposal to confer a Commonwealth or foreign honour may not be approved “when the proposal is for an honour to be conferred by the Head of State or government of a country *not recognized* by The Queen of New Zealand”.⁴⁴

Recognition of a new entity as a State serves at least three different functions. At the international level, it acknowledges the statehood of the entity, that is, it accepts the entity’s claim to the legal status of being a sovereign and independent State, with the ensuing legal consequences in international law. It also indicates a willingness to enter into official, but not necessarily diplomatic or cordial relations. At the domestic level, it informs the courts, government agencies, and nationals of the recognising State that the new entity is treated by the executive as a new State. There is no need for a formal recognition statement as long as these functions can be performed in other ways.

It is generally accepted that recognition can be express or implied. Express recognition takes place by a notification or declaration clearly announcing the intention of recognition, such as a formal diplomatic note addressed to

39 See New Zealand Ministry of Foreign Affairs and Trade, above n 6.

40 See above n 21.

41 See New Zealand Ministry of Foreign Affairs and Trade, Foreign Relations, Middle East, New Zealand and the Arab/ Israeli conflict (emphasis added) at <<http://www.mfat.govt.nz/Foreign-Relations/Middle-East/0-arab-israel-conflict.php>> (last visited 20 October 2007; no longer available).

42 See Statistics New Zealand “About 2006 Census, Information by Variable” (emphasis added); available at <<http://www.stats.govt.nz/Census/about-2006-census/information-by-variable/birthplace.aspx>>.

43 Immigration New Zealand “Countries not recognized by the New Zealand Government” in *Operational Manual* (15 December 2006) at A2.15.1 (emphasis added); available at <<http://www.immigration.govt.nz/opsmanual/i4781.htm>>.

44 New Zealand, Department of the Prime Minister and Cabinet “Rules Relating to the Acceptance and Wearing of Commonwealth, Foreign and International Honours by New Zealand Citizens, done at Wellington this 23rd day of July 2007” at [8(d)] (emphasis added); available <<http://www.dpvc.govt.nz/honours/overview/rules-foreign.html>>.

the State which has requested recognition. Implied recognition takes place through acts which, although not referring expressly to recognition, leave no doubt as to the intention to grant it.⁴⁵ New Zealand has opted for the quieter, less prominent way of implied recognition.⁴⁶ In reply to the question of whether New Zealand recognised a State of Palestine, the Ministry of Foreign Affairs and Trade replied in 2007:⁴⁷

New Zealand has a policy of implied recognition of states, that is, it allows recognition to be inferred from the nature and extent of our dealings with that state, unless there is good reason to depart from this.

This was confirmed by Prime Minister Helen Clark when, with regard to Kosovo, she said that “over time the way in which we deal with those who govern in the territory will I suppose *imply whether there is recognition*”.⁴⁸ This brings the practice with regard to the recognition of States in line with its recognition practice concerning governments. In a Background Paper for the cabinet of Prime Minister David Lange in September 1984 New Zealand’s attitude towards the Cambodian Government was explained as follows: “There is apparently no easy legal answer to the question of whether we do or do not currently recognize the DK [Democratic Kampuchea]. In the absence of a formal statement, recognition, or at least continued recognition, must be deduced from the actions of the two states.”⁴⁹ The States seeking recognition have also interpreted New Zealand’s practice as one of implied recognition. For example, Montenegro treated Foreign Minister Winston Peters’ letter of 17 July 2006, congratulating the Republic of Montenegro on its entry into the United Nations,⁵⁰ as implying New Zealand’s recognition of “Montenegro as an independent and sovereign state”,⁵¹ and listed New Zealand as the 74th country having recognised Montenegro.⁵²

45 See Robert Jennings and Arthur Watts (eds) *Oppenheim's International Law* (9th ed, Harlow, Longman, 1992) at 169.

46 Similar, for New Zealand’s new recognition practice with respect to governments, Scott Davidson “Recognition of Foreign Governments in New Zealand” (1991) 40 ICLQ 162 at 165.

47 See New Zealand Ministry of Foreign Affairs and Trade, Foreign Relations, Middle East, New Zealand and the Arab/ Israeli conflict (emphasis added) at <<http://www.mfat.govt.nz/Foreign-Relations/Middle-East/0-arab-israel-conflict.php>> (last visited 20 October 2007; no longer available).

