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Unrecognized *de-facto* states as a challenge to the universal application of human rights

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PhD (Doctor of Philosophy) in Human Rights, Society, and Multi-Level Governance

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Abstract

The prolonged existence of non-recognized states, consequent isolation, and human rights gaps present a major concern and subject matter of this research. The objective of the thesis is to investigate how international human rights and governance can be adjusted and reformed to answer human rights challenges posed by the protracted non-recognition policies. Self-proclaimed de-facto states in Cyprus and Georgia are selected as case studies, the qualitative examination of which demonstrates the overall gaps in the existing human rights system. The gaps in human rights accountability, independent monitoring and reporting, and the application of universal human rights instruments are significant concerns that are resulting from the lengthy isolation of these regions. The thesis examines patterns of international engagement in Abkhazia, South Ossetia, and northern Cyprus and its consequences from a human rights perspective. The research applies the transnational interpretation of human rights and multi-level governance as an analytical concept to develop alternative ways and solutions for the given problem. The critical analysis of the relevant literature and legal jurisprudence suggests a rethinking of state-centric attitudes in the international human rights system that will expand human rights duties over non-state actors while maintaining a balance between human rights protection and non-recognition policies.

From the methodological perspective, international human rights reports, case law, and policies of key international actors (UN and EU) were analysed within the theoretical frameworks of transnationalization and multi-level governance. The thesis will use the qualitative analysis of secondary material/literature. Besides, interviews of human rights defenders and experts working on conflict issues were conducted to investigate first-hand information from those directly involved in human rights protection in this context. This tried to fill the informational gaps created by the lack of access to the conflict regions and the deficiency of regular independent monitoring tools. As for the conclusion, the critical analysis suggested rethinking and modifying the state-centric human rights approach, which expands the human rights duties of other actors besides the states and organizes human rights governance within the MLG concept. Furthermore, the thesis finds that transnational interpretation of key human rights concepts gives more flexible space to fit the created extraordinary situation in the human rights system.

Keywords:
De-facto States; Isolation; Frozen Conflict; Non-recognition; Human Rights; Multi-Level Governance, Transnationalization; Engagement

To my son, Nikolas

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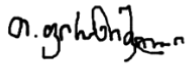
Special thanks go to my family members, who tirelessly supported and encouraged me during this three-year academic journey.

Declaration

I declare that the work in this thesis was carried out in accordance with the regulations of the University of Nicosia. It is a product of my original work unless otherwise mentioned through references, notes, or any other statements.

Signed: Date: 20 February 2022



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Abbreviation Index

CoE	Council of Europe
EU	European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EUMM	European Union Monitoring Mission
ICJ	International Court of Justice
ICRC	International Committee of Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
IHRL	International human rights law
IDP	Internally Displaced Persons
MLG	Multi-Level Governance
NGO	Non-Governmental Organization
OSCE	Organization for Security and Cooperation in Europe
RoC	Republic of Cyprus
TRNC	Turkish Republic of Northern Cyprus
UN	United Nations
UN SC	United Nations Security Council
UN SG	United Nations Secretary-General
UN GA	United Nations General Assembly
UNPKFC	The United Nations Peacekeeping Force in Cyprus
UNOMIG	United Nations Observer Mission in Georgia

Introduction

Research objectives and subject matter

Non-recognized de-facto states, their protracted existence, and human rights consequences are major concerns of this research. The limitations of the existing international human rights system compromise the universality of human rights in these entities. These limitations are primarily the result of state-centric attitudes and principles that create the fundamental basis of international human rights law and policy. It recognizes states as prominent actors of the whole system. On the other hand, statehood is a restrictive phenomenon in international law that requires various criteria and recognition from the international community. In that sense, state sovereignty has become a shield for states to preclude any recognition of de-facto entities and, therefore, any engagement that, according to their concerns, might amount to such recognition. The protracted nature of non-recognition policies has resulted in the isolation of de-facto states and gaps in human rights accountability, monitoring, and reporting. The de-facto states can be named grey zones where the application of universal human rights instruments and principles is compromised and where traditional human rights duty-bearers (states) cannot or do not operate effectively.

The research is dedicated to protracted conflicts in Europe that are often branded in literature as "frozen conflicts".[1] In particular, the present study focuses on the conflict situations in Georgia and Cyprus. The problems associated with these conflicts embrace various dimensions, including political, legal, social, and institutional, and they have been analysed from multiple viewpoints and angles in literature. The present research focuses on human rights gaps and drawbacks of existing international law and policy to face these gaps, which are primarily caused by protracted non-recognition policies and attitudes.

With the growth of international relations and cooperation, cross-border interaction between various actors, and globalization, different challenges have emerged for human rights law and governance. These problems include environmental protection, the proliferation of non-

[1] Tudoroiu Theodor, 'Unfreezing Failed Frozen Conflicts: A Post-Soviet Case Study', (2016) 24 Journal of Contemporary European Studies, 377-378; Fischer Sabine (ed.), 'Not Frozen! The Unresolved Conflicts over Transnistria, Abkhazia, South Ossetia and Nagorno-Karabakh in Light of the Crisis over Ukraine', (2016) SWP Research Paper, German Institute for International and Security Affairs, 86; *See also*: Morar Filon, 'The myth of frozen Conflicts, Transcending Illusive Dilemmas' (2010) 1 Journal of European Security and Defense Issues, 11;

state armed groups and hostilities among them and between the states, terrorism, transnational surveillance, and others that demand the development of the international human rights system. “Frozen conflicts” can be enlisted among such problems. An in-depth analysis of these situations from legal and political perspectives highlights a lack of theoretical and conceptual frameworks for these problems and the absence of practical solutions. Broadly, the question that the current research project answers is as follows: *how can international law and the governance of human rights be adjusted and reformed to answer the human rights challenges* posed by the prolonged existence of non-recognized states? To this end, the conceptual and practical analysis of human rights governance suggests how international and local governing authorities can tackle the problem of non-recognition and how the existing legal approaches can be interpreted to overcome the gap in the protection and isolation of the population in de-facto states.

In particular, the doctoral thesis is organized around the following two sub-objectives. First, the critical examination of political approaches and attitudes towards the de-facto states sheds light on how the protection of human rights is affected by these attitudes and what challenges are faced by international and local actors in that regard. The dissertation evaluates the policies of two prominent international actors, the UN and EU, and analyses their influence on local actors. Here, the thesis scrutinizes non-recognition policies and the problems posed by their lingering nature. Second, the study of legal and theoretical perspectives demonstrates how international human rights law deals with human rights protection in the concerned regions and can be adjusted to answer the problem more comprehensively. The thesis analyses various interpretations of human rights norms, concepts, and case law. It also examines the possibility of expanding the list of duty-bearers beyond the states by rethinking state-centric attitudes towards the human rights system.

Added value

This research contributes to the progressive development of the understanding of human rights from theoretical and practical viewpoints. From a theoretical perspective, examining international human rights norms, case law, and their various interpretations demonstrates key features and challenges of the existing legal system. The thesis contributes to the rethinking of state-centric and sovereignty-based approaches that represent a traditional basis of human rights legal theory and practice. The critical conceptual survey of transnational/extraterritorial interpretation of human rights concepts and the application of

the theoretical framework of multi-level governance to the given context serves this theoretical objective.

As for the practical perspective, the research discloses the gaps in and shortcomings of the existing human rights governing system that treats secessionist regimes as non-existing entities. While such non-recognition lasts for decades, these political approaches do not change and adjust to the given realities. The thesis suggests critical assessment of the jurisprudence of European Court of Human Rights, that is applied as a major human rights instrument on international level in the selected cases. As such drawbacks will be displaced, the thesis suggests alternative strategies and frameworks using which decision-makers can navigate and adapt according to their necessities and problems. Multi-level governance as a conceptual framework was applied so that alternative human rights governance construction could be framed specifically for these situations. Such analysis can facilitate the effective implementation of basic human rights principles even in the case of protracted conflict and non-recognition.

The legal literature has experienced vast growth in terms of recognizing new challenges posed to the human rights system by developing new relations and interactions between various actors beyond the states. The scholars acknowledge that a shift from "state-centredness" is vital for some areas of international human rights law (IHRL)[2] to survive its functionality and adapt to the new realities. International human rights jurisprudence has also developed in applying human rights beyond the state's national borders and imposing an obligation on states to protect conventional rights extraterritorially.[3] However, analysis

[2] Vandenhole Wouter and Genugten Willem, 'Introduction: An Emerging Multi-Duty-Bearer Human Rights Regime?', in W. Vandenhole (ed.), *Challenging Territoriality in Human Rights Law: Building Blocks for a Plural and Diverse Duty-Bearer Regime* (Routledge 2015 1; McConnell Lee James, *Extracting Accountability from Non-State Actors in International Law* (1st ed, Routledge 2018); Clapman Andrew, 'Human Rights Obligations of Non-state actors in conflict situations' (2006) 88 International Review of the Red Cross 863, 491-523; Besson Samantha, 'The Extraterritoriality of the European Convention on Human Rights: Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts to' (2012) 25 Leiden Journal of International Law 4; Besson Samantha, 'Sovereignty, International Law and Democracy' (2011) 22 EJIL 2; Mishra Anumeha, 'State-Centric Approach to Human Rights: Exploring Human Obligations' (2019) Rev Quebecoise de Droit Int'l 49; Reidel Laura, 'Beyond State Centric perspective' (2015) 21 Global Governance, 317-336; Lafont Christina, 'Accountability and global governance: challenging the state-centric conception of human rights' (2010) 3 Ethics & Global Politics 3; Besson Samantha, The Bearers of Human Rights' Duties and Responsibilities for Human Rights: A Quiet (R)evulotion? (2015) 32 Social Philosophy and Science, 1

[3] *Issa v. Turkey* App no 31821/96 (ECHR, 16 November 2004); *Catan v Moldova and Russia* App nos 43370/04, 8252/05 and 18454/06 (ECHR, 19 October 2012); *Chiragov v Armenia* App no 13216/05 (ECHR, 16 June 2015) para 186. *Al-Skeini and Others v. The United Kingdom* App no 55721/07 (ECHR, 7 July 2011); *Georgia vs. Russia (II)* App no 38263/08 (ECHR 21 January, 2021) para 109; *Loizidou v. Turkey* App no 15318/89 (ECHR, 23 March 1995; *Cyprus v. Turkey* App no 25781/94 (ECHR, 10 May 2001) para 76*, Ilaşcu and Others v Moldova and*

of the given literature and its application to the concerned contexts demonstrate that both literature and human rights case law lack answers to policy and legal challenges posed by the protracted non-recognition of de-facto states. The thesis suggests a multi-dimensional analysis of policy and law within the conceptual frameworks of transnationalism and multi-level governance can present comprehensive solutions. Such an approach is new in literature, as it unites legal and political considerations, structures them in conceptual frames, and suggests alternatives from the practical level to relevant stakeholders. Therefore, the thesis has both theoretical and practical values and invites other scholars to expand research in such dimensions to find comprehensive solutions for the concerned problem.

Methodology

A comparative qualitative analysis of two case studies of Georgia and Cyprus was conducted to fulfil the aforementioned objectives. These two conflict situations were selected due the similarities and differences, which enabled us to draw conclusions regarding the research question.

In particular, the conflicts in Georgia and Cyprus that have lasted for decades emerged from similar roots and have experienced similar developments with specific differences that are primarily relevant to this research. Both case studies face the problem of protracted non-recognition of a self-proclaimed entity within their territorial borders. Moreover, one of these de-facto states has attained international recognition, and the conflicts have been ongoing for several decades.

Key differences between these case studies were decisive factors for their selection due to their relevance to investigating the research question. Different intensities of involvement of international actors, like the EU and UN in the Cyprus and Georgian conflicts, determine these differences and are an excellent comparative feature to demonstrate specific findings. The analysis below indicates that the engagement of international actors in these conflicts and with de-facto authorities has been more intense in the case of Cyprus than in Georgian situations. The study reveals that such engagement reduced isolation and separation between the conflict parties in Cyprus and served conflict transformation objectives. The engagement of international actors and their role on a local level is theoretically framed within the

Russia App no 48787/99 (ECHR, 8 July 2004); *Güzelyurtlu v Cyprus and Turkey* App no 36925/07 (ECHR, 4 April 2017).

concept of multi-level governance, and its consequences are analysed from human rights prism. The findings are linked to the human rights implications in all three conflict situations that enable us to conclude how multi-level governance of human rights can positively affect human rights protection in the context of non-recognition.

This analysis is more problem-centred and is based on the functional logic of human rights mechanisms that goes beyond narrow normative limitations of human rights law that often has territorial and state-centric approaches. The functional analysis of human rights law enables us to reflect on protection gaps that arise in the given context and overcome the existing limitations and interpretations. To this end, international legal concepts and relevant case law will be given a transnational interpretation to cover the gaps in human rights responsibility. Further, a conceptual rethinking of the state-centred approach of international law will try to expand human rights duties over non-state actors while maintaining a balance between human rights protection and non-recognition responsibilities/policies.

Noteworthy, the analysis of the human rights situation relies on various international reports prepared by the UN and EU human rights institutions and the reports of other international and local NGOs. Due to the limitation of information and a lack of access to the de-facto states, various interviews were conducted with human rights defenders and experts who have multi-faceted and broad experience working on conflict-related issues.[4] The information from these interviews facilitated the validation of the secondary sources and examined the subject-oriented perspectives of the people directly involved in human rights protection in conflict zones.

Research design

The research contains six chapters organized to achieve the two aforementioned sub-objectives. The first chapter analyses the beginning and development of conflicts in Georgia and Cyprus and highlights relevant significant events for drawing a clear picture of similarities and differences. The second chapter suggests a critical analysis of the involvement of prominent international actors, the EU and UN, who were involved in conflict resolution and management processes since the beginning of these conflicts within their mandates. The analysis of international engagement creates a clear picture of how non-

[4] See the list of the interviewed people and respective questionaries in the Annex.

recognition-related attitudes were developed and managed by the international actors during their interaction with de-facto states. The following subchapter examines the validity of "creeping recognition" fears from the international legal perspective.

The third chapter connects the findings of the previous chapter with the human rights situation on the ground to analyse the real implications of engagement in human rights protection in a non-recognition context. This analysis demonstrates the fundamental practical gaps in protection caused by non-recognition and less-engagement attitudes. Simultaneously, the fourth chapter shows a theoretical and legalistic side of the problem. Here, the problem will be analysed from international human rights law perspective, showing how the jurisprudence has developed to face the challenges posed by the concerned context, what interpretations are suggested by the human rights courts (mainly the European Court of Human Rights), and what gaps remain for a comprehensive application of human rights in the de-facto states. The fifth chapter aims to create a theoretical and conceptual framework for problem resolution. To this end, the transnational interpretation of human rights will be examined to fill the gaps created by the existing practice, and it will be applied to the non-recognition context. Besides, multi-level governance as another conceptual tool will be used to analyse alternative possibilities of human rights governance and suggest solutions for the research question. The thesis will be concluded with final remarks and ideas that highlight the importance of international engagement and alternative human rights governance that will balance non-recognition needs and human rights protection in these areas. The given analysis also demonstrates that a shift from a state-centric approach is needed in international law and political attitudes while such non-recognized entities persist, and their incredible endurance requires transformative legal and policy perspectives.

Chapter 1. Case Study of Cyprus and Georgian "frozen conflicts" [5]

To better comprehend the concerned problem, a brief analytical overview of the conflict situations is presented below. This review suggests an analysis of significant facts and developments in all case studies that are relevant and important to analyse the research question. The primary focus is given to the role of international actors in the conflict transformation process and their cooperation with local actors, including non-state ones. As mentioned above, the research is developed around three *de-facto* states in Georgia and Cyprus and case studies, and its findings will be somewhat generalized for similar problems.

Georgia is a rare example of a state having protracted conflicts with its two conflict zones and secessionist regimes outside of its control. They will be addressed separately due to their relatively different developments and *status quo*.

1.1. Abkhazia

Abkhazia is in a peculiar international situation, both stable and internationally isolated. Russia's recognition of Abkhazia (and South Ossetia) in 2008 following its war with Georgia gave it a bigger sense of security from Georgia as well as resources to continue its "nation-building process", but it has also led to a stronger dependence on Russia and reduced international engagement.[6]

The recent picture of the separated *de-facto* Abkhazian regime has been portrayed after the destruction of the USSR. Before that, according to the Soviet multi-layer territorial hierarchy, Abkhazia was considered an Autonomous Region of Georgia.[7] The co-existence

[5] Note: The conflict description below relies on author's previous research work: "Concept of 'Frozen Conflict' and in search of just peace" under Advanced LLM program in Leiden University, Netherlands. (Supervisor Prof. Dr. Carsten Stahn).

[6] De Vaal Thomas, *Uncertain Grounds, Engaging with Europe's De Facto States and Breakaway Territories*, (Carnegie Europe 2018) 2.

[7] Bebler Anton, *"Frozen Conflicts" in Europe* (Verlag Barbara Budrich 2015) 75; Coppieters Bruno, et al, *Europeanization and Conflict resolution: Case studies from the European Periphery* (Academia Press 2004) 193; Francis Celine, *Conflict Resolution and Status: The case of Georgia and Abkhazia,* (VUBPRES Brussels University Press 2011) 64.

of Abkhazians and Georgians was not peaceful and friendly even during the Soviet Union.[8] Under Stalin's regime, Georgian leadership pursued a discriminatory policy that oppressed the Abkhazian language and culture.[9] Abkhaz administration several times addressed Moscow to reconsider their status, which was continuously rejected. Since 1991, as Georgia restored independence and sovereignty, the ethnopolitical conflict escalated. The 14 months of active military confrontation between 1992-1993 ceased after adopting the Russian-mediated ceasefire agreement, and Russian Peacekeeping Forces entered Abkhazia.[10] The armed conflict had disastrous results on both sides: according to several sources, around 4000 Georgians were killed, and 1000 disappeared, more than 3000 Abkhazians lost their lives,[11] and more than 200,000 civilians, mostly ethnic Georgians, were forced to flee from Abkhazia and seek refuge in and outside of Georgia.[12] The trauma caused by the war consequences still shadows the current political and social context of prolonged conflict.

