

The Legal Status of Unrecognized States: Do Entities like Taiwan, Palestine, and Kosovo Have Rights under International Law?

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Annotation: This article analyzes the rights of entities such as Taiwan, Palestine, and Kosovo – considered subjects of international law – within the framework of international legal norms. It explores the origins and current status of these entities from a legal perspective.

Keywords: International law, subject of international law, recognition of states, statehood, international organizations, theories of state recognition.

Introduction

In the system of international relations, the recognition of states, their international legal status, and sovereignty significantly affect global political balance. Some territories, although having declared themselves as independent states, are either partially or not recognized by the international community. While some countries have recognized them (such as the three case studies in this paper), others have refrained for various reasons. Despite not being UN members, they have joined other influential organizations. This naturally raises several questions: How important is international recognition? What rights and opportunities does recognition provide under international law? And how does lack of recognition impact a state politically and economically? These legal-political issues and real-world case studies have long been at the center of international legal disputes. From this perspective, this article focuses on analyzing the status, legal rights, and limitations of subjects like Taiwan, Palestine, and Kosovo under international law.

Subjects of International Law, the Status of a State, and Recognition

International law is a system of treaties, customary norms, and universally recognized

principles that emerge from the coordination of will among states and other subjects of international law. It serves to regulate various relations between them and ensures the conscientious fulfillment of international obligations by these subjects.

In simple terms, international law is a legal field that governs relations among subjects of international law. A subject of international law is an entity that possesses rights and obligations under international law, can protect those rights, and engages in international relations governed by international norms. In other words, it is a participant in international legal relations. There are different types of such participants.

Types of International Legal Subjects:

Primary subjects: States, nations, and peoples fighting for independence

Derivative subjects: International intergovernmental organizations, state-like entities (e.g., the Vatican)

This article primarily focuses on the primary subjects—namely, states. Establishing a state is one issue; gaining international recognition after its establishment is another. Thus, we will examine what constitutes a state and the process of its recognition, especially through the lens of three case studies—Taiwan, Palestine, and Kosovo—whose statehood remains contested.

Definition of a State in International Law

According to international law, a state is a political entity that is independent, possesses a permanent population, operates within a defined territory, and is capable of engaging in relations with other states. This definition is codified in the 1933 Montevideo Convention, Article 1 of which states that a state must possess the following four essential elements:

1. A permanent population
2. A defined territory
3. A government
4. The capacity to enter into relations with other states

However, there are entities that meet all four of these elements—territories with a permanent population, functioning governments, and foreign relations—yet are still only partially or not recognized at all. This is because states often base recognition on protecting their political and economic interests.

Joining international organizations and solidifying subjectivity also depends on the internal statutes and criteria of those organizations. Therefore, recognition itself can be viewed as a separate institution within international law.

Recognition in International Law

Recognition in international law is a voluntary, unilateral act by which one state acknowledges another entity as a subject of international law and declares its intention to establish official relations. This recognition can also apply to a government that has come to power through

unconstitutional means, recognizing it as the representative of the state or the people residing in a certain territory.

Legal recognition in international law is a document issued by a state in accordance with international law. It may concern a new state, a government, or the establishment of official or unofficial, full or partial, permanent or temporary relations. Recognition is not obligatory; it is a right, not a duty, of states.

Types of legal recognition include:

Recognition of resistance movements

Recognition of a government

Recognition of a rebel faction

Recognition of national liberation organizations

Forms of Recognition

The traditional forms of recognition in international law are *de jure* (formal/legal) and *de facto* (informal/factual):

De jure recognition: Official recognition without conditions, often followed by the establishment of diplomatic relations.

De facto recognition: Informal cooperation without official diplomatic acknowledgment, often within the context of international organizations or conferences.

There is also a third form:

Ad hoc recognition: Latin for “for this purpose,” applied during specific circumstances, such as providing humanitarian aid or granting asylum. Many states do not fully recognize Taiwan, yet they cooperate with it in certain areas. This is a clear example of ad hoc recognition

Theories of State Recognition in International Law

There are two primary theories regarding state recognition in international law: the declaratory theory and the constitutive theory.

a) Declaratory Theory

According to this approach, a state's existence is not dependent on its recognition by other states, but rather on fulfilling the four criteria outlined in the Montevideo Convention. Recognition simply acknowledges an already existing state—it is not a prerequisite for statehood.