48 See above n 33 (emphasis added).

49 Background Paper “Recognition of Kampuchea” (19 September 1984) quoted in Anthony L Smith “The ‘Dilemma’ of Recognition: New Zealand and Cambodia” in Anthony L Smith (ed) *Southeast Asia and New Zealand: A History of Regional and Bilateral Relations* (Institute of Southeast Asian Studies, Singapore, 2005) 93 at 109.

50 A copy of the letter is on file with the author.

51 Montenegro Ministry of Foreign Affairs “New Zealand recognizes Montenegro as an independent and sovereign state” (press release, 9 August 2006).

52 See Montenegro Ministry of Foreign Affairs, Dates of Recognition and Establishment of Diplomatic Relations at <<http://www.mip.gov.me/en/index.php/Bilateral/dates-of-recognition-and-establishment-of-diplomatic-relations.html>>.

The agreement to the appointment of a Kosovar Ambassador to New Zealand⁵³ was also widely interpreted as recognition of the Republic of Kosovo by New Zealand. The Foreign Minister of the Kosovo, Skender Hyseni, told Kosovo TV:⁵⁴

The government of New Zealand has given its approval to the accreditation of the Kosovo ambassador to London to the capital of New Zealand, too. This concludes New Zealand's process of recognition of the Republic of Kosovo.

However, rather than regarding the establishment of diplomatic relations as *the* (legally relevant) act of recognition, it should be seen as the final act in a process of recognition. It can be argued that New Zealand had already recognised the Republic of Kosovo as an independent and sovereign State with the acceptance of its passports as travel documents on 5 June 2009. According to s 2 of the New Zealand Immigration Act 1987, passport means a document that is issued by or on behalf of the Government of any country, being a document that purports to establish the identity and nationality of the holder and that confers on the holder the right to enter the country the Government of which has issued the document.⁵⁵ Accepting Kosovo passports meant, by implication, that New Zealand recognised Kosovo as a “country” that may regulate the entry to its territory, and the holders of those passports as having Kosovo “nationality” – a concept that is generally associated only with sovereign and independent States and opens the door to diplomatic protection by the issuing State. New Zealand's support for Kosovo's membership of the International Monetary Fund (IMF) in May 2009 can be seen as another act of recognition. The IMF is an intergovernmental organisation and a Specialised Agency of the United Nations that is open only to “countries”.⁵⁶ In this context, “countries” means sovereign independent States. It could well be argued that by voting in favour of Kosovo's membership of the IMF, and thus enabling it to become the 186th member of the organisation,⁵⁷ New Zealand had implicitly recognised Kosovo as a sovereign independent State.

It is suggested that although formal acts or declarations of recognition of States are no longer made, the criteria previously applied for the express recognition of States remain the basis upon which the New Zealand Government makes any decision on implied recognition. In reply to the

53 See the Note Verbale, above n 36.

54 “Kosovo foreign minister confirms New Zealand's recognition, upbeat on ICJ ruling” *BBC Monitoring Europe – Political* (11 November 2009). See also Foreign Minister Hyseni's speech before the UN Security Council: “The most recent recognitions came from New Zealand” (UN Doc S/PV.6264 (22 January 2010) at 10).

55 See the Immigration Act 1987.

56 See art II(2) of the Articles of Agreement of the International Monetary Fund, 27 December 1945. Membership in the IMF is a precondition for membership in the World Bank and affiliated intergovernmental financial institutions.

57 See International Monetary Fund “Statement on Membership of the Republic of Kosovo in the IMF” (press release, no 08/179, 15 July 2008); “IMF Offers Membership to Republic of Kosovo” (press release, no 09/158, 8 May 2009); “Kosovo Becomes the International Monetary Fund's 186th Member” (press release, no 09/240, 29 June 2009).

question of whether New Zealand recognized a state of Palestine in 2007, the Ministry of Foreign Affairs and Trade replied that the Palestinian leadership had not formally proclaimed statehood. If it did, "New Zealand would examine whether it satisfied the conditions which must be fulfilled before a state can be said to exist under international law, and respond accordingly."⁵⁸ The conditions usually referred to in this context are set out in Article 1 of the Convention on the Rights and Duties of States which stipulates that the State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states.⁵⁹ While recognition is first and foremost a political decision, the New Zealand Government, as a rule, will not take any action implying recognition of statehood if a new entity does not fulfil these conditions.