Since that period, Georgia lost its sovereign control over the Abkhaz region. At the same time, Abkhazia failed to reach its ultimate goal - a desired *de jure* status, as most states do not recognize its self-proclaimed sovereignty.[13] Regardless of the unilaterally declared "independence", dependence on the Russian Federation from economic, political, military, and financial perspectives is continuing and is being strengthened periodically.[14]

The peace-building process was ongoing but not always at the same pace. At the outset, the "Geneva Process" started,[15] under the UN aegis, where the Memorandum of Understanding between the parties was adopted, and parties agreed on the non-use of force obligation. UN also deployed its Observer Mission in Georgia (UNOMIG) to verify the fulfilment of the

[8] Coppieters, 194; Francis, 67-68.
[9] Bebler, 76;
[10] International Crisis Group (ICG), *Abkhazia: Way Forward* (Europe Report N°179, 18 January 2007)
[11] Bebler, 87.
[12] Human Rights Watch, *Georgia Abkhazia: Violations of the Laws of War and Russia's Role in the Conflict*, (Vol. 7, No.7, Arms Project, March 1995) 5; ICRC, *Country report Georgia/Abkhazia*, (Greenberg Research, 1999) 2.
[13] Francis, 281.
[14] Amnesty international, *Georgia: Behind Barbed Wire: Human Rights Toll of "Borderization" in Georgia* (Amnesty International, July 3 2019) https://www.amnesty.org/en/documents/eur56/0581/2019/en/ accessed 20 March, 2020. 16-17.
[15] ICG, 'Abkhazia: Ways Forward', 3.

ceasefire agreement.[16] UNOMIG mandate was terminated in June 2009 (after the August war of 2008) since Russia vetoed the Security Council Resolution. [17]

Various international actors tried to play the role of peace-maker in this process. Among them, German Diplomat Dieter Boden can be remarked, who was involved in the negotiation process as a Special Representative of the UN Secretary-General. Boden's Plan declared Georgia's territorial integrity and sovereignty as an untouchable principle, while Abkhazia was named as a "sovereign entity based on the rule of law, within the State of Georgia."[18] Boden suggested solving the conflict based on this principle and defined specific steps to move forward. UN Security Council endorsed the conflict resolution Plan in 2002.[19] Still, it was rejected by the Abkhaz side, as they strictly contested to go back "within the state of Georgia" and compromise their most significant achievement- independence.[20] So, Boden's Plan failed, and conflict remained in a deadlock.

New political leadership that came into the Georgian government in 2004 (after the Rose Revolution) made several suggestions to grant "unlimited autonomous status" and offered to give federal status and solid security guarantees for Abkhazia's peaceful development. However, such initiatives were rejected by the separatist regime. [21] Another plan to unfreeze the conflict was offered by German Foreign Minister Frank-Walter Steinmeier. However, his plan failed to achieve any ice-breaking results. [22] The peace-building process was

[16] UN SC/Res 858 (24 August 1993); See Francis, 132; UN SC/Res 937 (21 July, 1994); Wohlgemuth Alex, 'Successes and Failures of International Observer Missions in Georgia' in P. Fluri and E. Cole (eds) *From Revolution to Reform: Georgia's struggle with democratic institution Building and Security Sector Reform*, (2005), 137.

[17] UN SC, 6143rd Meeting, *Security Council Fails to Adopt Resolution Extending Mandate of Georgia Mission for 2 Weeks*, (15 JUNE 2009) http://www.un.org/press/en/2009/sc9681.doc.htm accessed 8 July, 2020.

[18] Coppieters, 204; Francis, 149.

[19] UN SC/Res 1393 (31 January 2002). See also: ICG, *Georgia: Avoiding war in South Ossetia* (Europe Report No. 159, 26 November 2004) 27.

[20] Bebler, 89; Coppieters, 205-206.

[21] Bebler, 97. Francis, 152; Glasser Susan and Bake Peter, 'Leader Pledges To Unite Georgia', *Washington post* (May 7, 2004) https://www.washingtonpost.com/archive/politics/2004/05/07/leader-pledges-to-unite-georgia/c4914137-3f2e-403b-8564-bab375d6e805/ accessed 4 July, 2018;. Peuch Jean-Christophe, 'Georgia: Having Secured Adjara, Tbilisi Turns To Abkhazia With An Eye On Russia' (May 19, 2004) https://www.rferl.org/a/1052848.html accessed 4 July, 2018

[22] Tagliavini Heidi (ed), *Independent International Fact-Finding Mission on the Conflict in Georgia*, (vol. 1, The Council of the European Union 2009) 59; See also, 'Germany Proposes Peace Plan for Abkhazia', *Spiegel* (July 07 2008) http://www.spiegel.de/international/europe/calming-the-caucasus-germany-proposes-peace-plan-for-abkhazia-a-564246.html accessed at 20.06.2017); 'Abkhaz Separatists Reject German Peace Plan', *DPA news agency,* (18 July 2008) http://www.dw.com/en/abkhaz-separatists-reject-german-peace-plan/a-3493198 accessed 20 June, 2017;

essentially terminated at the outbreak of war in 2008 in South Ossetia when Abkhazians chose the appropriate timing to gain complete control over the whole territory of Abkhazia (over Kodori valley, which was controlled by the Georgian government before 2008).[23] In the same year, Russia recognized Abkhazia as an independent state,[24] which was followed by a handful of recognitions from Nicaragua[25], Nauru[26] , and Venezuela[27]. Since then, Russia has strengthened its ties with a newly recognized "state." [28] Within the bilateral agreement, signed in 2014, Russia emerges as a significant supporter of Abkhazians in economic and financial development.[29] Abkhazians continue to pursue their national project by maintaining distance from the Georgian government. Still, their connections and dependence on Russia are permanently increasing, as Russia is getting more and more involved in political and economic processes in Abkhazia.[30]

1.2. South Ossetia/Tskhinvali Region

The conflict in South Ossetia/Tskhinvali Region[31] is as profoundly rooted in ethnic connotations as Abkhazia. The region's name is also frequently debated and questioned; many claim that "South Ossetia" is a separatist name and it should be "Samachablo", which is a historical name of the area when it was within united Georgia. De-facto regime objects

[23] Tagliavini Heidi, Vol 2, 290.

[24] McElroy Damien, 'Russia recognizes independence of Georgian enclaves South Ossetia and Abkhazia', *Telegraph*, (26 August 2008) http://www.telegraph.co.uk/news/worldnews/europe/russia/2625270/Russia-recognises-independence-of-Georgian-enclaves-South-Ossetia-and-Abkhazia.html accessed 21 June, 2018; Levy Clifford, 'Russia Backs Independence of Georgian Enclaves' *NY Times* (26 August 2008) http://www.nytimes.com/2008/08/27/world/europe/27russia.html accessed 21 June, 2017;

[25]Bremer Catherine, 'Nicaragua recognizes South Ossetia, Abkhazia' *Reuters* (3 September, 2008) http://uk.reuters.com/article/us-georgia-ossetia-nicaragua-idUKN0330438620080903 accessed 21 June, 2018);

[26] 'Nauru recognizes South Ossetia and Abkhazia' *Telegraph,* (15 December 2009) http://www.telegraph.co.uk/news/worldnews/australiaandthepacific/nauru/6813915/Nauru-recognises-South-Ossetia-and-Abkhazia.html accessed 21 June, 2018;

[27] Suggett James, 'Venezuela Recognizes Independence of South Ossetia and Abkhazia' *Venezuela Analysis* (11 September 2009) https://venezuelanalysis.com/news/4787 accessed 21 June, 2018.

[28] Morrison, 'Putin Signs Law on Ratification of Russian-Abkhazian Military Agreement', *Georgia Today, (*26 November 2016) http://georgiatoday.ge/news/5214/Putin-Signs-Law-on-Ratification-of-Russian-Abkhazian-Military-Agreement accessed 26 June, 2018.

[29] Jamestown Foundation, 'Russian-Abkhaz Agreement: What Is Moscow's Plan for Georgia?' (2014) 11 Eurasia Daily Monitor 214, https://www.refworld.org/docid/54aa74ae4.html, accessed 9 February 2022.

[30] De Vaal Thomas, 'Abkhazia Today' (2019) Carnegie Europe, 4-7, https://carnegieeurope.eu/2019/07/04/abkhazia-today-pub-80789, accessed 8 February, 2022.

[31] *Note:* The thesis will use the term "South Ossetia", as it is the most commonly used term in international literature and legal documents/agreements, without rendering any conclusion whether this is a correct name or not.

to such a title [32] and, even more recently, the 2017 referendum was held when most local population chose to be named "Alania," another name of the territory, which is not recognized either by Georgia or the international community.[33] Most international legal and political documents and the documents/agreements signed by Georgia, Russia, and South Ossetia representatives refer to the term "South Ossetia."[34] Therefore, the thesis will use this term for consistency and uniformity with international documents.

This conflict in South Ossetia emerged based on the tense ethnic confrontation between Georgians and Ossetians, like in Abkhazia. For most ethnic Georgians, Ossetians were considered "strangers on the Georgian land" who migrated from the North Caucasus.[35] South Ossetia is located along Georgia's northern frontier in the Caucasus Mountains, bordering North Ossetia, a republic of the Russian Federation. Before the August war, its population consisted of around 70% ethnic Ossetians and 30% ethnic Georgians.[36]

Ethnic tensions between Georgians and Ossetians might have started in earlier periods, but the most recent antagonism began when the first Georgian independent republic was announced in 1918, and South Ossetia claimed to be separate from this republic. The resistance continued during the USSR. Ossetians, as Abkhazians, asked to be granted the status of Soviet Ossetian Autonomous Region without being subordinated to the Soviet Republic of Georgia. Later in 1989, the ethnic-ideological rivalry transformed into an active political and military conflict. South Ossetian Autonomous Region decided to upgrade its status by claiming a "Republic," which frustrated Tbilisi. Armed clashes commenced in 1991-1992, which finally ceased after signing the Sochi Agreement.[37] The parties agreed on

[32] ICG, *Georgia's South Ossetia Conflict: Make Haste Slowly* (Europe Report N°183, 7 June 2007) 2. Danver Steven, *Native Peoples of the World: Encyclopedia of Groups, Cultures and contemporary issues* (1st ed, Routledge 2015) 355; See also ICG, *Avoiding War in South Ossetia* (n 19) 2.

[33] 'U.S. Condemns South Ossetia Name-Change Referendum' *Radio Liberty* (15 February 2017) https://www.rferl.org/a/u-s-condemn-south-ossetia-name-change-referendum/28310987.html accessed 29 June, 2018; 'So-called 'referendum' to change name of South Ossetia - illegal and irrelevant' *Romanian National News Agency* (9 April 2017) https://www.agerpres.ro/english/2017/04/09/mae-so-called-referendum-to-change-name-of-south-ossetia-illegal-and-irrelevant-15-42-26 accessed 29 June, 2018;

[34] See 6-point agreement between Georgia and Russia on cession of armed hostilities in South Ossetia, 2008 See also European Parliament Resolution on the situation in Georgia, (2008) B6-0412/2008 https://www.europarl.europa.eu/doceo/document/B-6-2008-0412_EN.html accessed 8 February, 2022.

[35] Bebler, 111; ICG, *Avoiding War in South Ossetia*, 2.

[36] Tagliavini Heidi , Vol 2, 65.

[37] Sochi Agreement on principles of settlement of the Georgian-Ossetian conflict 1992 (unofficial English translation

the obligation of non-use of force and launched Joint Peacekeeping Force (JPKF). The trilateral peacekeeping force that united Georgian, Ossetian, and Russian parties were assigned to monitor the fulfilment of the ceasefire agreement and make decisive measures in case of its violation. Since the military situation was stable and calm, political negotiations and attempts to peacefully resolve the conflict were more active in that period.[38]

As with Abkhazia, the new government of Georgia actively launched initiatives to restore territorial integrity and return control over its lost territories, including South Ossetia. Tbilisi requested Russia to withdraw its peacekeeping forces from the territory of Georgia, accusing them of ethnic bias and commitment crimes.[39] The internal political and military tensions (numerous violations of the ceasefire agreement)[40] were further intensified with international political hostility between Georgia and Russia caused by Georgia's interests and proactive measures to become a member of the EU and NATO. [41]Consequently, active military confrontation commenced in South Ossetia with full-scale Russian military intervention that lasted for five days and finished with the EU and US-mediated, 6-point ceasefire agreement.[42]

Russia recognized South Ossetia's independence along with Abkhazia. Regardless of the recognition of independence, the Russian Federation is a principal guarantor of its security and economic development. South Ossetia's dependence on Russia's financial, economic, political, and military support is vital and decisive for South Ossetia to be "independent" (at least beyond Georgia's control).[43] While military actions are terminated, the conflict is ongoing, and it is more than a frozen conflict situation. Due to the so-called process of "creeping occupation," the local Georgian population continuously loses their lands nearby the conflict zone as razor wires and other installations try to enlarge the territory of South

https://peacemaker.un.org/sites/peacemaker.un.org/files/GE%20RU_920624_AgreemenOnPrinciplesOfSettlementGeorgianOssetianConflict.pdf accessed 8 February, 2022.).

[38] ICG, 'Avoiding War', 4.

[39] Ibid, 23; See ICG, *Make Haste Slowly*,17.

[40] Ibid, 17.

[41] ICG, *Georgia and Russia: Clashing over Abkhazia* (Europe Report N°193, 5 June 2008) 3; ICG, *Russia vs Georgia: The Fallout* (Europe Report N°195, 22 August 2008.

[42] Tagliavini Heidi, Vol 2, 439.

[43] Tuathail Gerard and Loughlin John, 'Inside South Ossetia: A Survey of Attitudes in a De Facto State', (2011) 27:1 Post-Soviet Affairs, 43-45. De Vaal Thomas, 'South Ossetia Today' (2019) Carnegie Europe, 4-7, https://carnegieeurope.eu/2019/06/11/south-ossetia-today-pub-80788, accessed 8 February, 2022.

Ossetia.[44] The "borderization" process severely impacts the human rights situation on a local level, and it deepens isolation and separation from Georgia-controlled territory.[45] The IDPs are forced to remain without remedy and hope to return.[46] The August war also gave birth to the new format of negotiation/mediation between the conflict parties, named Geneva International Discussions - "Geneva Talks," covering the conflict in Abkhazia and involving various third-party actors like the US, UN, EU, and OSCE.[47]

1.3. Northern Cyprus

The conflict in northern Cyprus is one of the oldest unresolved ethnopolitical and secessionist conflicts that has been pending since the 19th century.[48] The roots of today's conflict can be noticed in times of British colonial domination when Greek Cypriots started an anti-colonial movement. Cyprus was under British Empire domination since 1878 but after the World War I it was announced as a Crown Colony, from 1925 until 1960. Anti-colonial movement which implied unification with Greece fluctuated since the early years of British rule and there were several waves of requests by Greek Cypriots towards UK to allow *enosis*,which was persisntely refused by British empire.[49] During 1950s until 1977 *enosis* movement acquired more organizational complexity under the leadership of Archbishop Makarios III. A plebiscite arranged by the Archbishop of Cyprus, Makarios III, in 1950, revealed that 92% of Greek Cypriots favoured *enosis*, which meant unification with Greece.[50] In response, Greece started diplomatic pressure towards Britain, but without success.

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[44] Higgins Andrew, 'In Russia's Frozen Zone, a Creeping Border With Georgia' *NY Times* (23 October 2016) https://www.nytimes.com/2016/10/24/world/europe/in-russias-frozen-zone-a-creeping-border-with-georgia.html?_r=0 accessed 30 June, 2018; Coffey Luke, 'The creeping Russian border in Georgia' *Aljazeera,* (27 July 2015) http://www.aljazeera.com/indepth/opinion/2015/07/creeping-russian-border-georgia-south-ossetia-abkhazia-150722111452829.html accessed 30 June, 2018.

[45] See Amnesty international, *Georgia: Behind Barbed Wire* (2019);

[46] Internal Displacement Monitoring Center, *Georgia: At least 128,000 people internally displaced by renewed conflict*, (21 August 2008), 3-4. UNCHR, *World at war* (Global Trends, 2014), 50;

[47] Mikhelidze Nona, 'The Geneva Talks over Georgia's Territorial Conflicts', (2010) 10 Istituto Affari Internazionali 2-7.

[48] Heraclides Alexis, 'The Cyprus Gordian Knot: An Intractable Ethnic Conflict', (2011) 17 Nationalism and Ethnic Politics, 118.

[49] Yiangou Anastasia , 'Decolonization in the Eastern Mediterranean: Britain and the Cyprus Question, 1945-1960', (2020) Cahiers du Centre d'Études Chypriotes 50, 45-63.

[50] Walker Anita, 'Enosis in Cyprus', (1984) 38.3 Middle East Journal, 475. Stavrou Michael, *Resolving the Cyprus Conflict: Negotiating History* (Palgrave Macmillan, New York, 2009), 9-10.

Enthusiasm by Greek population of the island for political union with Greece (enosis) culminated in 1955, when Greek Cypriots established the army EOKA (Ethniki Organosis Kyprion Agoniston) – National Organization of Cypriot Fighters.[51] This was a military group who aimed at self-determination of Cyprtion, which implied union with Greece and was strongly opposed by UK and Turkish Cypriots (18% of total population of the island). Such developments resulted in a backlash from the Turkish Cypriots, with the support of Britain and the establishment of an antagonist movement with the name of *Taksim* – or partition of the island into Greek and Turkish parts.[52] The roots of the rivalry were neutralized for a short period as a result of the Zurich (5-11 February 1959) – London (17-19 February 1959) agreements. In Zurich Greece and Turkey reached with the knowledge on two sides in Cyprus agreed on a plan for a settlement, which was later endorsed at the conference in London attended by the representatives of Greece, Turkey, Britain and the two Cypriot communities.[53] Based on the above agreements, constitution of independent Cyprus was drafted and final agreement was signed in Nicosia, in August, 1960. It was also agreed in London, that Britain maintained its sovereignty over two military bases in Dhekelia and Akrotiri.[54]

The 1960 Treaty of Guarantee was adopted in Nicosia between the Republic of Cyprus, Great Britain, Greece, and Turkey, recognizing the independence, territorial integrity, and security of RoC. This Treaty banned any initiation that would result in the island's partition or its union with other states. In other words, any initiation like *Enosis* or *Taksim* was prohibited. [55] Greece, the UK, and Turkey, as Guaranteeing Powers, recognized and were obliged to guarantee the independence, territorial integrity, and security of RoC. In the case of a violation of the treaty provisions, the UK, Turkey, and Greece undertook to "consult together with respect to the representations or measures necessary to ensure observance of those provisions" and to take actions with the sole aim to reestablish the situation created by the present Treaty.[56]

[51] *Encyclopædia Britannica*: EOKA - https://www.britannica.com/topic/EOKA accessed 17 February, 2022
[52] Coppieters , 66.
[53] http://www.kypros.org/Cyprus_Problem/p_zurich.html
[54] London-Zurich Treaty 1959; See Heraclides, 120.
[55] Treaty of Guarantee, 1960. Article 1, https://peacemaker.un.org/sites/peacemaker.un.org/files/CY%20GR%20TR_600816_Treaty%20of%20Guarantee.pdf
[56] ibid, Article IV.

The 1960 Constitution enshrined the equality between these communities, granting the Turkish and Greek languages the status of official language and conferring executive power to the President and Vice-President who are members of the Greek and Turkish communities. Their respective communities elected them to hold office for five years. To ensure executive power, the President and the Vice-President of the Republic should have a Council of Ministers composed of seven Greek Ministers and three Turkish Ministers. It was stipulated that one of the three key ministers, Defence, Finance, or Foreign Affairs, should be from the Turkish Cypriot community. As for the house of representatives, 70% shall be elected by the Greek Community and 30% by the Turkish. Further, communal chambers were established, which would have exclusive legislative power concerning specific issues, such as religious, educational, cultural, and teaching matters, imposition of personal taxes and fees to provide for individual needs, etc. Public service and army compositions were also separated between these two communities.