For example, consider the Taliban government in Afghanistan. Since August 2021, the Taliban has been exercising *de facto* control over the country. The structure they have established meets all four elements required for statehood under the Montevideo Convention. However, most countries have not recognized the Taliban as the legitimate government.

Nevertheless, the Taliban’s political office operates in Doha, Qatar, which serves as a mediator in international dialogues. Qatar itself initially opposed the Taliban but now interacts with them as the *de facto* governing force in Afghanistan. Pakistan, though historically supportive

of the Taliban during the 1980s–90s, has not officially recognized them but still maintains strong cooperation. China and Iran have kept their embassies open in Kabul, and Russian diplomacy has also been active in the region—Russia recently granted official recognition to the Taliban government.

Meanwhile, countries in Central Asia, such as Kazakhstan, began referring to the Taliban as the “Afghan government” as of April 2023. Neighboring Uzbekistan cooperates with the Taliban on border security and humanitarian aid. While most of these countries have de facto relations with the Taliban, they have yet to grant de jure recognition.

b) Constitutive Theory

This theory asserts that a state can function as such only if it is recognized by other states. Recognition is an essential condition for becoming a subject of international law. This theory itself is divided into two sub-categories: centralized and decentralized recognition.

Centralized recognition: States that recognize each other enter into bilateral agreements, open diplomatic missions, and establish full diplomatic relations.

Decentralized recognition: In this case, states acknowledge each other’s legal subjectivity but do not necessarily engage in formal diplomatic relations.

For instance, small Caribbean states such as the Dominican Republic may recognize Uzbekistan as a subject of international law, yet they have no embassy in Tashkent and have not signed agreements due to a lack of mutual interest. (This is a hypothetical example; official details can be found in the records of the Ministry of Foreign Affairs.)

Unrecognized States: Types and Causes

Unrecognized states are entities that have declared themselves independent but are not widely or officially recognized by the international community (especially by UN member states). Their legal status is complex and subject to various interpretations.

These entities can be classified as follows:

1. Fully Unrecognized States

These are entities not recognized by any state.

Example: Somaliland – Declared independence in 1991, yet it is still considered part of Somalia. Despite that, Somaliland has a permanent population, holds elections, maintains border security, has its own government, currency system, and official languages.

2. Partially Recognized States

These are recognized by some states but not by the United Nations.

Examples: Taiwan, Kosovo, and Palestine

Let me share a personal analytical view as to why these three entities have not been recognized by the UN:

Becoming a UN member significantly strengthens an entity's position as a subject in the international community. However, none of the three countries mentioned have been able to join the UN.

According to Article 4 of the UN Charter, any peace-loving state can become a member if

recommended by the Security Council and approved by the General Assembly. However, none of the five permanent members of the Security Council must use their veto against the application.

Taiwan's recognition is blocked by China, a permanent member, which considers Taiwan an inseparable part of its territory.

Palestine's case is hindered by the United States, Israel's closest ally, also a permanent member. Kosovo faces opposition from Russia, Serbia's ally, another permanent member of the Council. As a result, these countries remain outside the UN and are not fully recognized as states.

The International Legal Status and Rights of Taiwan

Taiwan (officially the Republic of China, ROC) came under separate governance after the 1949 Chinese Civil War, when the People's Republic of China (PRC) was established on the mainland. The Kuomintang party retreated to the island of Taiwan and continued to govern it as a sovereign state. Since then, Taiwan has maintained its claim as an independent nation, while the PRC views it as an inseparable part of its territory.

In the 1950s, Taiwan was recognized by many countries as the legitimate representative of China. However, in 1971, UN General Assembly Resolution 2758 replaced the ROC with the PRC as "the only legitimate representative of China" in the UN system. This decision marked a turning point in Taiwan's international standing.