IV. IMPLIED RECOGNITION AND JUDICIAL PRACTICE

In New Zealand, as in the United Kingdom, the regulation of foreign affairs has traditionally been a matter for the Crown in the exercise of its prerogative. A request by the courts for a determination by way of executive certificate of the status of a foreign entity or authority, that is whether it qualifies as a State or government, has been regarded as conclusive on matters of fact. This position is based on the so-called 'one voice doctrine' which provides that in matters of foreign affairs, the courts and the executive speak with one voice, namely that of the executive. No extrinsic evidence is admissible in court to contradict the executive certificate.⁶⁰ However, in practice the matter has not always been as straightforward as that and the courts have been called upon to interpret the certificates from the executive, especially if certificates were couched in nebulous and ambiguous terms.⁶¹

It is argued that when adopting the practice of implied recognition, the New Zealand Government did not intend to, and actually could not, change the established procedure based on the "one voice doctrine" that the courts defer to the executive in matters of foreign policy. The change in recognition practice does not mean that it is now left to the courts to determine independently, and on the basis of all available evidence, whether

58 New Zealand Ministry of Foreign Affairs and Trade, Foreign Relations, Middle East, New Zealand and the Arab/ Israeli conflict (emphasis added) at <<http://www.mfat.govt.nz/Foreign-Relations/Middle-East/0-arab-israel-conflict.php>> (last visited 20 October 2007; no longer available).

59 Convention on Rights and Duties of States, signed at Montevideo, 26 December 1933, 165 LNTS 21. The qualifications set out in the Convention are usually used in NZ practice when determining whether an entity qualifies as a State; see, for example, New Zealand Parliament "New Zealand Sovereignty: 1857, 1907, 1947, or 1987?" (research paper, August 2007), available at <<http://www.parliament.nz/>>.

60 See *Attorney-General for Fiji v Robt Jones House Ltd* [1989] 2 NZLR 69 at 74 per Jeffries J who made reference to *Carl Zeiss Stiftung v Rayner and Keeler Ltd (No 2)* [1967] 1 AC 853 (HL) at 901 per Lord Reid and *The Arantzazu Mendi* [1939] AC 256 (HL) at 264 per Lord Atkin.

61 See *Attorney-General for Fiji v Robt Jones House Ltd* [1989] 2 NZLR 69 at 74 per Jeffries J.

an entity qualifies to be treated as a State.⁶² The relevant legislation continues to provide for certificates of the Minister of Foreign Affairs and Trade on matters of statehood and the legal status of foreign authorities,⁶³ and the government has expressly stated that “our regard for them [the countries or new nations] can be *inferred* by the way our connections or relations with them develop.”⁶⁴ The Ministry of Foreign Affairs and Trade has stated that:⁶⁵

New Zealand has a long standing practice of not making explicit statements of recognition or non-recognition of states. Instead, *New Zealand allows recognition or otherwise to be inferred from our dealings with entities.*

These statements are reminiscent of the British Government’s reply to the question of how in future, for the purposes of legal proceedings, it may be ascertained whether, on a particular date, Her Majesty’s Government regarded a new regime as the government of the State concerned. On 23 May 1980, the Lord Privy Seal Sir Ian Gilmore replied:⁶⁶

In future cases [...] our attitude on the question of whether [a regime] qualifies to be treated as a Government will be left to be inferred from the nature of the dealings, if any, which we may have with it, and in particular on whether we are dealing with it on a normal Government to Government basis.

It seems likely that, as in the case of governments,⁶⁷ the executive will in future provide the courts with specific information on the nature and level of its “connections or relations” or the nature and extent of its “dealings” with the entity in question. This gives rise to the question of what kind of connections, relations or dealings allow for the inference of recognition as a State. As recognition is a matter of intention and as important legal consequences follow from the grant or refusal thereof, care must be taken not to imply recognition from actions which, although amounting to a limited measure of intercourse, do not necessarily reveal an intention to recognise the

62 But see the judgment of the English Court of Appeal in *R (Kıbrıs Türk Hava Yolları) v Secretary of State for Transport* [2010] EWCA Civ 1093 at [74] which seems to suggest that this was the effect of the policy change with respect to the recognition of governments.

63 See the Diplomatic Privileges and Immunities Act 1968, s 22; Consular Privileges and Immunities Act 1971, s 9.

64 See above n 34 (emphasis added).

65 Email from Europe Division, New Zealand Ministry of Foreign Affairs and Trade, to the author regarding New Zealand’s recognition policy (13 October 2010) (emphasis added). In another email to the author MFAT stated: “New Zealand’s recognition of a State or otherwise should generally be inferred from the nature and extent of our dealings with the new entity.” (22 October 2010).