Many Greek Cypriots were still not satisfied with the 1960 Constitution since the minority Turkish population (18% of the population) had equal rights along with the majority of Greeks.[57] The Greeks initiated constitutional amendments that planned to change essential elements of the bi-communal Republic and granted Turkish Cypriots the mere status of minority (noteworthly, the proposal was not implemented). Naturally, such an initiative was rejected by the Turkish Cypriot side. Greece expressed its concerns as the breach of an internationally negotiated agreement, the Treaty of Guarantee, was unacceptable. On 19th April 1963, Foreign Minister Averoff wrote to the Greek Cypriot leader Archbishop Makarios `It is not permissible for Greece in any circumstances to accept the creation of a precedent by which one of the contracting parties can unilaterally abrogate or ignore provisions that are irksome to it in international acts which this same party has undertaken to respect.'[58] The violence commenced in 1963 between two communities. The constitutional rule in Cyprus collapsed in the wake of inter-communal strife.[59] On 25th December 1963, Turkish contingent on the island intervened militarily to support the Turkish Cypriot

[57] Coppieters, 68.
[58] Michael Stephen, 'The European court of human rights and Cyprus' (1997) 270 Contemporary Review 1574 https://www.thefreelibrary.com/The+European+court+of+human+rights+and+Cyprus.-a019420274 accessed 17 February 2022.
[59] UN Security Council Reports Chronology of Events, Cyprus, https://www.securitycouncilreport.org/chronology/cyprus.php accessed 17 February, 2022

irregulars against the army of the Republic of Cypriots that was joined by Greek Cypriot irregulars.

The tension continued with Greek military coups in 1974[60] and the full-scale military involvement of Turkey in response to inter-communal violence, as it invoked its rights under the Treaty of Guarantee.[61] Consequently, the island was divided into one self-proclaimed *de-facto* entity of the Turkish Republic of Northern Cyprus (TRNC), recognized only by Turkey and RoC and officially recognized by the rest of the world. Approximately 140-160.000 Greek Cypriots were forcefully replaced from North Cyprus to South and around 60.000 Turkish Cypriots from South to North. In this way, both areas were ethnically cleansed.[62] Furthermore, the Greek Cypriots' property was nationalized and distributed to Turkish Cypriots. Because of this, compensation is currently the most critical aspect of negotiation between the conflict parties.[63] On the other hand, Turkish Cypriots in the southern part of the island were oppressed, discriminated against, and deported; those people who left reported living in ghetto-like residences as third-class citizens while dealing with poverty, unemployment, and racism.[64]

These events caused the division of two communities and froze the conflict with two separate economic, social, and political systems being established. The communities that once lived together now lack social-cultural links, nurturing their division.[65] The economic disparity further fosters this separation, as isolated and non-recognized TRNC faces economic stagnation and social difficulties.[66] It should be noted that the conflict was supported by the rivalry between related states, Turkey and Greece.

The conflict remained unresolved as either party rejected various conflict resolution initiatives and alternatives. Different international actors and organizations were involved in

[60] Bebler, 122.
[61] Ibid;
[62] Bryant Rebecca, 'Life Stories: Turkish Cypriot Community, Displacement in Cyprus Consequences of Civil and Military Strife', (2012) 2 PRIO Cyprus Centre, 6-10; Coppieters, 70.
[63] See Coppieters, at 70.
[64] Stephen Michael, 'The European court of human rights and Cyprus' (1997) Contemporary Review, 70; See Also: Özersay Kudret and Gürel Ayla, 'The Cyprus problem at the European Court of Human Rights' in Tocci Nathalie and Diez Thomas, eds *Cyprus: A Conflict at the crossroads*, Manchester University Press. 2009, 273-291
[65] Ibid, 71.
[66] Ibid.

this process from the beginning of the conflict emergence. In 1975, the UN offered the creation of a bi-communal and bi-zonal federation,[67] which triggered a series of negotiations, the so-called Vienna Talks, which entered into a stalemate because the parties could not agree on critical issues related to sovereignty, political structures, territory, and security.[68] In 1983, TRNC declared independence, which was considered invalid by the UN Security Council.[69] The Vienna talks resumed in the next year when UN Secretary-General Javier Perez de Cuellar made several proposals to create federations with two independent provinces and determine their constitutional powers.[70] The proposals were rejected by the Greeks but accepted by the Turkish side.[71]

The comprehensive settlement[72] was offered later by another Secretary-General, Kofi Annan, who, in 2002 issued the "Annan Plan" on Cyprus conflict resolution. He perceived Cyprus' access to the EU as a tool for resolution. However, this plan reentered deadlock. While EU accession was expected to be an instrument of the solution, it apparently failed. [73] Once RoC joined the EU in 2004 without its northern region, the conflict resolution avenues were further mitigated.

Later, Turkish and Greek leaders revealed genuine enthusiasm for resolving the conflict. Nicos Anastasiades and Mustafa Akıncı started active negotiations in Geneva with other international mediators to make territorial arrangements for the two-state federation.[74] However, on 7th July 2017, UN Secretary-General announced with regret that the parties again failed to reach an agreement, primarily because of the disagreement on removing Turkish troops from northern Cyprus.[75]

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[67] Ibid, 5. UN SC/Res 367 (12 March 1975).
[68] See Coppieters, at 75.
[69] UN SC/Res 541 (18 November 1983).
[70] Groom A. J. R, 'No End in Sight in Cyprus.' (2007) 29 The International History Review 4, 833–40,
[71] Ibid.
[72] Ibid.
[73] Yakinthou Christalla 'The EU's Role in the Cyprus Conflict: System Failure or Structural Metamorphosis?' (2009) 8:3-4 Ethnopolitics, 307-323; See Coppieters, 98-100.
[74] Smith Helena, 'Cyprus peace talks raise hopes of an end to a conflict that has haunted Europe' *The Guardian* (May 2015) https://www.theguardian.com/world/2017/jan/11/cyprus-greek-and-turkish-leaders-edge-closer-to-deal-to-end-conflict; accessed 15 December, 2020.
[75] Miles Tom, 'Cyprus reunification talks collapse, U.N. chief 'very sorry', *Reuters* (7 July, 2017) https://www.reuters.com/article/us-cyprus-conflict-idUSKBN19S02I accessed 18 October, 2020; 'Cyprus talks end without a peace and reunification deal' *BBC NEWS* (7 July, 2017) http://www.bbc.com/news/world-europe-40530370 accessed 18 October, 2020.

The self-proclaimed independence of the Turkish Republic of Northern Cyprus is recognized only by Turkey, which is its only supporter and patron, and Turkish troops are still located in northern Cyprus. The rest of the world refuses to recognize its independence and communicate with it as a separate new entity subject to international law. EU, along with the UN, still stays loyal to the position that the declaration of independence by "TRNC" is not compatible with the two treaties that had established the Republic of Cyprus in 1960, the Treaty Concerning the Establishment of the Republic of Cyprus and the Treaty of Guarantee. Therefore, a unilateral declaration of independence is legally invalid.[76] The EU officially supported the view that recognition of the TRNC would contravene international law, as the entity is established in violation of international law.[77] The legality of an entity is intertwined with the issue of legitimacy from the political perspective, and recognition of statehood is the most debatable issue which connects legal and political sciences. The legal and political implications of the non-recognition policy will be discussed below in Chapter 4. Here should be noted that the EU's political decision not to recognize TRNC as an independent state relies on the international legal assessment that the situation was created in violation of abovenamed treaties. In this case, non-recognition is a minimum resistance that the law-abiding community can demonstrate.[78] The treaties to which the Republic of Cyprus, Greece, Turkey, and the United Kingdom are parties explicitly define and guarantee Cyprus's sovereignty and territorial integrity and prohibit partition of the island or its union with other states. The treaties, which are legally binding documents for all the parties, were violated by the events taking place since 1974 and by the declaration of independence by the northern part of the island. This creates a legal ground not to recognize the illegally created situation and not to grant any legitimacy. The legal duty of non-recognition lasts until the illegal situation is terminated.

The non-recognition policy has a powerful impact and even causes some tension in the implementation of the EU's engagement policy. EU engagement policy is perceived to support trust-building between the communities and allow residents of break-away territories to benefit from EU policies.[79] This attitude is shared by other international actors

[76] Coppieters Bruno 'Statehood', 'de facto Authorities' and 'Occupation': Contested Concepts and the EU's Engagement in its European Neighbourhood' (2018) 17 Ethnopolitics 4, 347.
[77] Coppieters (2018) 347-48.
[78] Lauterpacht Hersch, *Recognition in international law.* (Cambridge: Cambridge University Press. 2013) 430-434.
[79] Coppieters (2018) 347-48.

like the UN, which considers that non-recognition should not affect the fundamental rights of the local population.[80] Engagement was selected as an essential tool to mitigate the negative results of protracted non-recognition. This might be a reason why TRNC is not as isolated as other de-facto states, such as Abkhazia and South Ossetia. Northern Cyprus receives thousands of international students and tourists each year. The patronship of Turkey determines its participation in the global marketplace. [81] Unlike Abkhazia and South Ossetia residents, many Turkish Cypriots have received Republic of Cyprus passports, which enabled them to be connected with the EU. Such attitude supported their mobility in European states and access to the benefits and goods available for the residents of the Republic of Cyprus.

1.4. Similarities and differences

The conflict situations in Abkhazia, South Ossetia, and Northern Cyprus have many similarities, as well as differences that are determined mainly by different development of peace-building processes and the level of engagement of various international actors and institutions in these processes.

All conflicts in Georgia and Cyprus have two dimensions: internal and external. All emerged on the grounds of ethnopolitical clashes and tensions[82] that were intertwined with the issues of ethnic identity, self-determination, preservation of culture, identity, language, equal rights, political rights and participation, separation of power, political status, etc. This background gives these conflicts an internal dimension since they emerge between local ethnic groups.

[80] UN Secretary-General's report, Promotion and protection of human rights. (20 December 2001) https://www.un.org/sg/en/content/sg/report-secretary-general-d-promotion-and-protection-human-rights accessed 9 February, 2022.

[81] De Vaal Thomas, *Uncertain Grounds*, 3.

[82] Kourvetaris George A., 'Greek and Turkish Interethnic Conflict and polarization in Cyprus' (1988) 16 Journal of Political and Military Sociology, 185-199; Papadakis Yiannis, 'Locating the Cyprus Problem: Ethnic Conflict and the Politics of Space' (2005) 15 Macalester International 11 http://digitalcommons.macalester.edu/macintl/vol15/iss1/11 accessed 9 March, February, 2020; Antoniades Nicholas James, 'Ethnic Nationalism and Identity Formation in Cyprus, 1571 to 1974' (2017) 5 Capstone Project Papers, 5 https://digital.sandiego.edu/solesmalscap/5 accessed 9 March, February, 2020; Torun Nevzat, 'Soviet Nationality Policy: Impact on Ethnic Conflict in Abkhazia and South Ossetia' (2019) Graduate Theses and Dissertations, https://scholarcommons.usf.edu/etd/7972, accessed 9 March, February, 2020;

On the other hand, inter-ethnic conflicts were manipulated by outside powers who had strategic and geopolitical interests in them. Russia and Turkey were heavily involved in the development and continuation of the conflicts both in Georgia and Cyprus. As it has been adjudicated various times by human rights courts and recognized on a political level, both outside powers play a decisive role in the survival of de-facto regimes (See sub-chapter 4.2).

The consequences of the conflicts can be named among their similarities. These conflicts ended with the separation of one region from the unified state and their unilateral declaration of independence. None of these regions has gained international recognition, and the non-recognition policy continues for decades.

The conflict situation in Georgia got tenser due to the recent aggressive hostilities that renewed the conflict and escalated the situation, which differentiates Georgian conflicts from Cyprus, where the military situation is stable due to the uninterrupted presence of the UN buffer zone between the South and North. After the 2008 August War in Georgia, the internal dimension of the conflict has practically erased as Russia is represented as a primary antagonist. Georgian-Abkhazian and Georgian-Ossetian dimensions of the conflict are no longer visible in the domestic political agenda. Due to such circumstances, since August 2008 direct official negotiations between Abkhazian and Georgian or South Ossetian and Georgian authorities no longer exist.[83] The only communication format is Geneva International Discussions, where different international actors (UN, EU, OSCE) are involved. Here, the Russian Federation is considered a major counterpart, and the de-facto authorities attend the negotiations, but without status (due to recognition-related concerns). This is often assumed to be a critical mistake by Georgian leadership that hinders conflict transformation and peace-building.[84] Unlike this experience, formal negotiations between the Turkish and Greek Cypriots continue regularly with several interruptions, although Turkey's geopolitical interests in this conflict are widely-recognized.[85]

Another distinguishing aspect between Georgian and Cypriot conflicts is the intensity and level of international engagement in these conflicts and with de-facto states. The critical

[83] Khashig Inal, 'What could Georgian-Abkhaz negotiations look like? An Abkhaz take' *JamNews* (7 March 2021)https://jam-news.net/georgian-abkhaz-conflict-no-solution-in-sight-just-like-negotiations/

[84] Abramishvili Ivane and Koiava Revaz, '25 years of Georgia's Peace Policy' (2018) Caucasian House, 35-37. Gegeshidze Archil and Haindrava Ivlian, *Transformation of the Georgian-Abkhaz conflict: rethinking the paradigm* (COE, 2O11) 30.

[85] Heraclides, 117-139; Bebler, 19-39.

analysis suggested in Chapter 2 and Chapter 3 demonstrates that international actors, institutions like the UN, EU, and Council of Europe, and a certain group of states are more involved in the Cyprus conflict. They were more consistent in taking measures directed at conflict resolution and transformation than in the case of Georgia. With its ongoing mission, the UN has been represented in Cyprus since the very emergence of conflict. EU has engaged with various tools and has established different legal platforms to cooperate with de-facto authorities (Green Line Regulation; Financial Assistance; Trade Agreement); access of Turkish Cypriots on EU and other regional levels is also more intensive than in the case of Abkhazians and South Ossetians. However, such engagement has not ended up with any legitimation or recognition of TRNC as an independent entity.

On the other hand, international actors have not applied their mechanisms and engagement frameworks in Georgian conflict situations as intensively as in Cyprus. Their engagement is even more minor in South Ossetia than in Abkhazia. For various periods, UN and OSCE missions were represented in both areas. However, after 2008 (August War), these missions were terminated. Recently, only the mission deployed in Georgia is authorized by the EU (EU Monitoring Mission), which does not have direct physical access to conflict regions, and they observe the situation remotely. The EU launches various projects to support local infrastructure, education, or civil society actors, but this engagement is minimal and restricted by the de-facto authorities. Moreover, Abkhazia recently initiated a law that would limit civil society organizations to take international grants, and in case of violation, they would be classified as "foreign agents." This would automatically limit the involvement of international actors to improve civil society work and, consequently, human rights and social situation on the ground. There is a similar situation is in South Ossetia, where only ICRC is represented, and the local authorities restrict engagement. This so-called "self-isolation" policy is caused by increased Russian intervention and strong dependence of de-facto authorities on Russian political, financial, and military support. Further, strong narratives in *de-facto* authorities that international actors need Georgian consent to engage with them hinder their willingness to open the doors. Any cooperation with Georgia, including the one that might be necessary and beneficial for them, is equalized with betrayal and is considered shameful in society. For these reasons, international engagement is highly restricted, which negatively impacts the human rights situation in general (see Chapter 3).

These significant differences and similarities have largely determined their selection as case studies for the research problem. Their comparative features open an opportunity to make conclusions and create a theoretical framework that can provide specific solutions for other similar situations.

Chapter 2. Political repercussions of non-recognition policy

Unlike in the case of Kosovo, there is no official legal judgment concerning the legality of a unilateral declaration of independence by Abkhazia, South Ossetia, and TRNC. Self-declaration of independence of Kosovo in 2008 is the only situation which was adjudicated by the international court whether it was in accordance with international law or not.[86] International Court of Justice found that the declaration of independence did not violate international law, as it was not prohibited under any provision of international law. The court refrained itself from analysing whether it was permitted under international law or not. Such judicial finding does not exist in case of declaration of independence of TRNC or Abkhazia or South Ossetia. However, since their secession, major international actors like the UN, EU, and others are strictly loyal to the non-recognition policy towards these regions, with recent modifications to reduce isolation and increase engagement. An incredible endurance of de-facto states forces the international community to find some ways of involvement without infringing on parent states' sovereignty. For example, in 2014, Joe Biden's visit to Cyprus and meeting with Turkish Cypriot leader Dervis Eroglu in northern Cyprus upset Greek Cypriots. Such high-level international engagement was not welcomed although Biden expressed his continuous support for one legitimate government of Cyprus.[87]

The traditional doctrine of non-recognition is being compromised as the lengthy existence of non-recognized entities requires at least limited intervention and engagement. Regardless of the need for engagement, the duty of non-recognition of unilaterally seceded "states" is still unquestionable.[88] The traditional criteria of statehood reflected in the Montevideo

[86] Accordance with international law of the unilateral declaration of independence in respect of Kosovo, ICJ, Advisory Opinion, 22 July, 2010. https://www.icj-cij.org/en/case/141/advisory-opinions

[87] Ker-Lindsay James, 'Engagement without recognition: the limits of diplomatic interaction with contested states' (2015) 91 International Affairs 2, 1-16.

[88] Berg Eiki, 'Re-Examining Sovereignty Claims in Changing Territorialities: Reflections from 'Kosovo Syndrome'', (2009) 14 Geopolitics 2, 222.

Convention are a key determinant of recognition.[89] However, as state practice developed, additional criteria were adopted that take into account whether the "state" has been established through illegal use of force, whether the "state" is genuinely independent or a puppet regime,[90] whether it has been established through the gross violation of human rights, and whether it protects human rights, including minority rights.[91]

The importance of international engagement is frequently discussed in literature from the conflict resolution viewpoint.[92] However, the observation of the influence of international engagement over human rights and humanitarian situations in conflict regions is somewhat lacking in the literature. It is also noteworthy that, while talking about international engagement, this paper does not refer to the engagement of the countries that are directly controlling and, at some point, triggered the conflict situation, having in mind the Russian Federation and Turkey. This chapter will observe the engagement of prominent international actors that have the authority and power to impact human rights situations and the well-being of people stacked in isolation caused by non-recognition, namely the UN and the EU. The role of OSCE was also important, particularly in the Georgian case, but as their engagement was largely intertwined with the UN, the thesis analyses their involvement jointly.