Background of Resolution 2758

UN General Assembly Resolution 2758 (also known as the "Resolution to Accept the Beijing Representatives") was adopted in response to Resolution 1668. The latter had stipulated that changes to China's representation at the UN must be decided by a two-thirds vote under Article 18 of the UN Charter.

When the UN was founded in 1945, China was represented by the ROC (governed by the Kuomintang). However, by 1949, after the civil war, the Communist Party led by Mao Zedong declared the PRC in Beijing. The Kuomintang, led by Chiang Kai-shek, withdrew to Taiwan with over 2 million followers, occupying areas vacated by Japan after WWII.

Despite the PRC taking control of mainland China in 1950, it never gained control over Taiwan, Penghu, Matsu, and Kinmen islands. The PRC considers itself the successor of the ROC, while the government in Taiwan claims the continuous existence of the ROC.

Until 1971, the ROC was recognized as a founding member of the UN and held a permanent seat on the UN Security Council under Article 23(1) of the Charter. Resolution 2758 removed ROC representation and transferred it to the PRC.

Legal Ambiguity of Taiwan's Status

The 1951 San Francisco Peace Treaty required Japan to renounce all claims to Taiwan but did not specify who should assume sovereignty over it. Thus, while Taiwan was legally detached from Japan, it was not formally assigned to any other country.

UN attempts to apply a "One China – One Taiwan" formula—allowing both the PRC and ROC to be admitted as separate states—failed. Notably, Resolution 2758 did not determine Taiwan's

status. It merely recognized the PRC as the representative of China. The terms “Taiwan” and “Republic of China” are not mentioned in the resolution, nor is the phrase “One China Principle.”

This raises a legal question: Can the PRC use Resolution 2758 to reject Taiwan’s UN membership bids (like President Chen Shui-bian’s application in 2007)?

Indeed, then-UN Secretary-General Ban Ki-moon rejected the application, citing Resolution 2758. He claimed that the UN considered Taiwan part of China. However, several states, including the United States, protested, and Ban later acknowledged that his statement did not reflect an official UN position. His reasoning was flawed for two reasons:

1. The resolution says nothing about Taiwan’s status;
2. It addressed representation, not statehood.

China's Use of Resolution 2758

In 2022, following U.S. House Speaker Nancy Pelosi’s visit to Taiwan, the PRC published a white paper titled “The Taiwan Question and China’s Reunification in the New Era.” It exaggerated the scope of Resolution 2758, stating:

“Resolution 2758 is a political document representing the One China principle. It has unquestionable legal force and universal recognition. Taiwan has no right to join the UN or any organization limited to sovereign states.” (Fukuda, 2022)

However, the resolution does not mention Taiwan at all, and the One China principle is not established in its wording. The PRC is using it to advance its claims, though it lacks explicit support in the resolution.

The One China policy, introduced in 1979, advocates peaceful reunification but does not rule out the use of force. In 2005, China adopted the Anti-Secession Law, allowing military action if:

- Taiwan declares independence;
- An event triggers separation;
- Peaceful reunification becomes impossible.

Taiwan’s government responded:

“The ROC is a sovereign, independent country. The Anti-Secession Law is a domestic law unilaterally imposed by China and violates Taiwan’s right to self-determination.” (Gazzini, 2023)

Taiwan’s Diplomatic Isolation

Under PRC pressure, Taiwan’s diplomatic recognition has declined. Since 2016, eight countries have severed ties, including Nicaragua in 2021. As of 2022, only 15 countries officially recognized Taiwan—mostly in Latin America, the Pacific Islands, and the Vatican.

Nevertheless, Taiwan maintains 111 informal missions in 74 countries, preserving unofficial diplomacy (**Dagorn, 2022**).

China has pushed the UN system to implicitly treat Taiwan as part of China since the late 1990s. However, Taiwan has continued applying for UN membership and asserting its independence.

Taiwan’s Participation in International Organizations

Though not a UN member, Taiwan is part of several international bodies under the name “Chinese Taipei”:

WTO (2002)

APEC (1991)

Asian Development Bank (1966)

International Olympic Committee (1981)

Taiwan issues its own passports, conducts foreign trade (notably producing over 50% of global microchips), has an independent judiciary and legislature, and holds democratic elections.