66 (23 May 1980) 409 GBPD HL 1097-1098. See also (23 May 1980) 985 GBPD HC 385 (Written Answer).

67 See the letter of the Minister of Foreign Affairs, Mr CR Marshall, dated 28 March 1988, in *Attorney-General for Fiji v Robt Jones House Ltd* [1989] 2 NZLR 69 at 72: “2. New Zealand’s general practice therefore, has been to leave any questions of recognition in respect of new Governments to be inferred from the nature and level of our dealings with such Governments.” This led Jeffries J to conclude that this brought New Zealand “close, if not actually to the point of, the familiar doctrine of ‘implied recognition.’” (ibid, at 75).

entity in question as a "State".⁶⁸ In the absence of an unequivocal intention to the contrary, no recognition of statehood is implied by contacts, meetings or negotiations with high-ranking leaders or officials of the new entity; the giving of consent to, or the toleration of the establishment by the new entity of a representative office (which may even provide quasi-consular services); the sending of consular officers to the territory of the new entity; the acceptance of the new entity's passports as identity documents (as opposed to proper travel documents); the cooperation between law enforcement agencies, the lodging of protests with, or the invocation of the responsibility of the new entity; the provision of economic or development aid to it, the presence or representatives of the new entity under its official name at international meetings or conferences; the conclusion of a multilateral treaty to which the new entity is a party, or even the conclusion of a bilateral agreement with it for limited, technical purposes. On the other hand, the conclusion of a bilateral treaty on matters of State; the establishment of (formal) diplomatic relations; the issue of a consular exequatur; the acceptance of the new entity's passports as travel documents and its citizenship (in lieu of the parent State's citizenship); the sending of a message of congratulations on the attainment of independent; the sponsoring, and voting for the admission of the new entity to an organisation open only to States are all acts which clearly imply recognition as a State.⁶⁹

The courts will have to "concentrate on the true meaning and effect of the certificate supplied by the Executive."⁷⁰ If a certificate is supplied, the courts will not be able to examine any other material, or reach any other conclusion on the status of a foreign entity than that contained in the certificate (although they might draw on other relevant evidence to interpret the certificate). It is not, however, for the courts to declare the "recognition" or "non-recognition" of a State by New Zealand. But, depending on the executive certificate, the courts can, for purposes of State immunity, locus standi and the recognition and enforcement of foreign (judicial, legislative and executive) acts, treat the entity in question like a formally "recognised" State before.

V. APPRAISAL OF NEW ZEALAND'S RECOGNITION POLICY

While in the 1980s New Zealand followed the lead of the United Kingdom and other States in abandoning the practice of making formal statements on the recognition of governments,⁷¹ this time around it seems to be one step ahead of those countries. In a letter to the High Court in Wellington Foreign Minister Marshall wrote in March 1988:⁷²

68 Jennings and Watts, above n 45, at 169-170.

69 This extended list is based on Jennings and Watts, above n 45, at 169-175.

70 See *Attorney-General for Fiji v Robt Jones House Ltd* [1989] 2 NZLR 69 at 75 per Jeffries J.

71 See Talmon, above n 5, at 247-248.

72 See *Attorney-General for Fiji v Robt Jones House Ltd* [1989] 2 NZLR 69 at 71.

The New Zealand position has been for many years that formal acts of recognition in respect of new Governments in other countries are unnecessary as a matter of international law and, except in the most unusual cases, undesirable.

Today, the New Zealand Government seems to take the same position with regard to formal acts of recognition in respect of new States: they are considered legally unnecessary and politically undesirable.⁷³ The Government seems to have determined that making formal statements of recognition causes more difficulties than it is worth. Especially where the situation is legally unclear or highly politically charged it may seem advisable to operate in a “recognition vacuum”. Formal statements of recognition have often been interpreted as an expression of approval or support. By making a formal statement, New Zealand may get entangled in the ongoing dispute between the parent State and the secessionist entity and may be seen as taking sides. In such a situation, recognition will almost inevitably lead to a deterioration of the relations with the parent State and may negatively impact upon New Zealand’s political and economic interests. Not making formal recognition statements (and announcing that fact to the world) allows the New Zealand Government to keep a low profile both internationally and at home. For example, the various acts in the process of the recognition of Kosovo, the voting for IMF membership, the acceptance of its passports, and the agreement to the establishment of formal diplomatic relations, went largely unnoticed in New Zealand. There were no announcements on the website of the Ministry of Foreign Affairs and Trade of what many may consider purely technical or administrative acts, and not a single newspaper or other media outlet reported the events. In the end, New Zealand had “recognised” Kosovo without even international lawyers in New Zealand being aware of the fact.