Thus, the key question is to what extent states and international organizations can get involved in diplomatic and other relations with the de-facto state.[93] Observation of the documents issued by the UN political and legal bodies concerning the situations in Georgia and Cyprus as well as a critical analysis of EU policies towards the concerned areas aim to draw a picture of how the attitudes changed over time, whether or not human rights challenges became a part of these general attitudes and how this issue was reflected. Below, a description of UN and EU engagement in Georgian and Cypriot conflicts and their policies prepare a ground for the following critical assessment of how the engagement correlates to

[89] Montevideo Convention on Rights and Duties of the States 1933, *Article 1 requires for statehood: a defined territory, settled population, an effective form of governance and an ability to enter into foreign relations.*
[90] Ker-Lindsay, 94.
[91] EU Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union 1991
[92] Stewart Susan, 'The Role of the United Nations in the Georgian-Abkhazian Conflict' (2003) 2 The Journal on Ethnopolitics and Minority Issues in Europe, 4-5; MacFarlane Neil, *Western Engagement in the Caucasus and Central Asia* (London: The Royal Institute of International Affairs, 1999; Coppieters Bruno, 'Western Security Policies and the Georgian-Abkhazian Conflict' in Coppieters/Darchiashvili/Akaba (eds) *Federal Practice: Exploring Alternatives for Georgia and Abkhazia*. (Brussels: VUB University Press, 1997) 21-58.
[93] Ker-Lindsay, 93.

the human rights situation on the ground and how human rights multi-level governance works for de-facto states.

2.1. UN engagement in Cypriot conflict

Cyprus became a member of the UN in 1960 after UN Security Council issued a relevant recommendation to General Assembly for its acceptance.[94]

UN was engaged in the Cyprus conflict since its early beginning and continues until now without interruption. UN Security Council recommended the establishment of UNFICYP, already in 1964 when it assessed the situation as a threat to international peace and security.[95] Security Council called upon all Member states in conformity with the UN Charter, Article 2 to refrain from any action or threat of action likely to worsen the situation in the sovereign Republic of Cyprus or to endanger international peace. The Council asked the Cyprus government to take additional measures to stop violence and bloodshed. In 1964, the Security Council also recommended the establishment of a UN Peacekeeping Force in Cyprus which will be designed to preserve international peace and security, prevent the recurrence of fighting, and contribute to the restoration of law and order and return to normal conditions. Council also recommended establishing a mediator to promote the peaceful resolution of the conflict. Since 1964 UN Peace Keeping Force in Cyprus (UNFICYP) appeared to be one of the longest-running missions, which is mandated to monitor the de-facto ceasefire and to maintain the buffer zone between the Cypriot National Guard and Turkish Forces. In 1967, its mandate was enlarged to include supervision of disarmament and arrangements to safeguard internal security.[96] UNFICYP's mandate is in the interest of preserving international peace and security and to contribute restoration of law and order.[97] After Turkish full-scale invation in 1974, UNFICYP's responsibility became to patrol the buffer zone between the Turkish and Greek sides.

In 1964, the Security Council requested Turkey to instantly cease bombardment and use of military force against Cyprus and called upon all states to refrain from any action that might

[94] UN SC/Res 155 (24 August 1960)
[95] UN SC/Res 186 (4 March 1964)
[96] UN SC/Res 244 (22 December 1967)
[97] UN SC Res 186

exacerbate the situation or contribute to the broadening of hostilities.[98] UN failed to prevent hostilities in the 1970s, but it continued engagement in the Cyprus conflict after 1974 and sent representatives to Cyprus regularly. Six rounds of meetings were mediated in Vienna (known as Vienna Talks), which were followed by meetings in New York.[99] In 1979, the leaders of both communities achieved a Ten-Point Agreement at the UNFICYP Headquarters in Nicosia in the presence of the Secretary-General.[100] The Parties agreed that Intercommunal talks will be continued in a sustained manner, but they also agreed on the demilitarization of Cyprus and upheld the independence, sovereignty, and territorial integrity of the Republic. Interestingly, the parties agreed to respect the human rights and fundamental freedoms of all citizens of the Republic.[101] Regardless of such agreement, human rights violations were still pressing, which is why UN General Assembly issued a resolution in 1978, which called parties "to respect the human rights of all Cypriots and institute urgent measures for the voluntary return of refugees to their homes".[102] Olga Campbell-Thomson criticizes the UN for not mentioning in its resolutions anything specific on Turkish Cypriots, while their rights were continuously violated in the condition of isolation and movement restriction. She criticizes the UN for being subjective and giving forums only to Greek Cypriots and denying the rights of Turkish Cypriots, including the right to equal representation, the right to economic development, the right to freedom of movement, and freedom of self-determination.[103]

In July 1974, Security Council was deeply concerned due to the Turkish military intervention in Cyprus and assessed the situation as a serious threat to international peace and security, and called upon all states to respect the sovereignty, independence, and territorial integrity of Cyprus.[104] This has been reiterated in several resolutions including the one adopted in 1975 after the declaration of the "Federated Turkish State", which was considered a compromise reached through the negotiations. The work of UN Good Offices and mediation by the Secretary-General appeared unsuccessful, which was followed by the unilateral declaration of independence by Turkish Cypriot authorities. The Security Council

[98] UN SC Res 193 (19 August 1964)
[99] Campbell-Thomson Olga, 'The Failure of UN Peace Brokering Efforts in Cyprus' (2014) 19 Perceptions 2, 72-73.
[100] Ten-Point Agreement of 19 May 1979: http://www.mfa.gov.tr/ten-point-agreement-of-19-may-1979.en.mfa
[101] Ten Point Agreement, Article 3.
[102] UN GA/Res 33/15 (9 November, 1978)
[103] Campbell-Thomson, 78
[104] UN SC/RES 353 (20 July, 1974)

considered the declaration incompatible with the 1960 Treaty on the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee.[105] The Council also called upon all states not to recognize any Cypriot state other than the Republic of Cyprus (RoC). The Security Council prolonged the mission of the Peacekeeping force and also the Secretary-General's Good Offices continued the negotiation process between the communities.

UN actively engaged in the conflict resolution process, and one stage of mediation was held between 1965 and 1974, led by UN mediator Galo Plaza. However, his only conclusion from several recommendations was that the parties needed to meet and talk about their initiatives for peace and conflict resolution, and he did not suggest alternatives.[106]

In the context of failed negotiations, TRNC announced independence, which was immediately condemned by the Security Council. The 1984 Security Council resolution mentions that the "Turkish Republic of Northern Cyprus" is an occupied part of Cyprus and expressed its grave concerns about further secessionist acts, namely the exchange of ambassadors between Turkey and TRNC and the holding of a "constitutional referendum", "elections", and other acts which led to the division of Cyprus.[107] It is important to note that Council called upon all states not to recognize the purported state of "TRNC" set up by secessionist acts and urged not to facilitate or in any way assist this secessionist entity.

On 11 October 1991, the Security Council reaffirmed its position and supported one state of Cyprus comprising two politically equal communities as defined by the Secretary-General in his 8 March 1990 report.[108]

The Security Council's resolutions constantly upheld the negotiations and the initiatives of the Secretary-General for conflict resolution. It supported the single sovereignty and international legal personality of Cyprus, its independence and territorial integrity, comprising two equal political communities in a bi-communal and bi-zonal federation, and that such a settlement must exclude union in whole or in part with any other country or any form of partition or secession.[109] This position directly echoed the Treaty of Guarantee between Cyprus, Turkey, Greece and the UK. The Council also reaffirmed that the *status*

[105] UN SC/Res 541 (18 November, 1983)
[106] Campbell-Thomson, 78-80; UN Report S/8286, Secretary-General on the UN Operation in Cyprus (1967).
[107] UN SC/Res 550 (11 May, 1984)
[108] UN SC/RES 716 (11 October, 1991)
[109] UN SC/Res 750 (26 AUGUST 1992); UN SC/Res 939 (29 July 1994)

quo is an unacceptable and final political solution has been at an impasse for too long;[110] Since 1999, the Security Council became stricter towards all member states of the UN by "requesting them along with the parties concerned, to refrain from any action which might prejudice the sovereignty, independence, and territorial integrity, as well as from any attempt at the partition of the island or its unification with any other country."[111] Furthermore, in 1990,[112] the SC started mentioning two politically equal communities, which meant effective, equal, and identical participation of both communities in the federal government.

Since 1992, UN Secretary-General has issued an annual report on his mission of good offices in Cyprus and assessed the situation on the ground.[113] These reports unite all activities taken by the bi-communal Technical Committees and other measures taken by both parties to move forward in negotiations and cooperation. The study of the Secretary General's reports reveals that they are a valuable source of information and indicator of how the UN engaged in the situation and how SG assessed human rights needs on the ground.

The very first report of 1992 mentions the importance of fundamental rights of all Cypriots and highlights freedom of movement and the right to property as the most important rights to deal with. Interestingly, the report relates the implementation of these rights to the establishment of a federal republic and, in general, to the issue of the territorial adjustment, i.e., to the conflict resolution.[114] 1992 is marked as an important date in the conflict resolution process as UN Secretary-General Boutros-Boutros Ghali offered a Set of Ideas on the overall framework agreement on Cyprus. The document suggested creating a politically equal community and presented detailed arrangements for the federal government.

Secretary-General's next report in 1994 discusses another important agreement between the parties to grant administrative powers to the UN to manage the Nicosia International Airport as well as a fenced area of Varosha.[115] The discussion concerning freedom of movement and de-facto border administration appeared as the foremost issue of discussion between the

[110] UN SC/Res 1217 (22 December, 1998)
[111] UN SC/Res 1251 (29 June, 1999)
[112] UN SC/Res 716 (1990)
[113] Secretary General reports on his good offices: http://www.uncyprustalks.org/secretary-general-reports-on-his-good-offices/ accessed 19 July, 2021.
[114] Report of the Secretary-General on his mission of good offices in Cyprus, (3 April 1992) para 23, http://www.uncyprustalks.org/report-of-the-secretary-general-on-his-mission-of-good-offices-in-cyprus-friday-april-03-1992/ accessed 19 July, 2021.
[115] Report of the Secretary-General on his mission of good offices in Cyprus, (4 March 1994) http://www.uncyprustalks.org/report-of-the-secretary-general-on-his-mission-of-good-offices-in-cyprus-friday-march-4-1994/ accessed 19 July, 2021.

conflict parties apart from the issue of sustainable resolution of the conflict. From 1999 to 2003, the engagement of Secretary-General Kofi Annan was intensive as he offered a Comprehensive Settlement of the Cyprus Problem. The Settlement was itself connected to the possible accession of Cyprus to the EU.[116] The settlement was rejected by the Greek Cypriot electorate and approved by Turkish Cypriots; therefore, the agreement failed. Kofi Annan assessed this result as missed opportunity to resolve the conflict.[117]

Apart from the routine mandate extension resolutions, Security Council resolutions assessed the ongoing situation, including the human rights situation on the ground. For example, in 2005, Council welcomed the fact that over seven million crossings by Greek Cypriots to the north and Turkish Cypriots to the south have taken place and encouraged the opening of additional crossing points. By the end of 2005, the number of crossings increased to 9 million.[118] The Council assesses the continuing movements by Greek and Turkish Cypriots as a peaceful development that encourages confidence building and reconciliation.[119] Further, the Security Council often welcomes all efforts to promote bi-communal contacts and encourages promoting active engagement of civil society.[120] Generally, SC resolutions do not refer to the improvement of the human rights situation in the non-recognized area, but it supports the continuous work of Bicommunal Technical Committees intending to improve the daily lives of Cypriots.[121]

Since 2008, 11 Bicommunal Technical Committees operate which brings together representatives of Greek and Turkish Cypriots and negotiators appointed by the UN Secretary-General. In 2008, after the four years gap since 2004, both leaders of Turkish and Greek Cypriot communities, Mehmet Ali Talat and Demetris Christofis agreed to further continue full-fledged negotiations. At first, they prepared and established seven technical committees aimed at improving the everyday lives of Cypriots and at encouraging and facilitating greater interaction among them.[122]

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[116] Report of the Secretary-General on his mission of good offices in Cyprus, (1 April 2003) http://www.uncyprustalks.org/report-of-the-secretary-general-on-his-mission-of-good-offices-in-cyprus-tuesday-april-1-2003/ accessed 19 July, 2021

[117] ibid.

[118] UN SC/Res 1642 (14 December, 2005)

[119] UN SC/Res 1728 (15 December, 2006)

[120] UN SC/Res 1758 (15 JUNE 2007)

[121] UN SC/Res 1818 (2008).

[122] Report of Secretary General Good Offices mission in Cyprus (2009) http://162.243.184.203/wp-content/uploads/2015/09/2009-11-30-SG-GO-Report-S-2009-610.pdf accessed 29 July, 2021

The technical committees were formed to improve cooperation and communication between both communities and the daily lives of people, particularly those in isolation. The technical committees are created on each critical thematic issue: respectively, on health, culture, education, criminal matters, environment, crossing points, humanitarian matters, cultural heritage, gender equality, broadcasting, economic matters, and commercial matters.[123] As UN Secretary-General assesses in his annual reports, the technical committees advanced cooperation between the separated communities. For example, the committee on criminal matters has established a joint contact room for the exchange of information. After the establishment of such cooperation, the first ambulance car in the 45 years of conflict passed to and from north Cyprus approving that "health knows no borders".[124] The technical committees unite one Greek and one Turkish representative with the chairmanship of the UN representative. The committees meet regularly and exchange critical information, including the intelligence information of law enforcers, and work together to improve the cooperation of the two communities in the respective areas of each committee.[125]

2.2. EU Policy towards Cypriot de-facto region

As demonstrated in the UN's policy while engaging with the Cypriot conflict, it was built on the idea to protect and respect the sovereignty of the Republic of Cyprus. Similarly, the EU's engagement was also grounded on the state sovereignty principle. However, as the conflict situation has a long history, it became challenging for the EU as well as other international organizations to develop an engagement policy and maintain a non-recognition approach simultaneously.

George Kyris describes the EU's engagement as a continuous attempt to achieve the successful reunification of the island, while the UN was more oriented on the conflict

[123] Report of the Secretary-General on his mission of good offices in Cyprus, (November 2019), para 17-27. http://www.uncyprustalks.org/report-of-the-secretary-general-on-his-mission-of-good-offices-in-cyprus-thursday-november-14-2019/ accessed 29 July, 2021

[124] 'Cyprus Ambulances cross to and from the Turkish-occupied areas' *Financial Mirror* (August 2009) https://www.financialmirror.com/2009/08/07/cyprus-ambulances-cross-to-and-from-the-turkish-occupied-areas/ accessed 29 July, 2021.

[125] See Activities of the technical committees on the following link: http://www.uncyprustalks.org/

resolution process.[126] EU's attempts to accept the united island as a member state in accordance with Annan Plan failed due to the rejection of Greek Cypriots. This is considered the main failure of the EU (as well as of the UN) to settle the dispute and unify the island, while EU accession was considered a very influential mechanism to achieve this goal.[127] As a result, the EU accepted the entire Republic of Cyprus (RoC) as a member state while the island remained divided and EU laws cannot be implemented in its northern part. EU accession was also based on the unwavering recognition of RoC sovereignty.

Regardless of the acceptance of a divided island, the EU continues to be engaged with the northern part, to mitigate the negative impacts of their isolation and assist Turkish Cypriots in the implementation of EU law, if and when reunification is achieved.[128] EU tried and in certain cases implemented several initiatives to maintain and develop its contacts with Turkish Cypriots. In 2004, the EU carefully launched its three initiatives: Direct Trade Regulation, Financial Aid Regulation, and Green Line Regulation.[129] This was justified by the EU with the results of the referendum, which demonstrated a clear desire of Turkish Cypriots to engage with the EU.

The Direct Trade Agreement was blocked by Greek Cypriots due to the fear of creating "Taiwan in the Mediterranean". The Trade regulation envisaged a "preferential regime so Turkish Cypriots products can enter the Customs Territory of the EU," which could occur via Famagusta in the Northern part.[130] The second initiative, Financial Aid Regulation,[131] was hardly passed after 2 years of its initiation, in 2006, due to severe objections from RoC. The Financial Aid Regulation aims to "facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community, with particular emphasis on the economic integration of the island and improvement of contacts between the two communities and with the EU." Within this regulation, the EU determined to assist Northern

[126] Kyris George, 'Sovereignty and Engagement without Recognition: Explaining the Failure of Conflict Resolution in Cyprus' (2018) 17 Ethnopolitics 4, 435.
[127] Sozen Ahmet (ed), *Reflections on the Cyprus Problem: A Compilation of Recent Academic Contributions* (2007), 2-17.
[128] Kyris, 436
[129] De Vaal Thomas, Uncertain Grounds, 55-56.
[130] Proposal for EC Regulation on special conditions for trade with those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control (2004) COM/2004/0466 https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52004PC0466 accessed 17 February, 2022
[131] Council Regulation (EC) 389/2006 on Regulation establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community (2006).

Cyprus in following five directions: 1) infrastructure development; 2) socio-economic development; 3) conflict-related issues: funding of confidence-building measures, de-mining, and finding missing persons; 4) Information Campaign about EU; 5) to prepare Turkish Cypriots to implement EU law.[132]

The third important initiative was the Green Line regulation, which is designed to support the economic development of Turkish Cypriots. It was prepared to manage trade from northern Cyprus to all over Europe, but the regulation only works for individual traders and not large-scale businesses, as the south banned the movement of trade trucks due to disputes on license and insurance.[133] The dispute relates to the recognition of license and insurance documents issued by the respective authorities in the TRNC. The RoC does not recognize such documents and all vehicles travelling to the south need MOT (roadworthiness certificate), since the MOT issued by the TRNC authorities is not recognized.[134]

Within these initiatives, the EU's attempts to engage with non-recognized entities intended to cease the isolation of the northern part and prepare the ground for reunification. But all of these initiatives are met with objection and restraints from the Republic of Cyprus due to the fears of granting any recognition to the self-proclaimed republic.[135] The rejection of the most ambitious initiative of the EU to adopt a preferential trade agreement with northern Cyprus was a clear demonstration of fears of implied recognition.