Despite fulfilling all de facto criteria of statehood, its lack of widespread recognition prevents access to international courts and many diplomatic privileges.

Conclusion on Taiwan

Taiwan is a functioning, democratic, and economically strong state. Yet due to China’s opposition, it remains in a legal gray area. Resolution 2758 does not address its status directly, leaving room for reinterpretation. In my opinion, applying the principle of self-determination of peoples—one of the ten core principles of international law—should justify Taiwan’s recognition as a subject of international law. Just like North and South Korea coexist as independent entities, the PRC and Taiwan could cooperate without mutual territorial claims. Over time, such peaceful coexistence might eventually pave the way for a unified “One China” made up of two different systems, governed by one shared Chinese identity.

The International Legal Status of Palestine

Palestine has long struggled to obtain full recognition as an independent state due to its territorial conflict with Israel. In 1988, the Palestine Liberation Organization (PLO) unilaterally declared an independent Palestinian state. However, in practice, political control has remained divided between the Gaza Strip and the West Bank.

Today, over 145 UN member states recognize Palestine. In 2012, despite opposition from Israel and the United States, the UN General Assembly granted Palestine the status of a "non-member observer state." The vote was supported by 138 countries, with 41 abstentions.

Countries that voted against the resolution included: the United States, Israel, Canada, the Marshall Islands, Micronesia, Nauru, Palau, Panama, and the Czech Republic.

Earlier, Palestinian Authority President Mahmoud Abbas had stated that this vote was a last chance to preserve the two-state solution. Israeli Prime Minister Benjamin Netanyahu dismissed the vote as "meaningless" and criticized Abbas for not expressing a desire for peace in his UN speech.

Israel’s UN Ambassador Ron Prosor claimed that upgrading Palestine’s status would not help peace efforts but would instead hinder them. U.S. Secretary of State Hillary Clinton called the move “unfortunate and counterproductive,” arguing that it would obstruct peace. Nonetheless, then-UN Secretary-General Ban Ki-moon stated that the resolution demonstrated a serious intention to move toward negotiations.

Following the vote, Palestinians gained new rights to participate in UN discussions and apply for membership in international bodies such as the International Criminal Court (ICC). The

announcement of the vote was greeted with celebrations in Ramallah, where Palestinians took to the streets and launched fireworks.

Historical Background

In 1947, the UN General Assembly passed Resolution 181, which partitioned the historic land of Palestine and established the state of Israel. In his speech prior to the 2012 vote, Mahmoud Abbas recalled this resolution as the starting point of the Palestinian struggle for statehood.

Israeli representatives and Western allies opposed Palestine's upgraded status, insisting that peace can only be achieved through bilateral negotiations, not UN declarations. Israel's ambassador emphasized that "no UN resolution can break the 4,000-year-old bond between the people of Israel and the Land of Israel."

The 2012 resolution considered expanding Palestine's rights at the UN, recognizing the pre-1967 borders, and granting "observer state" status.

Current Palestinian Claims and Limitations

Palestinians demand recognition of their state within the West Bank, Gaza Strip, and East Jerusalem. Analysts agree that while the new status is largely symbolic, it could have long-term diplomatic implications. For instance, the Palestinian flag now flies at the UN as a symbol of its political identity.

Frustrated with the lack of progress in peace talks, the Palestinian Authority formally applied for full UN membership through the Security Council. However, the application did not progress beyond the committee level.

Palestine's UN Ambassador Riyad Mansour stated that over 60 countries sponsored the resolution that upgraded Palestine's status. The proposal was supported largely by developing countries, and also by several European nations. The UK abstained, while the US and Israel opposed.

Reactions and Expert Analysis

Political scientist Edmund Ghareeb of George Washington University highlighted the positive implications of Palestine's upgraded status, noting that:

"It strengthens Palestine's position on the international stage and facilitates unconditional negotiations with Israel."

With this status, Palestine gained the ability to join international treaties and organizations, including:

The World Health Organization (WHO)

The International Labour Organization (ILO)

Most notably, the International Criminal Court (ICC)

If accepted by the ICC, the Palestinian Authority would be able to request investigations into Israeli actions in the occupied territories. However, some observers warned of potential

negative consequences, such as retaliatory measures by the US and Israel.