However, even the policy of not making formal statements of recognition or non-recognition cannot always avoid political controversy. The issue of who qualifies as a new State or the government of an existing State does not go away simply by not making a formal statement. Claims to statehood or governmental status will normally, sooner or later, require a response even by “a far away country” such as New Zealand. Despite its policy of no longer formally recognising new governments, in the 1980s New Zealand got entangled in the question of which of the two rival claimants was the Government of Cambodia.⁷⁴ While, for example, the United Kingdom in December 1979 and Australia in October 1980 formally “de-recognised” the Government of Democratic Kampuchea, New Zealand, by its conduct, maintained its

73 In an email to the author MFAT (Europe Division) wrote: “New Zealand’s position, developed since the 1970s, has been that formal acts or statements of recognition are unnecessary.” (22 October 2010).

74 Between 1979 and 1990 there were two rival governments – the ousted Government of Democratic Kampuchea under Pol Pot (and its successor, the Coalition Government of Democratic Kampuchea) and the Vietnamese-installed Government of the People’s Republic of Kampuchea headed by Heng Samrin – which claimed to be the Government of the State of Cambodia; see Stefan Talmon *Recognition of governments in international law: with particular reference to governments in exile* (Oxford, Clarendon Press, 1998) at 309-310.

recognition of that government. The New Zealand Government voted at the United Nations for the credentials of the Government of Democratic Kampuchea (and its successor, the Coalition Government of Democratic Kampuchea), thereby implying its continued recognition as the representative of Cambodia in the organisation; an action that was heavily criticised, both inside and outside New Zealand.⁷⁵ After all, it is not only formal statements of recognition but also certain acts implying recognition that can be seen as signifying approval or as taking sides in a dispute.

There are also some practical problems with the practice of not making formal statements of recognition of States. In March 2010, the New Zealand Embassy in Dili replied to the question of when New Zealand had recognised the independence of Timor-Leste:⁷⁶

New Zealand does not formally recognise independent states but over time there is a cumulative range of actions that give rise to a de facto acknowledgement of independence so *we do not have a specific date recognising Timor-Leste* as an independent state.

There may, however, be situations when the exact date as of which an entity has been recognised as an independent State is of crucial importance. It is for that reason that some States, in their formal recognition statements, expressly specify the date, and some even the hour, as of which they recognise a new State. For example, the letter of the Afghan Government conveying the country's recognition of Kosovo stated: "As of today, Monday February 18, 2008, 18:00 hour local time, the Islamic Republic of Afghanistan officially recognizes Kosovo as an independent and sovereign nation."⁷⁷ One of the functions of recognition at the domestic level is to inform the courts and government agencies of the recognising State that the new entity is treated by the executive as an independent State. The courts and government agencies may have to decide on what date exactly a new State came into existence for the purposes of domestic law. There are numerous acts in New Zealand domestic law that make reference to a "foreign State". For example, s 55(1)(c) of the Electoral Act 1993 provides that a member of Parliament shall lose his or her seat on becoming "a subject or citizen of any foreign State", and s 8(2) of the Crimes Act 1961 provides a defence, if "the act or omission would not have been an offence under the law of the country of which the person charged was a national or citizen at the time of the act or omission". In both cases, it may be decisive on what date a new State and, consequently, its citizenship was

75 See Anthony L Smith "The 'Dilemma' of Recognition: New Zealand and Cambodia" in Anthony L Smith (ed) *Southeast Asia and New Zealand: A History of Regional and Bilateral Relations* (Institute of Southeast Asian Studies, Singapore, 2005) at 93; Anthony L Smith "The Devil You Know: New Zealand's Recognition Policy towards Cambodia from 1978-1990" (1999) *New Zealand Journal of History* 221.

76 Email from New Zealand Embassy, Dili, to the author regarding New Zealand's recognition of Timor-Leste (8 March 2010) (emphasis added).