Regardless of such level of engagement, Turkish Cypriots are not represented in the institutions like European Council or the Council of the EU, where RoC is represented by Greek Cypriots. Noteworthily, the EU accepted RoC as a whole country including its northern part. At the same time, from 2010 to 2015, European Parliament (EP) established a High-Level Contact Group for Relations with the Turkish Cypriot Community for a more political engagement with the locals.[136] In literature, a number of reasons are concluded to characterize the EU's "conceptualized avoidance" of the non-recognized entity.[137] First, it is

[132] De Vaal Thomas, Uncertain Grounds, 56.
[133] Ibid 57.
[134] Hatay Mete, Kalimeri Julia, and Mullen Fiona, 'Intra-island Trade in Cyprus: Obstacles, Oppositions and Psychological Barriers' (2008) PRIO Cyprus Center, 8.
[135] Kyris, 438-441.
[136] George Kyris 'The European Union in Northern Cyprus: Conceptualizing the Avoidance of Contested States' (2020) 25:2 Geopolitics, 349.
[137] Ibid, 346-361.

derived from the *sui generis* non-recognition of TRNC, which has a major influence over the EU's engagement with this entity. Second, the EU tries hard to avoid official contact with TRNC authorities, regardless of the level of engagement it has under the Financial Aid Agreement. More specifically, the EU cannot contact TRNC officials through the recognized diplomatic means with RoC, and it cannot establish an official delegation at TRNC. Therefore, the EU decided to establish a Brussels-based Taskforce with a local programme support office. Apart from this, TRNC opened an EU coordination centre (EUCC) which was practically an opportunity for the EU to conduct meetings and cooperate with local officials without recognition consequences. In this way, the EU also strengthened its contacts with non-state actors, to avoid cooperation with officials. Moreover, the EU enhanced its engagement with civil society.[138] For example, in 2018, European Commission granted EUR 2.3 million to eight civil society organizations, to promote and defend democracy, fundamental rights and freedoms, cultural diversity and reconciliation and to reinforce partnerships.[139]

The analysis of EU and UN engagement in the Cyprus conflict leads us to conclude that, from the beginning, their involvement was strictly determined with the overall goal to resolve the conflict. It lacked a conflict transformation approach which involves more comprehensive attitudes towards improving the human rights situation and transforming social and institutional settings and narratives for the peace-building process. As the conflict situation persisted and non-recognized entities continued to exist for decades, these international actors decided to work for the improvement of human rights and the daily lives of people living in isolated regions and, in general, for the reduction of isolation. All of the abovenamed engagement measures were limited with the sovereignty approach that strengthened the parent state's perceptions to have the international community "on their side", which, on the other hand, hindered separatist state's trust towards any involvement of international actors. It should be also noted that the UN's engagement was more oriented towards the full-scale resolution of the conflict and restoration of the territorial integrity of Cyprus (probably because of the UN's general legal framework within the UN charter and its political structure). On the other hand, the EU's involvement was more flexible and

[138] ibid.

[139] 'The European Commission has launched a EUR 2 million call for proposals to support Civil Society Organisations (CSOs) in the Turkish Cypriot community', *Abbilgi.eu* (Nicosia, 23 July 2020) https://www.abbilgi.eu/en/the-european-commission-has-launched-a-eur-2-million-call-fo.html accessed 17 February, 2022

oriented towards reducing isolation, preparing the basis of enforcing EU law in northern Cyprus, and strengthening cooperation with them without infringing on state sovereignty and integrity principles. This approach caused reduced isolation and safeguarded better conditions for the people living in the non-recognized regime, which is analysed in more detail in Chapter 3.3.

2.3. UN engagement and policy towards Georgian Conflicts

UN engagement in Georgian conflicts is complex and polygonal, and it was more intensive in the Abkhazian situation than in South Ossetia. Soon after Georgia was admitted to the UN as an independent state, in 1992,[140] UN Security Council had to discuss the conflict situation occurring in Abkhazia, Georgia. The 1990s was a period of large-scale internal conflicts, including conflict over Abkhazia, which had ethnic and territorial components. In 1993, Security Council took into consideration the hostilities occurring in Georgia and established an Observer Mission (UNOMIG).[141] The mission was established for 6 months at first and its continuance depended on the Secretary-General's report. As Professor Neil MacFarlane observed: "the decision to send an observer force rather than a fully-fledged peacekeeping force reflected the desire of the Russian Federation to take the lead in the management of conflict in the 'former Soviet space', and the unwillingness of the other permanent members of the Security Council to challenge Russian prerogatives."[142]

Security Council continuously supported and called all member states to reaffirm their commitment towards Georgia's sovereignty, independence, and territorial integrity within its internationally recognized borders and also considered it necessary to define the status of Abkhazia within the State of Georgia in strict accordance with these principles.[143] In every resolution adopted after the conflict in Abkhazia, the Council reiterated the unacceptability of demographic changes caused by the conflict and recognized refugees' and IDPs' inalienable right to return to their homes in secure and dignified conditions, under international law.[144]

[140] UN SC/Res 765, (16 July 1992)
[141] UN SC/Res 858, (24 August 1993)
[142] MacFarlane Neil, 'The Role of the UN' in Jonathan Cohen (ed) *A Question of Sovereignty: The Georgia-Abkhazia Peace Process* (Conciliation Resources, 1999) 36.
[143] UN SC/Res 1524(30 January 2004); UN SC/Res 1494 (30 July 2003)
[144] UN SC/Res1582 (28 January 2005);

In his first report, Secretary-General assessed that a comprehensive settlement of the situation in Abkhazia would not be easy, human rights violations were harsh, and the newly independent state required security and stability. Therefore, the Secretary-General suggested two options if Security Council decided that a larger international military presence in Abkhazia was desirable. The first option was to establish a traditional United Nations peace-keeping force, under United Nations command and control. The Peace-Keeping force would have a mandate to carry out an effective separation of forces, to monitor the disarmament and withdrawal of armed units, and support the creation of conditions that would be conducive to the return of refugees and displaced persons. Interestingly, at that time, the Russian Federation was interested in establishing such operation in Georgia. The second option was to authorize a multi-national military force, which would not be under UN control and command, but under troop-contributing countries. Contingents could be made available by interested states, including the Russian Federation.[145] Later, in 1994, Secretary-General offered the following tasks to UNOMIG to implement: To monitor and verify the implementation of the Ceasefire Agreement signed in Moscow, in May 1994; to observe the operation of the Commonwealth of Independent States (CIS) peacekeeping force under the above agreement; to verify that troops and heavy military equipment do not remain in security zones and other security-related measures for the implementation of Ceasefire Agreement. Secretary-General advised the Council to allocate 136 military personnel to implement the mission.[146] According to the SG report, the Security Council extended the mandate of UNOMIG to supervise the CIS peacekeeping force.[147]Accordingly, UNOMIG closely supervised and cooperated with CIS peacekeeping forces.

The important achievement of the UN's engagement in the Abkhazian conflict was the signature of the Quadripartite agreement on the voluntary return of refugees and displaced persons on 4 April 1994. The agreement was signed between the Abkhaz side, the Georgian side, the UN, and the Russian Federation High Commissioner for Refugees.[148] Under this agreement, Georgian and Abkhazian sides agreed to cooperate on safe, dignified return of IDPs and refugees and agreed on several key principles of return, including to allow a return in their places of origin or residence; not to arrest, detain or commence any criminal

[145] UN SG report S/1994/80 (25 January 1994) para 22.
[146] UN SG Report S/1994/818 (12 JULY 1994).
[147] UN SC/Res 937 (21 July 1994)
[148] Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons between Georgian and Abkaz Sides, also Russia and UN High Commissionaire for Refugees (4 April 1994)

proceedings, as immunity shall not be granted to persons where there are serious shreds of evidence that they have committed war crimes and crimes against humanity as well as serious non-political crimes committed in the context of the conflict; parties also agreed to provide freedom of movement and that returnees should get expired documents validated and extended. Further, repatriates should be protected from harassment, threat to life and property. Quadripartite Commission was also established to implement voluntary return to Abkhazia. However, after the agreement, yet in 2002, SG reported that no progress was made for the implementation of this agreement.[149] Interestingly, Security Council highlighted the Abkhaz side's particular responsibility to protect the returnees and facilitate the return of the remaining displaced population.[150]

Under the chairmanship of the UN Secretary-General, the Geneva peace process was also ongoing and, within the third meeting on confidence-building measures between the Georgian and Abkhaz Sides, the sides agreed on the list of measures to be taken to build confidence.[151]

Further, since 1996, special Human Rights Office was opened as part of UNOMIG.[152] It was mandated to protect and promote human rights, more specifically, the office was tasked to gather information from victims, witnesses, and other reliable sources and followed up on individual cases in areas of due process, impunity, treatment of detainees, involuntary disappearances, forced labor, arbitrary evictions, and property rights violations.[153] With several restrictions, human rights officers managed to observe situations during the "court trials" and in detention facilities. Abkhaz authorities did not agree to open human rights office in Gali, nor accepted UNOMIG police officers to deploy there, which was asked by the Security Council in its resolutions since 1996.[154] Secretary General's 2005 report indicates the engagement of various international actors like OSCE and the government of Switzerland as they funded local Abkhazian NGOs to enhance human rights protection. Other international NGOs were also involved in rehabilitation and community development programmes.

[149] UN SG Report S/2002/469 (12 April, 2002) para 33.
[150] UN SC/Res 1615 (29 July, 2005)
[151] Letter from Acting Permanent Representative of Ukraine to UN addressing UN SG (17 March, 2001) https://abkhazworld.com/aw/Pdf/YaltaDeclaration-English.pdf accessed 30 March, 2020
[152] UN SC/Res 1077 (22 October 1996)
[153] UN SG Report S/2005/657 (19 October 2005) paras 24-30.
[154] UN SG Report S/2005/657 (19 October 2005) paras 24-30. UN SC/Res 1554 (29 July 2004); UN SC/Res 1615 (29 July 2005);

In general, UNOMIG and its Human Rights Office's existence in Abkhazia was an important tool to monitor human rights situations on the ground. The assessments of the situation are reflected in Secretary General's periodic reports under the Security Council resolutions. Such assessments were available until May 2009, when the mission expired. The Human Rights Office has conducted monitoring visits to detention facilities to monitor court proceedings and provide advisory services to the local population on the Abkhaz-controlled side of the ceasefire line. The office also observed the individual cases related to the right to physical integrity, security, and safety, right to equality, and non-discrimination. The office followed the complaints related to the fair trial, treatment of detainees, and right to property issues. The human rights office also monitored freedom of media and expression and worked to raise awareness on the rights protection. The office supported and facilitated several projects, involving civil society representatives to promote confidence-building and human rights education. UNOMIG supported and conducted various humanitarian and rehabilitation activities.[155] UNOMIG's headquarter was located in Sokhumi (the centre of Abkhazia), as well as in Tbilisi. The mission conducted regular visits and monitoring in Gali, the region of Abkhazia, mostly resided by ethnic Georgians.

UNOMIG's work was also implanted in the so-called 'Geneva Peace Process', a negotiation framework initiated in 1997 for conflict resolution under the UN umbrella. The Russian Federation as a facilitator, OSCE, and "Group of Friends of the Secretary-General on Georgia" as observers were involved in this process. The SG Group of Friends united representatives from France, Germany, Great Britain, the United States, and the Russian Federation.[156] The Group of Friends were initiated once it was visible that only the UN's role as a mediator was unsuccessful until 1996 and it was tasked to consult and advise Secretary-General on the specific issues related to the crisis.[157] Under Geneva Peace Process, three working groups were functioning on security issues, refugee and IDP return, and socio-economic problems. The Chief military observer of UNOMIG was chair of the first working group, while the other two were under the chairmanship of UNHCR and UNDP Resident Coordinator.[158] Within this process, Coordinative Council was established on the prime

[155]UN SG Reports for Georgia https://www.securitycouncilreport.org/un_documents_type/secretary-generals-reports/page/1?ctype=Georgia&cbtype=georgia#038;cbtype=georgia accessed 17 February, 2022
[156] Stewart Susan, 15.
[157] Coppieters Bruno (1997), 48.
[158] Wohlgemuth Alex, 136.

ministerial level, under the Chairmanship of Special Representative of the Secretary-General for Georgia (SRSG). UN worked in the region with the conviction that human rights monitoring can play a crucial role in preventing conflict escalations and building confidence between the parties to engage them in dialogue.[159] Therefore, UN Human Rights Office in Abkhazia was working as an integral part of UNOMIG in Sukhumi. Unfortunately, the efforts of UNOMIG to monitor and advocate human rights had a setback when a contracted local lawyer was shot dead in front of the UNOMIG headquarter in Sukhumi, in 2001.[160]

UN was also engaged with agencies such as UNICEF to provide medicine, testing kits, and equipment to Abkhaz hospitals, as well as implement free health services and a tuberculosis treatment program. UNDP in cooperation with UNOMIG continued rehabilitation and economic recovery programmes. Furthermore, UNOMIG contributed to the efforts aimed at improving the living conditions of the conflict-affected local population through its quick-impact projects and related activities. UNHCR continuously conducted small-scale humanitarian operations, including rehabilitation of schools, etc. UNDP constantly conducted activities in the Gali, Ochamchira, and Tkvarcheli districts and opened offices in Sukhumi and Gali;[161] Other UN agencies involved in Abkhazia were the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) and United Nations Volunteers (UNV).[162] While the deployment of UNOMIG was not a decisive factor for conflict resolution, its and UN specialized agencies (UNCHR, UNV, UNICEF, UNOCHA, World Food Program, etc.) involvement affected post-conflict situation management and observation of human rights situation.[163] However, it should be mentioned that due to the UN's non-recognition policy towards self-proclaimed de-facto states and respect for Georgian territorial integrity and sovereignty, even UN humanitarian aid has been provided inadequately to Abkhazia. The main UN assistance efforts have been concentrated on the Gali region, to which most (ethnic Georgian) refugees and IDPs were returning,[164] which might be destructive for conflict resolution and reveals political contours of international human rights and humanitarian engagement. The observation of UN Secretary Generals' reports which describes human rights and humanitarian measures taken by UN mission and

[159] Ibid, 137.
[160] ibid.
[161] UN SC/Res 1615 (29 July, 2005).
[162] Stewart, 3.
[163] MacFarlane, 38.
[164] Stewart, 13.

its specialized bodies, as well as other international NGOs, reveals that economic and rehabilitation projects were mostly focused on the villages and regions populated by ethnic Georgians – Gali, Tkvarcheli, Ochamchira, as well as on Sukhumi (the "capital") and upper Kodori valley. This was itself caused by the policy directives from Tbilisi, which was reluctant to allow UN or other international economic and rehabilitation projects outside Gali district on Abkhazian territory.[165] Such an approach harmed the confidence-building and conflict resolution process. As criticized in Susan Stewart's work, it might be more productive not to continue its insistence on mediation and conflict resolution through the "Boden document" and other initiatives and to concentrate on stabilization of the region.

One of the important issues discussed by the Secretary-General within its report is the right to education in the native language. In Gali district, where mostly ethnic Georgians reside, the de-facto Education department instructed school directors to use the Russian language in all grades. Many Georgian teachers who could not meet the requirement were forced to leave their positions, and they were replaced by Russian-speaking teachers. The language transformation itself for students, particularly in low-graders, negatively affected the quality of education.

2006-2007 Security Council resolutions were nothing more but to remind the states of the cease-fire agreement and express its concerns on its numerous violations in upper Kodori valley of Abkhazia. In 2007, Abkhazian authorities agreed to deploy UNOMIG police in Gali, which was considered a positive development.[166]

Security council welcomed connections between civil society organizations of Abkhazian and Georgian Sides.[167] At a later stage of the conflict, Security Council always considered the importance of economic development that was urgently required in Abkhazia to improve the livelihoods of the communities affected by the conflict, in particular refugees and internally displaced persons.[168]

[165] Stewart, 25.
[166] UN SC/Res 1781 (2007), para 13.
[167] Ibid
[168] See UN SC Resolutions received in 2008.

Although Security Council was actively engaged in the assessment of the conflict in Abkhazia, the council resolutions ceased in 2009, after the full-scale armed conflict and Russian military intervention occurred in August 2008, in Tskhinvali region and partially in Abkhazia as well. The last resolution received by SC was on 13 February 2009, which extended the UNOMIG mission for additional six months.[169] The Council underlined the need to refrain from the use of force or an act of ethnic discrimination and to ensure, without distinction, the security of persons, the right of persons to freedom of movement, and the protection of the property of refugees and displaced persons; The Council's resolution had not considered undertaking any measure to respond to the violation of use of force nor expressed any opinion to legally or politically assess the occurrences of August 2008. After the expiration of the last 6 months of UNOMIG, the mission was not extended since June 2009 due to the veto of the Russian Federation.[170] The draft resolution offered by Russia called on the parties to adhere to the following principles for conflict resolution: a) non-use of force; b) cessation of hostilities; c) free access to humanitarian aid; d) withdrawal of the Georgian forces to their permanent bases; withdrawal of the Russian Federation forces to the line before the beginning of hostilities; e) pending the establishment of international mechanisms the Russian peacekeeping forces take additional security measures; f) opening of the international discussion of lasting security and stability arrangements for South Ossetia and Abkhazia;[171] The resolution remained as a draft document and was not initiated and supported by other members of SC.

Between the adoption of the last resolution of SC and 2008 occurrences, nine meetings were held by the SC on the situation in Georgia.[172] The grave military situation and five-day full-scale war remained without the statement of the Security Council, while, during the meeting on the situation in Georgia on 8th of August,[173] representatives of the UK and Indonesia, expressed their hopes that the Council will take collective measure and express its collective view on the situation. Regardless of the numerous meetings and reports presented at the

[169] UN SC/Res 1866 (2009)
[170] UN SC Draft Resolution S/2009/310 by Austria, Croatia, France, Germany, Turkey, United Kingdom of Great Britain and Northern Ireland and United States of America (14 June, 2009) http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Georgia%20S%202009%20310.pdf accessed 17 February, 2022.
[171] UN SC Draft Resolution S/2008/570 by Russian Federation (2008)
[172] See UN SC meetings records at https://www.securitycouncilreport.org/un_documents_type/security-council-meeting-records/?ctype=Georgia&cbtype=georgia
[173] UN SC Meeting 5951, S/PV.5951 (8 August, 2008).