The US State Department, through spokesperson Victoria Nuland, reaffirmed that Washington's position remained unchanged. Secretary of State Clinton also told Mahmoud Abbas that the U.S. continues to view direct negotiation with Israel as the only path to statehood.

"This route will not lead to an independent Palestinian state. It's a mistake, and we oppose it,"
– Victoria Nuland

Strategic Implications and International Pressure

Though Palestine may face short-term economic and political costs, including tension with the US and Israel, it arguably has no alternative but to internationalize the conflict. Ghareeb emphasized:

"Palestinians had no choice. No one took their grievances seriously, and as a result, their position weakened over time."

Analysts believe that Palestine's recognition by the UN General Assembly is unlikely to harm the peace process, despite claims to the contrary by Israel and the US. In fact, they argue, it could revive stalled negotiations and increase international pressure on Israel.

As political scientist Vera Jelinek put it:

"Abbas sees the resolution as a way to strengthen his negotiating position. If his international stature increases, he'll gain leverage with Israel. Meanwhile, Israel will feel compelled to return to the table."

Differences Between the Security Council and General Assembly

Unlike the UN Security Council, where permanent members can veto resolutions, the General Assembly only requires a majority vote to pass measures. Countries such as Russia, China, France, and others like Spain, Denmark, and Switzerland expressed support for Palestine's upgraded status.

Palestine's Participation in International Organizations

Let's now summarize Palestine's current legal status and involvement in international bodies:

UN Status: Non-member observer state

Granted via Resolution 67/19 (29 November 2012). Palestine can participate in debates, deliver speeches, and submit documents but has no voting rights.

UNESCO: Full member since 31 October 2011

Palestine has full rights to vote, propose projects, receive funding, and engage in international scientific and cultural initiatives.

International Criminal Court (ICC): Member since 1 April 2015

As a signatory to the Rome Statute, Palestine can file complaints and request investigations. In February 2021, the ICC prosecutor confirmed jurisdiction over crimes committed in Palestinian territories.

Arab League: Full member since 1976

Organization of Islamic Cooperation (OIC): Founding member

Palestine has full rights to participate in political declarations, propose resolutions, and receive financial and military support.

Summary on Palestine

Palestine can sign international treaties, participate in UN discussions, and maintain diplomatic missions in over 90 countries. However, there is no final agreement on its borders, and Israel continues to occupy significant territory. Despite recognition from over 140 countries, Palestine is still not a full UN member state, largely due to ongoing territorial disputes with Israel and internal political divisions, including the controversial role of Hamas, which many Western countries classify as a terrorist group. The ongoing armed conflicts in Gaza since 2023 serve as a practical example of these obstacles. Due to the US veto, full membership through the UN Security Council remains impossible for now.

The International Status of Kosovo and Legal Debates

Kosovo declared its independence from Serbia on February 17, 2008, in a unilateral proclamation. Serbia and its close allies—especially Russia and China—have refused to recognize Kosovo’s independence, labeling it illegal under international law. As of 2024, 101 countries have recognized Kosovo as an independent state, including the United States, Germany, Turkey, and Japan.

However, some countries that previously recognized Kosovo have withdrawn their recognition—examples include Suriname and Papua New Guinea. As a result, Kosovo is considered a partially recognized state in international relations.

UN Membership and Veto Power

Kosovo is not a member of the United Nations, primarily because two permanent members of the UN Security Council—Russia and China—have consistently exercised their veto power to block Kosovo’s admission.

International Court of Justice (ICJ) Ruling

In 2010, the International Court of Justice (ICJ) issued an advisory opinion stating that Kosovo’s declaration of independence did not violate international law. This ruling provided legal support for those states that chose to recognize Kosovo’s statehood.

Nevertheless, the ICJ opinion was non-binding, and countries are not legally obliged to follow it. Thus, while Kosovo received judicial validation, it still faces strong political opposition from Serbia and its allies.