77 A copy of the letter is on file with the author. The Danish Foreign Ministry stated: "As of today, Denmark recognizes Kosovo as an independent state." (Denmark, Ministry of Foreign Affairs "Denmark recognizes Kosovo" (press release, 21 February 2008).

recognised by the New Zealand Government (unless recognition, irrespective of when it occurs, is automatically treated as being retroactive to the moment the new State declared independence or qualified as an independent State in international law). New Zealand domestic law refers to the “law in force in a foreign State”,⁷⁸ and makes the validity of acts dependent upon their being in accordance with the “law of the country” where they were performed.⁷⁹ Rules of private international law also point to the law of a person’s nationality or the *lex loci delicti* as the law that governs a dispute. In all these cases, it may be decisive to know on what date exactly the New Zealand Government recognised the new State, especially if the laws of the new State and that of the parent State differ in substance. Admittedly, such cases are few and far between.⁸⁰ However, if they were ever to arise, the new practice would prove to be unsatisfactory for failing to provide clear guidance on the date a new State was recognised and, consequently, the date from which its laws were to be applied and its citizenship was to be treated as effective.

There is also a possibility, albeit a very remote one, that without formal statements of recognition or non-recognition of States domestic courts and government agencies might draw the wrong inference from certain limited dealings with a new entity and treat it as a new State. Especially if there is a duty not to recognize the new entity either under customary international law or a binding Security Council resolution such conduct may engage New Zealand’s international responsibility.⁸¹

While formal statements of recognition or non-recognition of States are, strictly speaking, not necessary as a matter of international law they are an important legal and political tool. They allow States to express their support of a secessionist entity and, by openly putting their political, economic and military weight behind the entity, may contribute to peace and stability in a region. An explicit statement of non-recognition while, at the same time, maintaining contacts with both sides of a dispute, may allow a State to act as a mediator between the parent State and the secessionist entity. A public statement of non-recognition will show that the State does not consider

78 See for example the Crimes of Torture Act 1989, s 2(1); Civil Aviation Act 1990, s 4(3) (an act or omission “required in order to comply with the laws of any foreign state”); Protected Objects Act 1975, s 2(1) (“in accordance with the law of the relevant State”).

79 See for example the Reciprocal Enforcement of Judgments Act 1934, s 6(1) (“in accordance with the law of the country of the original Court”); Extradition Act 1999, s 2(1) (“a statement made [...] under the law of the country in which it is made”); Companies Act 1993 Regulations 1994, s 9(3) (“verification [...] in the manner (if any) prescribed by the law of the country where the translation is made for the verification of documents”).

80 *Attorney-General for Fiji v Robt Jones House Ltd* [1989] 2 NZLR 69 seems to be the only ever reported NZ case dealing with questions of recognition.

81 Similar concerns were raised in the 1980s when several States decided no longer to make formal statements on the recognition of new governments. See for example Ian Brownlie *Principles of Public International Law* (4th ed, Oxford University Press, Oxford, 1990) at 106; but see also the seventh edition published in 2008 where the author states that “when issues of international legality have been in question, the British Government has provided the necessary guidance” (at 102).

the status issued closed and that it considers that there is still room for negotiations. Public pronouncements of non-recognition (combined with an active policy of non-recognition, that is the withholding from a State the rights inherent in statehood) may also be the only sanction available when faced with unlawful behaviour of States in situations where the international community is unable or unwilling to take military action or to impose effective economic sanctions in order to bring about a reversal of an illegal situation.⁸² The effect of such pronouncements is said to be that States pledge themselves to avoid any international or internal act capable of turning the de facto situation into an internationally legal one, and that the domestic courts of all those States much treat acts and transactions with the unlawful authority as null and void.⁸³

New Zealand has indicated that it does not intend to forgo formal recognition statements altogether. In fact, recognition language, both with regard to new States and new governments, has crept into government statements from time to time. For example, on 2 July 2007 Prime Minister Helen Clark said with regard to the authorities in Fiji that had got to power by coup d'état: "Participation in [...] the annual Pacific immigration quota schemes requires agreements which we cannot negotiate with a government whose legitimacy we do not recognise."⁸⁴ On 17 March 2008, Prime Minister Clark was quoted as saying that it was the New Zealand Government's set position not to recognise Tibet's independence.⁸⁵ Similarly, taking account of Beijing's sensitivities with regard to the Republic of China (Taiwan) the Ministry of Foreign Affairs and Trade website states: "New Zealand does not recognise the Government of the Republic of China."⁸⁶ It was said that "New Zealand's *normal practice* is not to make a formal statement of recognition or non-recognition",⁸⁷ and that formal statements are undesirable "except in the most unusual cases".⁸⁸ What such "unusual cases" may be is difficult to determine in the abstract, but one can assume that they will include circumstances which involve matters of "high politics" where, for

82 On non-recognition as a countermeasure, see Stefan Talmon "The Constitutive versus the Declaratory Theory of Recognition: Tertium Non Datur?" (2004) 75 BYBIL 101at 162-179.