Council meetings, the Council was unable to take collective measures, while many international actors, including OSCE, EU, and UN bodies were involved to manage cessation of hostilities, provide humanitarian aid, and facilitate negotiation. UNOMIG had no mandate rather than to observe military movements of Russian troops in Abkhazia. Once the hostilities were over, Security Council members expressed their opinions about the need to investigate humanitarian and human rights situations in Abkhazia and South Ossetia, where the UN and, more specifically, UNOMIG could play its role.[174] Georgian government requested from UN to send an independent fact-finding mission which would identify and investigate the existing humanitarian catastrophe on the ground after the war of 2008, and, secondly, Georgia asked for the continuation of UNOMIG representation and observation in upper Abkhazia, which was withdrawn due to the military activities of 2008.[175] In June 2009, at the Council's meeting, the Russian Federation vetoed the continuation of the UNOMIG, claiming that the UN observing mission was created on the terms and conditions that no longer exist and that two independent states have emerged out of Georgia's territorial borders that are recognized by Russia. Further, UNOMIG's major function was to observe and monitor the CIS peacekeeping mission, while Georgia, in 2008, decided to leave the 1994 Agreement as a basis of the peacekeeping mission. Furthermore, it was unacceptable for Russia to refer to the SC resolution 1808(2008) as it reaffirmed the territorial integrity of Georgia. As a French representative assessed: "Russia put an end to the 15 years the stabilizing presence of the United Nations in the area".[176] Security Council members supported Georgia's territorial integrity when the Russian Federation recognized the independence of Abkhazia and South Ossetia in August 2008 and condemned Russia's actions directed towards dismemberment of a sovereign country.[177]

Although the Security Council was unable to take collective measures to support the territorial integrity and sovereignty of Georgia and to respond to ongoing military activities, use of force, and threat to use of force on the territory of Georgia, General Assembly has never discussed the situation in Georgia. In general, General Assembly has the mandate to

[174] UN SC Meeting 5969, S/PV.5969 (28 August, 2008)
[175] Ibid, 20.
[176] UN SC Meeting 6143, S/PV.6143 (15 June, 2009) 4.
[177] See positions of US, Costa Rica, Croatia, Italy, UK, etc. UN SC Meeting 5969, S/PV.5969 (August 28, 2008) http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Georgia%20SPV%205969.pdf accessed 10 February, 2020

take measures to maintain international peace and security when Security Council fails to do so.[178]

As analysed above, UN engagement in the South Ossetia conflict, which started at the same time when in the Abkhazia region, was relatively low. In 1993, once the military activities were over and a ceasefire was achieved between the conflict parties, the UN and the Conference for Security and Cooperation in Europe (predecessor of OSCE) agreed that the international lead on resolving the conflict in Abkhazia should be taken by the UN, while CSCE would manage conflict in South Ossetia.[179] The mandate of CSCE was to monitor the ceasefire agreement in South Ossetia which was protected by the tripartite peacekeeping force in Russian leadership. In 1994, CSCE mission was expanded to include measures of conflict resolution and be oriented on development, including protection of human rights, democratization, freedom of expression, etc.[180] Apart from the OSCE/CSCE engagement which facilitated direct contacts between the communities to serve long-lasting conflict resolution and confidence-building, EU and UNDP also actively funded programmes for the economic development of South Ossetia.[181] Another important aspect in South Ossetia conflict development is the fact that, unlike Abkhazia, local authorities and the Russian Federation have not hindered the return of IDPs and refugees after the first military occurrences. With the assistance of UNHCR and the Norwegian Council for refugees, 800 families returned to the conflict zone in 1997-1998.[182]

One important development during the UNOMIG's mission was in 1997, when Abkhazian and Georgian sides initiated a coordination commission to deal with practical matters. The commission was determined to contribute by several humanitarian and development projects in Abkhazia, where UN funds were decisive.[183] However, the initiative could not last long, as, in 1998, situation worsened seriously, criminal acts and partisan activities, particularly in the Gali region deteriorated the situation, rehabilitation projects with the value of 2 million dollars were burned.

[178] UN GA/Res 377 United for Peace (1950);
[179] Sabanadze Natalie, 'International Involvement in South Caucasus', 15 ECMI Working Paper (February, 2002) 20.
[180] Ibid, 21.
[181] Olson Lara, 'The South Ossetia Case' in Jonathan Cohen (ed) *A Question of Sovereignty: The Georgia-Abkhazia Peace Process* (Conciliation Resources, 1999) 27.
[182] Sabanadze. 17.
[183] Stewart, 16.

This was analysed by Susan Stewart while assessing the role of the UN in the Georgian-Abkhaz conflict that UN's engagement in the situation was connected to the region's political status and unwavering recognition of Georgia's territorial integrity and sovereignty.[184] Thus, for Abkhazians, UN was a less reliable facilitator in conflict resolution, unlike the Russian Federation, which supported them. Therefore, the UN's engagement in Abkhazia was problematic as, for the separatist regime, it was a biased mediator supporting Georgia's territorial integrity and, in this way, rejected their total independence. Abkhaz side also did not support the engagement of Group of Friends for the same reasons and refused to meet them several times.[185] Likewise, the efforts of conflict resolution by Dieter Boden who offered a document 'Basic principles for the distribution of constitutional competences between Tbilisi and Sukhumi', and his successor Heidi Tagliavini failed as both of them relied on the underlying UN assumption on Georgia's territorial integrity.

Such attitudes and problems in Abkhazia were always reflected on the quality and level of UN involvement in the conflict, which affected their engagement for the enhancement and monitoring of human rights. The development of economic and rehabilitation projects was also blocked by Abkhaz authorities as they preferred those projects which would support Abkhazia's self-sufficient existence. This approach was objected to by Georgian counterparts, as they encouraged projects that could connect Abkhazia to Georgia more securely. Since the UN was not considered an unbiased negotiator, the Abkhaz side simply rejected proposals by the other side.[186] As Heidi Tagliavini mentioned in his interview, the greatest achievement of UNOMIG's presence in Abkhazia was to increase the sense of stability in the region, rather than resolve the conflict.[187]

The analysis of UNOMIG's role in Abkhazia revealed that the UN might be unable to proceed with positive steps in the conflict resolution process due to its unwavering attitude towards the state's sovereignty and territorial integrity.[188] It is also noteworthy that UN

[184] Stewart, 14.
[185] Ibid; See also, Kvarchelia Liana, 'An Abkhaz Perspective' in Jonathan Cohen (ed) *A Question of Sovereignty: The Georgia-Abkhazia Peace Process* (Conciliation Resources, 1999) 31.
[186] Stewart, 18.
[187] Ekberg Allison, 'UNOMIG: working toward peace one day at a time. Interview with Heidi Tagliavini', *The Messenger*, (30 April 2003)
[188] Stewart, 25.

engagement was directly focused on resolving conflict and finding an acceptable political status for Abkhazia within Georgia's territorial frames, which was a red line for Abkhazians to accept any measure. Perhaps conflict resolution and confidence-building activities would be more efficient if started with the cooperation on daily technical issues to prevent stalemated and deteriorated situations of human rights and humanitarian perspectives. The prioritization to settle political issues itself harmed the settlement of more emerging daily problems, and the general human rights situation deteriorated. After the expiration of UNOMIG in 2009, the UN could not establish any framework that would be responsible for settling human rights and humanitarian problems. In the context where Abkhazians are afraid of cultural extinction and strive for political independence, while Georgian concerns are related to political and territorial integrity,[189] the insistence on political resolution might be a strategic mistake of an international negotiator. The return of refugees has always been a major issue during negotiations which frequently led to stalemate.[190] When more emergent issues of stability, security, and human rights are at stake, international engagement could be more productive in that direction. The Cyprus experience as described above in that regard is relevant and will be analysed in later chapters.

2.4. EU policy and attitudes towards non-recognized regions in Georgia

It has been already well-assessed how the EU's engagement in conflict resolution affected conflicts in Georgia and what were its success and drawbacks.[191] However, literature is missing on the assessment of the extent to which EU's engagement impacted the ongoing situations in de-facto states and human rights situation there. This subchapter, similarly to others above aims to draw attention to those highlights of EU engagement that could have an effect on the rights conditions and humanitarian situation in Abkhazia and South Ossetia.

[189] Cohen Jonathan (ed) *A question of Sovereignty, The Georgia-Abkhazia Peace Process* (Conciliation Resources, 1999) 12.
[190] Ibid, 22
[191] Popescu Nicu, *EU Foreign Policy and Post-Soviet Conflicts* (London, Routledge, 2011); Coppieters Bruno, 'EU and Georgia: time perspectives in conflict resolution' 7 Occasional Paper (2007); Tocci Nathalie, *EU and Conflict Resolution, Promoting Peace in the Backyard*, (1st ed, Routledge 2007)

EU involvement in Georgian conflicts commenced in the 1990s, but it was not as intense as the UN's engagement. Since 1999 European Commission launched rehabilitation programmes for South Ossetia, which was implemented by OSCE in the region.[192]

Until the August War, the EU tried to play its role in conflict resolution and its approach was determined with four goals: to prevent, transform, manage and settle the conflict.[193] However, as B. Coppieters mentions, there were time differences in how EU and Georgia looked at conflict perspectives – EU feared that Georgia's impatience to resolve the conflict might result in a violent escalation, while the EU preferred more patient approaches, agreeing on a maxim that "patience of a nation is measured in centuries."[194] In pursuing the abovementioned goals, the EU could have rethought the success and failures of UN engagement in Abkhazia. Here, non-recognition policies and fears of implied recognition play a role, which affects all types of international engagement, starting from mediation and conflict resolution initiatives and ending with rehabilitation and economic support projects. Such projects themselves were directed at the management and transformation of conflict and to build trust between communities. However, apparently, fears of legitimation and unauthorized engagement with the de-facto regime interrupted EU involvement.

Similarly, to the UN, any type of EU's engagement with conflict regions of Georgia was dependent on solid attachment to the territorial integrity and sovereignty of Georgia. Therefore, it had to remain extremely cautious while contacting local de-facto authorities.[195] Although EU is still the largest donor in the conflict area, supporting rehabilitation and humanitarian activities, that in the end aims to improve confidence between the conflict parties and improve living conditions of those living in the de-facto state territories and also for the IDPs.[196] However, in the context of breakaway territories, implementation of certain confidence building or conflict transformation policies by an international actor needs often requires authorization of conflict parties, and primarily from the de-jure government, as any activity organized by an international actor without such authorization contains risks of

[192] ICG, *Make Haste Slowly,* 20.
[193] Coppieters (2007) 5.
[194] Ibid.
[195] Ibid, 17.
[196] EC, *European Neighborhood and Partnership Instrument*, Georgia, Country Strategic Paper (2007-2013) 34-35.

intervening in state's internal affairs.[197] Due to the requirements of non-recognition policies, the EU cannot independently define its policies. Coppieters notices that, in such context, EU's activities until 2007 were directed to support the local NGOs, rather than official structures, due to Georgia's fears of transformation policies. He claims that the Georgian government was trying to control the EU's engagement in conflict areas via transformation policies within the cooperation frameworks like European Neighborhood and Partnership policy (ENP). As the EU is reluctant to engage and its projects and initiatives undergo a strict authorization process, Russia is left to be the only accessible actor for the de-facto authorities, which also should not be the desirable way-out for the Georgian central government. Moreover, rehabilitation and economic development activities funded by European Commission in cooperation with OSCE after 1999 were mostly provided for ethnic Georgian communities and were not determined to enhance inter-ethnic cooperation and confidence-building.[198]

The fact that EU engagement policies are mostly derived from Georgia's central government political approaches towards the breakaway territories is further reflected in its propagated thesis that Georgian successful reforms after the 2003 Rose revolution and huge economic growth will convince Abkhaz and Ossetian communities to remain within Georgian territorial borders.[199] However, neither the Georgian government nor the EU took considered that the conflict with breakaway territories was not related to the economic growth or development, but ethnic identities and past injustices. Such approach may be related to the strict non-recognition and isolation policies which did not regard the conditions of people living in these territories. Consequently, the humanitarian situation and protection of human rights became extremely politicized and related directly to conflict resolution.

After the August 2008 War, European Union became the major international actor engaged in the conflict resolution process and with the de-facto state of South Ossetia.[200] After the expiration of the UNOMIG mandate and, practically, UN's institutional engagement in

[197] Coppieters (2007) 17.
[198] ICG, *Make Haste Slowly*, 20, Coppieters (2007), 18-19.
[199] Coppieters (2007) 19.
[200] Jeppsson Emilia, 'A Differentiated, Balanced and Patient Approach to Conflict Resolution? The EU's Involvement with Georgia's Secessionist Conflicts beyond the August 2008 War' (2015) 6 EU Diplomacy Paper.

Georgia's de-facto states, the EU took the lead.[201] EU failed to prevent armed hostilities in the region, although it played a critical negotiator role between Georgia and Russia to adopt a six-point ceasefire agreement and launch its Monitoring Mission (EUMM).[202] Apart from this, EU sent its Special Representative for the South Caucasus and crisis in Georgia (EUSR). Another framework of EU's engagement after 2008 is European Neighborhood and Partnership Instrument (ENPI) and the Instrument for Stability (IfS). Increased EU engagement in the region was balanced by the increased engagement of Russia with the breakaway territories, which were also officially recognized as independent states by Russia soon after military confrontation, on 26 August 2008.[203] EU and Georgia's other Western partners strongly condemned Russia's action, but the verbal reactions were not enough to interrupt Russia's determined engagement. Further, it has strengthened its support towards both separatist territories under respective Treaties of Alliance and Strategic Partnership, which was also condemned by Georgia, the EU, and the US.[204]

EUMM, as mentioned above, was launched by the EU to monitor a six-point agreement concerning ceasefire. The unarmed civilian mission is designed to prevent hostilities, facilitate safe life for the communities living along the Administrative Boundary Lines (ABL) with Abkhazia and South Ossetia, to build confidence between the conflict parties, and inform EU policy in Georgia and the wider region.[205] More than 200 monitors from 25 EU member states are deployed and mandated all over Georgia, but de-facto authorities of Abkhazia and South Ossetia do not allow the mission to the territories under their control.

EUSR was deployed in 2008 with a mandate to prepare the EU's position for the Geneva International Discussions (GID), which was another negotiation format created to resolve conflict. EUSR was also tasked with monitoring the implementation of the ceasefire agreement.[206] GID was also created based on the six-point agreement for security and stability in Abkhazia and South Ossetia. GID mediation process involves Georgia, Russia,

[201] Merlingen Michael, Ostrauskaite Rasa, 'EU Peacebuilding in Georgia: Limits and Achievements', in S. Blockmans, J. Wouters & T. Ruys (eds.), *The European Union and Peacebuilding* (T.M.C. Asser Press, 2010) 270.
[202] Popescu, 86-92.
[203] Cornell Svante, Popjanevski Johanna, Nilsson Niklas, 'Russia's War in Georgia: Causes and Implications for Georgia and the World' (2008) Policy Paper Central Asia-Caucasus Institute & Silk Road Studies Program, 22.
[204] Jeppsson, 13.
[205] EC Joint Action 2008/736/CFSP on the EUMM in Georgia (September 2008) Article 2 and 3.
[206] EC Joint Action 2008/760/CFSP on appointing the European Union Special Representative for the crisis in Georgia", Official Journal of the European Union, (25 September 2008) L259, 16.

Abkhazia, and South Ossetia representatives, and is chaired by EUSR, UN, and OSCE. Its role is critical to maintain links with de-facto authorities with the regular visits.[207]

As for ENPI and IfS, these financial instruments support various projects, but they are still restricted for South Ossetia as de-facto authorities do not allow them. However, in Abkhazia, their projects are more welcome.[208] Most assistance was related to the rehabilitation and reconstruction projects, confidence-building measures, and improving the living conditions of people affected by conflict and IDPs. However, in 2014, ENPI was replaced by European Neighborhood Instrument (ENI) which no longer contained a budget for the conflict-affected population.

EUMM has still not achieved any transformation, and confidence-building measures do not have any impact, as the mission is restricted with monitoring and reporting mandate and it is impossible to achieve any tangible results while lacking trust from the de-facto authorities. Nor the mission managed to positively influence the living conditions of people living in and nearby the conflict zones and protect their security and safety, although respective mechanisms with such goals were created in 2009 February under GID sixth meeting. The Incident Prevention and Response Mechanism (IPRM) is frequently assessed as a major achievement within 12 years of mediation.[209] IPRM meetings are held both for South Ossetia and Abkhazia regions, respectively in Ergneti and Gali, close to the ABLs.[210] Meetings at Gali are chaired by the UN, with the active participation of EUMM and in Ergneti, where it is moderated by OSCE and EUMM.[211] IPRM is designed to ensure a timely and effective response to the security challenges of the people living close to the ABL. IPRM meets monthly where all sides of the conflict with international mediation can discuss the issues like illegal detention of people during the crossing of ABL, access to the agricultural lands, military and training activities, etc.

[207] Jeppsson, 20.
[208] European Union Delegation to Georgia, *EU Assistance to People Affected by Conflict in Georgia,* (Tbilisi, October 2011) 4-5.
[209] Macharashvili Nana, Basilaia Ekaterine, Samkharade Nikoloz, 'Assessing the EU's conflict prevention and peacebuilding interventions in Georgia' (TSU, 2017) 30.
[210] EUMM, *Opportunities for IN-person Dialogue,* (6 Bulletin for the EUMM, August, 2018) https://eumm.eu/data/file/6440/The_EUMM_Monitor_issue_6_ENG.pdf accessed 8 November, 2019.
[211] Ibid.

European Union has remained loyal to the principles of sovereignty, territorial integrity, inviolability of borders, and peaceful settlement of disputes.[212] At the same time, the EU started active consideration of its greater role in conflict resolution and management, which required to transform its low-profile communication with de-facto states with more active engagement.

With the initiative of EUSR, the new policy was elaborated towards de-facto states known as "engagement without recognition" (NREP).[213] The key interest of the EU is stability in South Caucasus. Reheating conflict situations will cause destabilization of the whole region, humanitarian crises, and violation of human rights, and such reheating was obvious in the case of Georgia in 2008. As the EU started to actively form cooperation with Caucasian states under Association Agreements, stable and peaceful environment was under the mutual interest of parent states and EU as well.[214]

EU has also developed a similar policy with Kosovo, which is also a self-proclaimed entity since 2008, but recognized by more than 100 states, including members of the European Union. In the case of Kosovo, EU institutions are more involved to bring Serbian and Kosovo parties together closer to European Union.[215] Interestingly, Serbia applied to EU membership in 2009 and is expecting to finish negotiations by 2023, while Kosovo is also indicated as a potential candidate along with Bosnia and Herzegovina.[216]

NREP has an objective to de-isolate these regions but also not to grant any legal recognition, even implicit, and in this way not to damage the sovereignty and territorial integrity of the parent state. Therefore, every international engagement, including the one by the EU, should bypass the fragile medium line and, at the same time, this engagement should achieve its major objectives. This chapter will analyse how the EU has managed to protect the red lines of conflict parties and be successful in its endeavors. EU engagement in Kosovo is a different situation, where the UN peacekeeping mission is directing and managing the Kosovo state-building process and the EU's intervention is also in favor of democratization and

[212] Charter of the United Nations, (adopted 24 October 1945 1) UNTS XVI, art 2.
[213] Jeppsson, 21.
[214] EU Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, L 261/4 (signed 27 June, 2014, entered into force 1 July, 2016).
[215] Coppieters, (2018) 349
[216] Since declaration of Kosovo's independence, in 2008, EU assists assist the economic and political development of Kosovo through EULEX rule of law mission in Kosovo and Special representative in Kosovo .

strengthening of national institutions, as well as human rights situation.[217] With the engagement in other conflict situations like Cyprus and Georgia, EU is limiting itself by denying the status of breakaway regions, rejecting their elections and institutions legitimacy, which itself negatively affects the success of engagement and lessens the trust from de-facto authorities.[218]

The NREP policy was first officially endorsed in December 2009 by the EU Political and Security Council, regarding Abkhazia and South Ossetia.[219] This political decision had an approach of conflict resolution and confidence-building. It aimed to open political and legal space to cooperate with non-recognized states. At the same time, the EU has the challenge to show that NREP is not a slippery slope for Georgia's territorial integrity and sovereignty and that the EU is not compromising adherence to these principal values.