Kosovo’s Internal Structures and International Engagement

Despite lacking full international recognition, Kosovo has established the foundational elements of statehood:

A constitution

An independent judiciary

Legislative and executive branches

The capacity to sign international treaties

However, Serbia does not recognize Kosovo, which continues to fuel territorial disputes and tensions in the region.

Kosovo is not a member of the UN, but it has joined various international organizations, and it actively maintains diplomatic missions around the world.

Diplomatic Missions and International Presence

Kosovo maintains embassies in 29 countries, and also operates:

12 consulates general

Multiple diplomatic offices

Major embassies are located in:

United States, United Kingdom, Germany, France, Turkey, Switzerland, Belgium, Canada, Albania, Australia

Kosovo has been a member of the International Monetary Fund (IMF) and the World Bank since 2009.

Ongoing Obstacles to Full Recognition

Kosovo's full international recognition remains blocked due to:

1. Serbia's rejection of its sovereignty;
2. Russia's veto power in the UN Security Council;
3. Political lobbying against Kosovo's recognition in various international bodies.

Although many countries support Kosovo diplomatically and economically, the lack of consensus among UN permanent members has prevented its formal admission into the UN.

Conclusion on Kosovo

Kosovo has met nearly all criteria for statehood:

A functioning government;

Defined territory (albeit contested);

Active foreign policy;

Recognition by over 100 countries.

The ICJ's 2010 opinion reinforced the legality of its independence. Still, Russia's veto, and Serbia's opposition, make it difficult for Kosovo to achieve full UN membership.

Nonetheless, Kosovo has become increasingly integrated into global economic and diplomatic networks, proving that partial recognition can still enable meaningful international participation.

Conclusion

Taiwan, Palestine, and Kosovo each claim international legal subjectivity and seek recognition as sovereign states. However, their legal and political statuses differ significantly:

Taiwan

Strengths: Strong political and economic systems; highly developed democratic governance; independent judiciary and legislature; active in global trade and technology (especially microchips).

Challenges: Lack of formal diplomatic recognition from most countries due to China's pressure;

exclusion from the UN and many other international treaties.

Legal complexity: UN Resolution 2758 does not clearly define Taiwan's status, leaving it in a legal gray area. In my view, the UN should adopt a new resolution to clarify Taiwan's position. Otherwise, Taiwan's subjectivity will remain subject to China's political will.

Palestine

Strengths: Recognized by more than 140 countries; has observer state status at the UN; member of many international organizations such as UNESCO, ICC, OIC, and the Arab League; can sign treaties and attend diplomatic sessions.

Challenges: Lacks full sovereignty due to unresolved territorial disputes with Israel; internal political divisions (especially between the Palestinian Authority and Hamas); and the US-Israel alliance obstructing further international legitimacy.

Summary: Although widely recognized, Palestine's full statehood remains unrealized due to geopolitical opposition and the veto power of the United States in the Security Council.

Kosovo

Strengths: Recognized by 101 states; has a functioning constitution, judiciary, and foreign service; member of major international financial institutions like the IMF and World Bank; supported by the ICJ ruling that its independence did not violate international law.

Challenges: Not a UN member due to Russia's veto; Serbia's continued opposition complicates diplomatic efforts; some countries have withdrawn recognition, affecting momentum.

Summary: While Kosovo has established the elements of statehood and received international support, its full legal subjectivity remains blocked by major power politics.

Final Assessment

All three entities—Taiwan, Palestine, and Kosovo—fulfill the de facto criteria for statehood and invoke the right to self-determination, one of the 10 core principles of international law. However, the main obstacle to their full recognition is not legal, but political, rooted in the veto power of permanent members of the UN Security Council:

Taiwan: Blocked by China

Palestine: Blocked by the United States, aligned with Israel

Kosovo: Blocked by Russia, aligned with Serbia

In my opinion, the UN should take responsibility and reconsider the role of veto power in recognizing new states. Reforming the veto system could create more equitable outcomes in state recognition and reduce the stranglehold of powerful nations over emerging ones.

Otherwise, just like these three examples, other aspiring states will continue to face political roadblocks, even when they meet the legal and factual requirements of international law.

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