83 See Antonio Cassese *International Law* (2nd ed, Oxford, University Press, Oxford 2005) 341-342.

84 Helen Clark "Fiji travel ban extended" (press release, 2 July 2007). New Zealand and most other States in the region refused to recognise the Bainimarama Government, which had seized power in a military coup in December 2006.

85 "Pakistan, Russia, Germany oppose attempts to politicize Olympics" *BBC Monitoring Asia Pacific – Political* (18 March 2008).

86 See New Zealand Ministry of Foreign Affairs and Trade "Countries and Territories, Taiwan" (last updated 10 October 2010) at <<http://www.mfat.govt.nz/Countries-and-Territories/Taiwan.php>>.

87 See New Zealand Ministry of Foreign Affairs and Trade, above n 6 (emphasis added).

88 See the letter of the New Zealand Minister of Foreign Affairs, Mr CR Marshall, dated 28 March 1988, in the case *Attorney-General for Fiji v Robt Jones House Ltd* [1989] 2 NZLR 69 at 71. In an email to the author the Europe Division, MFAT, wrote: "This practice is only departed from in exceptional and limited circumstances" (22 October 2010).

example, a secession causes direct harm to New Zealand's economic or other interests and the New Zealand Government wishes for domestic or international political reasons to employ a statement of non-recognition as a mark of extreme disapproval.⁸⁹ A formal declaration of non-recognition may also be used to give expression to an obligation of non-recognition under general international law or a Security Council resolution where a secession is connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a preemptory character (*jus cogens*).⁹⁰ Conversely, the New Zealand Government may wish to convey its approbation by a formal statement of recognition where the people of a non-self-governing territory or a people subject to alien subjugation, domination and exploitation gains independence in exercise of its right to self-determination. In addition, there may be situations where the New Zealand Government may wish to put formally on record its continued recognition of a failing, failed or (factually or legally) disappearing State. One may, for example, conceive of a situation where New Zealand would want to put formally on record its continued recognition of some of the small Pacific island States which are predicted to become uninhabitable and finally disappear due to climate change and rising sea levels.⁹¹

For a medium-sized country like New Zealand that has no tradition of employing statements of recognition or non-recognition of new States or governments as an instrument of power politics and that, as a rule, will not be able to extract a high political or economic price for its recognition the move from express to implied recognition makes eminently good sense. Any disadvantages in the domestic judicial process are far outweighed by the political advantages in the field of international relations.

89 On 17 May 1990, the New Zealand Government made it clear that it refuses to recognise the unilateral declaration of independence by Bougainville; see "New Zealand refuses recognition of Bougainville independence" *Xinhua General News Service* (17 May 1990).

90 Compare *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Advisory Opinion), 22 July 2010, [81]. The International Court of Justice mentions, for example, northern Cyprus which, according to the *Operational Manual of Immigration New Zealand*, is one of the "Countries not recognised by the New Zealand Government"; see above n 43. On its previous website on the Arab/Israeli conflict, MFAT expressly stated: "New Zealand does not recognise Israel's annexation of Jerusalem in 1980, nor does it recognise that city as the capital of Israel." (New Zealand MFAT "Foreign Relations, Middle East, New Zealand and the Arab/Israeli conflict" available at <<http://www.mfat.govt.nz/Foreign-Relations/Middle-East/0-arab-israel-conflict.php>> (last visited 20 October 2007; no longer available). On New Zealand's changed approach to the Arab/Israeli conflict, see Nigel Parsons "Resolving the unresolvable: Nigel Parsons discusses New Zealand's position towards Israel/Palestine" (2009) 34/6 *New Zealand International Review* 26-28.

91 On the problem of disappearing States and their continued recognition, see Jane McAdam "Disappearing States', Statelessness and the Boundaries of International Law" in J McAdam (ed) *Climate Change and Displacement: Multidisciplinary Perspectives* (Hart Publishing, Oxford, 2010) 105 at 117-118.