NREP is built on two major pillars,[220] de-isolation of de-facto regions and conflict transformation. In the implementation of this policy, EU first focused on the Abkhazia region with a purpose to turn it into a showcase for South Ossetia, which is rather self-closed for international engagement since the 2008 August war. EU had several goals: 1) to increase EU leverage and footprint on these two entities, bearing in mind that non-engagement from international actors will further push them into Russian influence; 2) to support alternative political narrative for conflict resolution; 3) de-isolate these regions and diversification narratives.

Within the NREP, the EU had numerous initiatives concerning the de-facto regions of Georgia, with more emphasis on Abkhazia:[221] Firstly, to provide humanitarian assistance and support for conflict-affected communities; secondly, until 2011, EU special representative (EUSR) has been regularly traveling to Abkhazia and had an important channel of communication with EUSR police liaison officers; thirdly, to open EU information office in Sukhumi, which was initiated before 2008 and failed due to the war. EU also considered increasing educational scholarships for Abkhazian, Georgian, and South Ossetian students, to increase systemic communication with civil society and with the

[217] Coppieters, (2018) 348.
[218] Coppieters, (2018) 349; Talmon Stefan, 'The Cyprus question before the European Court of Justice' (2001) 12(4) European Journal of International Law, 727–750.
[219] Fischer Sabine, *The EU's non-recognition and engagement policy towards Abkhazia and South Ossetia*, (European Union In statute for Security Studies, 1-2 December 2010
[220] Ibid, 5-9.
[221] Ibid.

population in general; EU also considered that smart visa policy should be elaborated by its members aimed to encourage mobility and de-isolation. Most residents of Abkhazia and South Ossetia use Russian passports which are issued in violation of international law.[222] They do not apply the neutral travel documents offered by the Georgian government for political reasons or due to the fear of de-facto authorities. Therefore, the EU might need to elaborate more pragmatic ways, which is why two ideas were initiated: for an intermediary solution to provide visas issued by Tbilisi-based embassies and consular offices in the Russian passports (which required mutual agreement from Abkhaz and Georgian sides). For a long-term solution, the EU might think about status-neutral travel documents. EU also considered to support economic initiatives from de-facto authorities, which was similarly applied in the case of Moldova – the Transdniestria Business registered in Moldova benefits from EU trade and export preferences under Moldova-EU bilateral agreement, since 2006.

Another aspect of the EU engagement in the Georgian "frozen conflict" situation is EU Monitoring Mission (EUMM), which does not have direct access to Abkhazia and South Ossetia due to the denial from Russia and de-facto authorities.

Engagement is progressive but also difficult due to a number of challenges related to the "patron states" influence in de-facto states, also due to the opposing attitudes from the parent states. Apart from this, internal disagreements within the EU and disappointments of de-facto authorities as well as their internal political disagreements also hinder the effectiveness of engagement policy.[223] There is a quasi-consensus within the EU institutions that engagement without recognition is the only real alternative among the possible four: (1) active isolation and sanctioning de-facto states; 2) passive isolation (no-engagement) 3) NREP and 4) recognition. While the first and last options are too radical and destabilizing, EU policy fluctuates between passive isolation and engagement without recognition.)

The criticism towards NREP concerning its rather low success is related to the fear of creeping recognition, which frequently forced EU institutions to defer to Tbilisi, get a green light on certain actions, and later communicate with de-facto states.[224] As it was criticized

[222] Littlefield Scott, 'Citizenship, Identity and Foreign Policy; The Contradictions and Consequences of Russia's Passport Distribution in the Separatist Regions of Georgia.' (2009) 61 Europe-Asia Studies 8, 1461–82; Natoli Kristopher,.'Weaponizing Nationality: An Analysis of Russia's Passport Policy in Georgia.' (2010) 28 Boston University International Law Journal, 389–417

[223] Jakša Urban, 'EU policy options towards de-facto states' (2017) 6 Polish Institute of International Affairs, 7.

[224] Kucera Joshua, 'Georgia Thwarts EU Engagement with Abkhazia' *EurasiaNet* (2017); See also Jeppsson, 22.

in terms of UN and OSCE engagement, the EU's current engagement is also criticized due to its biases towards Georgia.[225] Because of the failure to be an unbiased third-party actor, the EU's chances similarly to UN and OSCE to peacefully settle the dispute without infringement of Georgia's territorial integrity is low, particularly after 2008. This was a turning period of breakaway regions to gain a certain level of recognition, deepen partnership with patron state, and firmly determine their de-facto independence.

Apart from the low interests in conflict resolution, the EU did not manage to create a mechanism for human rights monitoring and prevention mechanism of humanitarian crises. In Chapter 4, the human rights situation in breakaway territories will be analysed, which will show the extreme reluctance of de-facto authorities to allow international actors for the monitoring of human rights, to enhance and support their improvement, respond to violations, and prevent a humanitarian crisis. EUMM is not equipped with respective mechanisms to answer the so-called creeping occupation process, which has activated after 2013. This means that de-facto authorities with the assistance of the Russian Federation install new barbed wires and other constructions as a "border" between breakaway territory and Georgia, which continuously violates the human rights of the local population and destabilizes the situation. EU lacks leverage over the conflict parties under the GID process, as no tangible result was achieved after almost 12 years of negotiations.[226] However, it is also considered that the EU can be more proactive in negotiations as it is not bound by Russia's interference, unlike the UN and OSCE.[227]

2.5. OSCE mission engagement in Georgia

OSCE mission was a leading actor in South Ossetia Conflict along with the UN, which was launched in Abkhazia after the 1990s until the 2008 War. In 1992, OSCE (then CSCE) was mandated to support a peaceful political resolution of the conflict in South Ossetia.[228] It was a simple monitoring mission to observe the implementation of the ceasefire agreement reached with mediation of Russia in Sochi in 1992. Two years later, OSCE mission's mandate was extended to peaceful resolution of conflict. It was also tasked to facilitate the

[225] Kvarchelia Liana, 'Perceptions of the EU in Abkhazia and prospects for the EU-Abkhazia engagement' (2012) Conciliation Resources, 8.
[226] Jeppsson, 24.
[227] ibid. 26.
[228] Stöber Silvia, *The Failure of the OSCE Mission to Georgia – What Remains?* (OSCE Yearbook 2010, Baden-Baden 2011) 203-220.

resolution of the South Ossetia status question. Apart from its role in South Ossetia, the mission was actively supporting the UNOMIG mission in Abkhazia. In 2008 mission had already reached 200 staff members on the ground, out of which 137 were locals.[229] Similar to the missions of the UN and EU, OSCE also relied on the principle of territorial integrity of Georgia. It is important to note that this principle was also accepted by Russia until the August war. As mentioned above, Russia vetoed the UN SC resolution in 2008 as the resolution expressed its support to the integrity and sovereignty of Georgia. The mission was accepted by the de-facto authorities of both breakaway territories until that turning point of the five-day war.

In the late 1990s, the OSCE mission worked to offer a status for South Ossetia that would be suitable for both parties, but it was not possible due to South Ossetia's aspirations on the union with North Ossetia, therefore to be under the Russian Federation.[230] Along with the failed negotiation process over the status, from the late 1900s until the early 2000s, criminal network of smuggling—illegal trade of petrol and other products was a common practice that severely undermined the security process in the region.[231] This later ended with the closure of the Ergneti market where smuggled produces were sold, close to Tskhinvali. This measure strengthened violent rhetoric in South Ossetia, as Georgia's new government after Rose Revolution declared the establishment of territorial integrity as its major priority.

The situation in South Ossetia got tenser, while both parties accused OSCE of not being proactive apart from monitoring and reporting. The tension became even higher after Georgia's dedication to join NATO and active measures towards strengthening its defense institutions. OSCE was determined to prevent hostilities after a visible tense situation but in vain. The mission headquarters were bombed in Tskhinvali during the outbreak of hostilities, the staff members were evacuated and, since then, Tskhinvali authorities reject their allowance to the territory. The mission was not extended since 2009 as Russia rejected it.[232]

[229] Ibid, 205.
[230] Ibid.
[231] Stöber, 207.
[232] 'OSCE shuts down mission in Georgia conflict area' *EurasiaNet* (30 June 2019); 'Georgia: OSCE terminates its 17-year Georgian mission' *EurasiaNet* (30 June 2019)

OSCE lacked effective measures that would enable it to prevent deterioration of the situation and the outbreak of conflict, nor was it able to build up effective confidence-building mechanisms that might work even without necessary confirmation from Russia.[233]

2.6. "Creeping recognition" concerns

The fears of implied recognition, so-called "creeping recognition" are entangled in the issue of self-proclaimed de-facto states and such fears have existed since the emergence of these statelets. On the one hand, parent governments are relaxed knowing that the international community is "on their side," recognizing their territorial integrity and sovereignty (which may also determine a lack of incentives to resolve the conflict or make any concession.). On the other hand, due to the long-standing existence of de-facto states and non-resolution of conflicts, the governments are afraid that international engagement might occur naturally and cause certain legitimation. Because of these fears, almost every international engagement described above required a "green light" from the central governments. While engagement through the officially recognized channels is not accepted and welcomed by the de-facto authorities, which interferes conflict resolution process, the need for "blessing" from the central government also hindered effective engagement, even when this was emergently needed for humanitarian or human rights perspective.

For example, such "creeping recognition" concerns[234] emerged when the European Union commissioned a senior diplomat Thomas Hammarberg, along with Magdalena Grono to write the first-ever comprehensive report on human rights in Abkhazia.[235] Georgian central authorities initially cooperated with Hammarberg, allowed his assessment and fact-finding mission to Abkhazia six times, each time he traveled through Tbilisi (which is a mandatory requirement to enter occupied territories under Georgian Law on Occupation, otherwise it is a criminal act). The major findings of the report concerning the human rights situation in Abkhazia will be analysed in Chapter 4, but, here, it is important to note what disturbances were caused after the finalization of Hammarberg's work in Abkhazia. Regardless of the

[233] Engvall Johan, *OSCE and Military Confidence-Building in Conflicts, Lessons from Georgia and Ukraine* (Ministry of Foreign Affairs of Sweden, FOI-R--4750--SE, 2019) 29-31.
[234] Kucera (2017).
[235] Hammarberg Thomas and Grono Magdalena, *Human Rights in Abkhazia Today*, (Palmecenter, July 2017)

importance of the document, EU authorities refrained from publishing it as an official document, due to Georgia's critical stance. The Human Rights report at a certain level treated Abkhazian authorities and institutions as legitimate actors, rather than illegitimate puppets of the Russian Federation, which was unacceptable for Georgia. The report described the human rights situation of ethnic Georgians in Gali and nearby, as well as the critical unresolved issues of IDPs and a lack of property rights of ethnic Georgians. But, as the report mostly treated Abkhazia in itself, and not within the context of occupation, the official status of the report was blocked. The explanatory note of the report declares at the outset that the mentioning of terms as "the Constitution", "Criminal Code", "Law", "President", "Minister", "Prosecutor", "Judge", and "Treaty" does not indicate a recognition or any legitimization of these normative acts, institutions or actors. But such a note was not enough for Georgian authorities and subsequently for the EU to decline the official status of the report. In his interview with EurasiaNet, Hammarberg explains: "I never got a full explanation why the report was not published. What I know is that there were discussions inside the EU Commission, as well as with authorities in Tbilisi and Sukhumi. It was felt that the report was politically sensitive." However, the authors considered the report was important to voice concerns of conflict-affected people and still published it on the website of a Swedish human rights organization, the Olof Palme International Center.

Georgian policy towards its unrecognized states has been torn between non-recognition/isolation and engagement, and it remains essentially restrictive. Several legal and political documents have been elaborated throughout the years which gives certain indications of Georgian policy development concerning its two unrecognized states.

The law on occupied territories of Georgia is a key legal document on this subject matter which has entered into force after the latest full-scale military hostilities in Georgia in 2008.[236] The law restricted migration and economic activities in the occupied territories. Further, the Georgian government received a decision of enacting neutral traveling and identification documents. As for the policy documents, Georgian government received a strategic document on occupation – engagement through cooperation in 2010, which was followed by the respective action plan. Also, the policy document was received on the modalities on conducting activities in the occupied territories. Later, the government developed the policy named "step for better future," which encompasses plans and strategic

[236] The Law of Georgia on Occupied Territories (2008); See also Jeppsson, 13.

directions for confidence-building and conflict transformation measures, involves activities for the improvement of access to education for the inhabitants of conflict areas, as well as their access to health care.

Venice commission assessed that this piece of legislation has a punitive character, sets several unilateral sanctions ranging from limitations over freedom of movement also limitations over economic activities in the non-recognized territories, controlled by de-facto states. Venice commission compared Georgian law to the Moldovan version of a similar legislative act. The Commission concluded that Moldovan law on the special status of Transdniestria is more oriented on the overall effort of conflict resolution, granting the special autonomous status to the separatist region.

Georgian Law on Occupied Territories includes several restrictive provisions concerning the de-facto states of Abkhazia and South Ossetia. Firstly, it prohibits the citizens of foreign countries and persons without citizenship to enter respective territories from any other passing point than indicated in the law. These entering points are controlled by the central government. The violation of this prohibition is criminalized under the Criminal Code of Georgia. This prohibition was criticized by the Venice Commission for being in contradiction with freedom of movement without any distinction.[237]

While Moldova has allowed Transnistria to export its goods to the European market using Moldovan export certificates, Georgia either criminalized or strongly discouraged most types of engagement with Abkhazia and South Ossetia.

Under EU's openly declared policy of Non-Recognition and Engagement Policy (NREP), Hammarberg's report was an attempt to implement such policy, which again failed after the fears of creeping recognition. Faced with a lack of engagement and independent information on the human rights situation in the occupied territories, where no international mission is allowed after 2009, such reports have increasing importance.[238] In that viewpoint, the report implemented its goal, the document is publicly available and the information is accessible but without the status of the official document. This experience damaged the declared international policy of engagement.

[237] European Commission for Democracy through law (Venice Commission), *Comments on the law on Occupied Territories of Georgia*, (Opinion no. 516/2009, Strasbourg, 4 March 2009).
[238] Kucera (2017).

Thomas de Waal explains the concerns that greater engagement will lead to "creeping recognition" are not backed with valid legal grounds, as recognition is a conscious act and cannot be conferred by accident.[239] De Vaal argues that, if engagement is conducted in a "clear-sighter and intelligent" manner, it would be beneficial for all parties of the conflict, it would give the residents of breakaway territories better integration opportunities, and to parent states better opportunities by building bridges across the conflict divide and in wider understanding it would be beneficial to ensure more compliance with international norms.[240]

Eminent legal scholar Sir Hersch Lauterpacht noted that 'recognition is primarily and essentially a matter of intention. Intention cannot be replaced by questionable inferences from conduct. Such inferences are particularly inappropriate when the general attitude of the state in question points to its continued determination to deny recognition.'[241] The concept of intent during the recognition was also recognized by President Kennedy who signed the 1963 Nuclear Test Ban Treaty. Kennedy stated that the US did not recognize the Red Chinese Regime, which is also part of this multilateral treaty.

James Ker-Lindsay later agreed that if states insist that it does not recognize a territory as an independent state, nor it takes any steps that would amount a recognition, then this cannot be considered as recognition.[242] Under the steps that would amount to the recognition, Ker-Lindsay names establishment of diplomatic relations through the appointment of ambassador or establishment of the embassy. The diplomatic procedure, custom, and the law provide that recognition as a matter of intent. This means that if the state does not establish diplomatic relations and explicitly declares that it recognizes this entity as a state, any action of engagement will not grant recognition. In this way, Ker-Lindsay claims that the state can choose any level of the threshold for engagement without recognition.[243] Stephan Talmon also agrees with the opinion that the state itself defines its level of cooperation with de-facto states.[244]

This assertion becomes relevant in relation to northern Cyprus and engagement of international actors in this non-recognized state. As analysed above, their involvement,

[239] De Vaal Thomas, Uncertain Grounds, 1.
[240] Ibid.
[241] Lauterpacht, 371.
[242] Ker-Lindsay, 90
[243] Ibid, 91
[244] Talmon (2001) 748-749.

particularly of EU in northern Cyprus, is far more complex than in case of Georgia, but such intensity of cooperation and engagement has not resulted in recognition of northern Cyprus as an independent entity. Regardless of the criticism that is directed to EU (and to other actors) to be strictly attached to sovereignty approach,[245] such engagement still manages to preserve traditional attitudes and principles (sovereignty, territorial integrity) and to reduce negative results of protracted isolation. EU managed to remain loyal to RoC territorial integrity, while simultaneously financing norther Cyprus economic development that is justified to facilitate reunification of island (to improve intercommunity contacts and their contact with EU. Further, within the Green Line regulation, EU tries to make sure that EU law applies to both parts of the island.[246] While RoC furiously tried to hold EU back from northern Cyprus because of recognition fears, EU's inviolable adherence to RoC's national interests resulted in maintaining this balance between non-recognition and engagement. EU persistently disclaimed that none of the abovementioned engagement intended to imply recognition of any authority other than RoC. Interestingly, for practical purposes, EU strengthened cooperation with non-state actors to implement its engagement projects in norther Cyprus, to avoid any official cooperation with TRNC authorities and, in this way, diminish recognition-related anxieties. The fact that certain formats of engagement have been established by EU with the northern Cyprus does not mean that their implementation is free from obstacles, including the ones that come from the resistance of parent state.[247] For example, Direct Trade Regulation was quickly blocked by the Cyprus when it accessed to EU and it is not implemented until now. The other two regulations have various obstacles in implementation (due to the problem of recognition of official documents issued by TRNC, etc). However, on a theoretical level, this is a good example that engagement and cooperation can have various intensity and levels that do not necessarily cause recognition and that recognition is an explicit act, which cannot be reached by implied measures and perceptions.

Regardless of the unrest of states with breakaway territories concerning the implicit or tacit recognition, there has been no case in the practice of international law when a non-state actor has emerged as a recognized entity without clear expression from states. Nor is there any

[245] Kyris (2018), 426–44

[246] Ibid, 435.

[247] Ibid, 437-438; European Court of Auditors, *EU assistance to the Turkish Cypriot community*, (Special Report No 6, 2012).; European Commission (EC), *Annual report on the implementation of Council Regulation (EC) 866/2004 of 29 April 2004 and the situation resulting from its application,* (COM(2010) 499)

consensus regarding the necessary acts that would imply recognition to an entity.[248] What legal scholarship and practice agree on are the following forms of direct contacts which grant tacit recognition: establishment of formal diplomatic relations, formal notification of consular status, and conclusion of a written bilateral agreement on political questions or a general framework for bilateral relations.[249]

Chapter 3. Human rights challenges – the consequences of non-recognition policies

Human rights have become an integral part of the conflict resolution process in the context of long-lasting conflict situations, such as in Georgia and Cyprus. Their protection is even more challenging due to the existing non-recognition policies and unresolved political conflict. This chapter aims to analyse how protracted conflicts affected human rights protection in Abkhazia, South Ossetia, and Northern Cyprus. This will guide us to analyse in the following chapters how international engagement affected and can affect human rights protection in these territories, what are the differences among these case studies, and what should be improved.

The focus of this Chapter is not to evaluate the situation per right and freedom and draft a report on human rights violations in non-recognized states. The methodology of this Chapter is designed to analyse how non-recognition policies and legal framework affected human rights application to the de-facto states, whether there is an administrative practice of systemic violation of human rights and if there are any effective remedies on local and international levels. The following questions are set for this chapter to achieve the abovementioned goal:

1) Are there local institutions (even though unrecognized) designed to protect human rights within the de-facto regime? Can the work of these institutions be assessed as an effective mechanism for protection?
2) Is there any legislative ground that recognizes human rights values, principles, and provisions within the de-facto state?
3) Does the civil society/non-governmental sector exist, and, if yes, is it effective for human rights protection and monitoring in de-facto states?
4) Does any international human rights monitoring mechanism exist and work in a de-facto state, either governmental or non-governmental?

[248] Peterson M.J., *Recognition of Governments* (1st ed, Palgrave Macmillan, 1997) 86-100.
[249] Ibid, 99.

5) Are there international reports, recommendations, decisions/judgments issued by international human rights bodies (within UN, EU, CoE) aiming to improve human rights application in de-facto states?
6) Are there any systemic human rights abuses that qualify administrative practice of human rights violations caused by the conflict situation?
7) Are human rights violated systemically due to non-recognition that causes isolation of the residents of de-facto states?

The critical qualitative analysis of reports, decisions issued by human rights bodies, scholarly articles, and literature, as well as interviews with several actors[250] involved in human rights protection are conducted to answer the above questionnaire, which leads to achieving the objective set for this chapter.

The protractive nature of conflicts that last for decades creates risks of isolation and, respectively, long-lasting non-recognition policies require amendments and updates. The everyday life of citizens living in and nearby the non-recognized territories is alarming. These daily problems and grievances sometimes reach such a level that they become public, but hundreds of problems are invisible, unknown and the people living in isolation handle them in their ways and with their resources. The level and seriousness of human rights challenges are depended on the level of isolation and stressfulness of the situation. This becomes evident while comparing situations and reported human rights challenges in Cypriot and Georgian disputed non-recognized territories.

As stated above, the key research question of this dissertation is how international and local human rights systems can positively affect the challenging human rights situation in the contested non-recognized territories of Georgia and Cyprus. Otherwise, how international and local governing authorities can tackle the problem of recognition/non-recognition to overcome human rights-related problems, isolation, and gaps in accountability. All these questions derive from the common concern on the universal application of human rights. The isolation created by the long-lasting non-recognition policy threatened their inherent application. For decades, de-jure governing authorities are claiming that they cannot effectively protect human rights in one part of their territory, as it is out of their effective

[250] Annex: Interviews with human rights defenders, experts and government officials in Cyprus and Georgia.

control. On the other hand, de-facto authorities are not feeling accountable towards any international monitoring mechanisms.

The obstacles and challenges faced by the modern human rights system within the context of the so-called "frozen conflicts" have numerous dimensions. The key reason why all of these obstacles are derived is the continuing stalemate situation of conflict which, regardless of its negative and positive developments and fluctuations, is constant. The territorial conflict is unresolved, which extends the process of isolation and non-recognition by the rest of the world as if the people in these territories do not exist. The problems faced due to the established political and legal doctrine of non-recognition are not new and it has been discussed on both legal and political arena. They have been the subject of discussion in light of conflict resolution prospects, but how the political and legal institutions and the system should accommodate the existing stalemate problem has not been critically overviewed, and many still ignore the problem with the fears of triggering politically complicated discussions.

Human rights-related challenges differ between Georgian de-facto territories and Cyprus, as well as between Abkhazia and South Ossetia. These differences are related to the complexity of the conflict situations, the intensity of isolation, and the engagement of the international and local actors with de-facto authorities. The situation analysis below reveals that human rights conditions in Cyprus are not as severe as in Abkhazia and even not close to the situation in South Ossetia/Tskhinvali region. It will be demonstrated that local non-recognized institutions of TRNC are more inclined to act like a recognized state and protect human rights so that they have unilaterally ratified international human rights treaties. The civil society and non-governmental actors are more active, including in terms of reporting human rights on an international level. International organizations are more engaged with TRNC, particularly since political negotiations became more active. Observation on international reports proves that systemic violation of human rights caused by isolation is more evident in Georgian conflicts than in Cyprus. Further, international legal mechanisms like the European Court of Human Rights have more actively adjudicated cases on human rights violations caused by the Cyprus conflict than in the case of Georgian conflicts. The Court has issued important findings in terms of applying human rights provisions to the de-facto entities and recognizing their responsibility apart from the responsibility of effective-controlling and de-jure state. The court has apparently started to change the state-centric

paradigm, but there is still a long way to go until human right system reaches out to non-state actors' responsibilities.

The differences between the case studies can be related to different political contexts of international engagement that are described above and also to the level of openness towards international community by de-facto authorities. Since Turkish Cypriots expressed more interests in the EU, they were more open to cooperate, welcome and implement EU projects that are directed to prepare northern Cyprus for EU accession. It should also be noted that, due to EU's inviolable support to RoC sovereignty, Turkish Cypriots trust in international actors has lessened.[251] On the other hand, Abkhazians and, even more, Ossetians, were not so open to international engagement, neither do they have incentives for it, and international actors are also not motivated and ready for such engagement. For Abkhazians and Ossetians, international actors are "on Georgian side," acknowledging and preserving Georgia's integrity and sovereignty, but such biased approach never made them trustful partners. Russian negative influences also play a vital role, as their interest is to hold de-facto entities back from western actors and, in this way, implement its geopolitical interests.[252] The doors for international actors are even more closed in South Ossetia as their genuine interest is not in independence but in the union with the North Ossetia, which is a part of the Russian Federation. For the sake of fairness, it should be noted that a lack of international engagement is not single-sided, but mutually determines given results, and, even more, parent states have also played crucial role in that regard. Since all engagement is controlled and authorized by parent states, such involvement is not welcomed by de-facto authorities, and international organizations are less proactive as every step needs extensive deliberations and carefulness.

In Georgian reality, the so-called "creeping occupation" process (which means that conflict situation is negatively developing and security, stable peace is not achieved) further damages the human rights situation, and the territories are largely closed for the international actors. Barbed wires separate communities and freedom of movement is severely restricted, and one might frequently encounter tragic realities such as kidnapping, torture and death,[253] illegal

[251] Kyris (2018), 437-438.
[252] 'Moscow Wins from the New Socio-Economic Deal with Sokhumi' *Civil.ge* (26 April, 2021)
[253] 'Georgian autopsy says Tatunashvili sustained over 100 injuries before dying'-*OC-Media.org* (6 June, 2018); 'Death of Georgian Citizen Archil Tatunashvili in South Ossetia', US Embassy in Georgia (26 February 2018)

killings[254], and many other tragedies. Furthermore, isolation and lack of cooperation between de-facto authorities and central government also affect the effectiveness of law enforcement authorities, which themselves motivate impunity.[255]

The biggest challenge is the lack of independent reporting on human rights situations and access to monitoring mechanisms. As mentioned in previous chapters, to fill the vacuum caused by the absence of such mechanisms, the EU established an unarmed peacekeeping mission - the European Union Monitoring Mission in Georgia (EUMM) in September 2008. However, local de-facto authorities do not allow EUMM to enter the regions and they only operate in the government-controlled area. The presence of human rights organizations in both Georgian conflict areas is extremely limited. In Abkhazia, only a few international NGOs are present, also UNCHR and ICRC, but they operate in limited terms. South Ossetia is even more closed for human rights organizations, 2008 August all UN agencies, funds and programmes have ceased operating in the area. Only ICRC operates in South Ossetia now. [256] The reason behind such limited access lies in the intensive control on civil society and human rights organizations work by de-facto authorities, who are influenced by the Russian Federation.[257] Recently, Abkhazia has initiated a law on Foreign Agent NGOs that aims to restrict civil society actors from taking funds from foreign donors (bearing in mind EU and other funds). In case of violation, they will be declared as "foreign agents" and sanctions will be imposed.[258] Local civil society organizations declared that this law is pushed by Moscow and that it would revive totalitarian past of the Soviet era. A newly appointed Foreign Minister of Abkhazia (with Russian background) met with the representatives of several International NGOs in Abkhazia (World Vision, Danish Refugee Council and UNDP) and banned their Georgian-Abkhazian common projects.[259] Minister also banned an EU-funded project COBERM, which mostly works on conflict transformation and peace-

[254] Georgian Young Lawyers Association (GYLA), 'The European Court Began to Examine the Case of Giga Otkhozoria Killed near the Occupation Line on Merits' (17 December, 2018) https://www.gyla.ge/en/post/evropulma-sasamartlom-saokupacio-khaztan-mokluli-giga-otkhozorias-saqmis-arsebiti-gankhilva-daitsy#sthash.W5ojUBiV.dpbs accessed 17 February, 2022.

[255] *Güzelyurtlu v. Cyprus and Turkey* (ECHR, 2017). Case of illegal killing of Giga Otkhozoria at the ABL in Abkhazia, the alleged murderer is well known for the authorities but the investigation has not even commenced. The case is submitted to the ECHR.

[256] Amnesty International, *Behind Barbed Wire,* 12-13:

[257] Popescu Nicu, 'The EU and Civil Society in the Georgian-Abkhaz Conflict' (2010) MICROCON, 15 Policy Working Paper, 15-18

[258] 'Abkhaz NGOs Petition Against Russian-style Foreign Agents Law' *Civil.ge* (28 January, 2022)

[259] 'Abkhaz Civil Society Against Inal Ardzimba', *netgazeti.ge* (28 January, 2022) (*translated from Georgian by author)*

building.[260] Such developments will further limit civil sector and deteriorate human rights situation on the ground. Similar restrictions are enacted in South Ossetia.[261] Non-governmental organizations that act in the South Ossetia are controlled by local authorities and, by extension, they are influenced by Russia.[262] In 2014, South Ossetia adopted a legislative amendment similar to the one discussed in Abkhazia six years later – according to the law, NGO that receives foreign funds can be branded as a "foreign agent."

The northern Cyprus is open for the international monitoring mechanisms, like the United Nations Peacekeeping Force in Cyprus (UNFICYP), the Secretary-General's good offices, the secretariat of the Committee on Missing Persons in Cyprus, the United Nations Development Programme (UNDP), and various other stakeholders.[263] Most of these international actors are operating in Cyprus since the emergence of conflict and their existence has been uninterrupted. Such engagement made it possible to have more mechanisms of reporting and access to the de-facto state. United Nations human rights mechanisms have voiced their concerns at the factors and difficulties impeding the implementation of international human rights standards, particularly due to their persistent division.[264] The latest report of the UN human rights council highlights that the continued division of Cyprus affects human rights throughout the island, including the right to life, the issue of missing persons, non-discrimination, freedom of movement, property rights, freedom of religion or belief, and cultural rights, freedom of opinion and expression, and the right to education.[265]

The fact that the human rights situation is severely harsh in the regions of the frozen conflict has been approved by various international independent authorities, such as the European Parliament when it issued its latest study in 2016 on frozen conflicts in EU's eastern neighborhood and about their impact on protection and respect on Human Rights.[266] The study reports on the human rights situation in Crimea, Transnistria, Abkhazia, and South

[260] 'Abkhaz Minister bans Georgian-Abkhazian dialogue and projects', *netgazeti.ge* (19 January, 2022) (*translated from Georgian by author)*
[261] Caucasian Knot and Alan Parastaev, 'South Ossetia: rights and freedoms in an unrecognized state', *The Foreign Policy Center* (26 September, 2019); Interview with Ucha Nanuashvili (18 May, 2021).
[262] Freedom House, *South Ossetia,* (2021)
[263] UN Human Rights Council, A/HRC/37/22 (2018)
[264] Ibid.
[265] Ibid.
[266] European Parliament Directorate-general for External Policies (DROI), 'The frozen conflicts of the EU's Eastern neighborhood and their impact on the respect of human rights', (2016)

Ossetia, and Nagorno-Karabakh. It examines the situation in all these zones of conflict, considers harsh human rights situations, and criticizes the ability of local authorities to administer justice. The problem of internally displaced people who still do not have the chance to return home is still pending in Abkhazia, South Ossetia, and Cyprus. The situation is worsened by the lack of proper investigation, the prolonged judicial process, which causes a lack of trust in the local population and unwillingness to address law-enforcement authorities, which stimulate other illegal methods, like bribery.[267] In some isolated areas, even proper medical treatment is hardly accessible, with the only possibility left to import contraband drugs. Thus international non-government organizations like ICRC and Médecins Sans Frontières have a role to fulfill such gap in protection.[268] Such unrecognized states also become a "safe haven" for those who have violated severe human rights violations.

Below-given analysis will further encapsulate how non-recognition and isolation influences human rights situation in de-facto states that will shed light on the drawbacks and obstacles that long-lasting isolation creates from human rights perspective and requires reforms in human rights system, in general.

3.1. Non-recognition policy implications on human rights in Abkhazia

The conflict in Abkhazia has affected human rights since the very beginning of its emergence. The number of forcibly displaced people amounted to 250.000, which was approximately 6% of the total population of Georgia.[269] The first wave of displaced people from Abkhazia and South Ossetia occurred after the first armed conflict in 1991-1993, which was repeated after the 2008 August War. Among the 250.000 people displaced in the 1990s, the majority were ethnic Georgians who were forced to flee to Tbilisi-controlled territory.[270] After the conflict, only 40.000-50.000 Georgians returned to Abkhazia, settled mostly in the Gali district. Today, ethnic Georgian community is concentrated in the Gali district of

[267] ibid, 20-21.
[268] Parfitt Tom, 'Years of "frozen conflict" leave Abkhazia isolated and poor', (2006) *367 The Lancet*, 1043; Grono Magdalena, 'Isolation of Post-Soviet Conflict Regions Narrows the Road to Peace' (ICG, 23 November 2016) https://www.crisisgroup.org/europe-central-asia/caucasus/isolation-post-soviet-conflict-regions-narrows-road-peace accessed 17 February 2022.
[269] Ministry of Internally Displaced People of Georgia, IDP Issues-General Information, http://mra.gov.ge/eng/static/47 accessed 20 February, 2021.
[270] Amnesty International, *Behind the Barbed Wire*, 11.

Abkhazia.[271] The number of IDPs from Abkhazia is almost ten times larger than that of IDPs from Tskhinvali Region/South Ossetia.[272] The major part of the IDPs is resided in collective centres, according to the information of the State Commission on Migration Issues of Georgia. Public Defender reports that IDPs live in the buildings with an increased threat to life or health, or their requests for housing are systematically delayed for years.[273]

The return of IDPs to their homeland has been an integral part of every negotiation format designed for conflict resolution, including the one created after the 2008 August war – International Discussions launched in Geneva co-chaired by representatives of the UN, EU, and the OSCE. However, this issue became highly politicized and has not been resolved. Moreover, Abkhazian and Russian representatives permanently leave the negotiation table when the IDP return issue is raised by Georgian authorities.[274] It is claimed that the major reason for systematically failed discussions on this matter is an annual resolution received by the UN General Assembly on "the Status of Internally Displaced Persons from Abkhazia, Georgia and the Tskhinvali Region/South Ossetia, Georgia."[275] This resolution is adopted annually by the General Assembly since 2007, recognizes the right of return of all IDPs and refugees and their descendants, regardless of ethnicity, to their homes throughout Georgia, including in Abkhazia and the Tskhinvali region/South Ossetia. The resolution also highlights the importance to respect the property rights of all internally displaced persons and refugees affected by the conflicts in Georgia and refraining from obtaining property in violation of those rights.[276] The Abkhazian, as well as Ossetian representatives, prevent discussion on IDP return as UNGA resolutions are single-sided, reflecting the position of Georgia. They argue that, due to their absence from UNGA, the resolution lacks legitimacy and pledge that if UNGA resolution is not adopted, they are ready to engage in discussion. Georgian side looks skeptically to their position, arguing that Geneva Discussions are held four times a year and if they want to start a meaningful discussion on the IDP return issue,

[271] Ibid.
[272] State Commission on Migration Issues, *Migration Profile of Georgia* (Tbilisi, 2019), 68 http://migration.commission.ge/files/mp19_eng_web3.pdf accessed 6 February, 2022.
[273] Public Defender of Georgia, *Annual Parliamentary Report on Situation of Human Rights and Freedoms* (2019) 316.
[274] Organization for Security and Co-operation in Europe (OSCE), 'The 37th Round of the Geneva International Discussions Press Communiqué of Co-Chairs of Geneva International Discussions' (Geneva, 21 June 2017).
[275] Interview with Paata Zakareisvhili, (14 June 2021)
[276] UN GA Res A/72/L.55 (17 May 2018)

they can do it before an annual resolution is adopted.[277] Therefore, the IDP return is highly politicized, regardless of its direct interconnection with fundamental human rights. The legal and political consequences of the UN GA resolution are limited, and both sides simply use it as political leverage, which leaves the IDP return issue unresolved for decades.

As for the human rights situation of those ethnic Georgians that live in the de-facto state of Abkhazia and South Ossetia, it is significantly worse as they face systemic discrimination and oppression from the de-facto authorities both on "legislative" and "institutional" levels. Abkhaz authorities severely and arbitrarily interfere with the returnee's right to education in native language, freedom of movement and other rights that are related to "Abkhazian citizenship" (right to vote, to work in public sector or run for public office, to obtain school diploma, to travel freely across the Administrative Border Line that separates Abkhazia from the rest of the Georgia, etc).[278] The rights conditions of ethnic Georgians who returned after the armed conflict in the 90s is alarming, but this does not imply that other ethnic groups living in the occupied territory have full access to human rights protection mechanisms and can exercise their fundamental rights with the standards established at international level.

The major problem is the lack of independent and regular information which derives from the absence of monitoring mechanisms. The only and newest source of information is the report prepared by Thomas Hammarberg, the Council of Europe (CoE) Commissioner for Human Rights, and Magdalena Grono. The independent monitors were commissioned by European Union, with the initiative of the EU Special Representative for the South Caucasus to provide the first-ever comprehensive report on human rights in Abkhazia.[279] As this report highlights, the complex political situation has severely affected human rights protection. Divergent views on who is the responsible authority, as well as the politicization of fundamental human rights, have created obstacles for human rights protection in the occupied region. The major finding of the report was that the protracted conflict situation severely damaged the human rights of people living in Abkhazia as well as of people displaced from the region.[280]

[277] Panchulidze Elene, 'Limits of Co-mediation: The EU's Effectiveness in the Geneva International Discussions', (2020) 3 EU Diplomacy Paper

[278] Human Rights Watch, *Living in Limbo, The Rights of Ethnic Georgian Returnees to the Gali District of Abkhazia* (HRW, July 2011)

[279] Kucera (2017)

[280] Hammarberg and Grono, 7-10.

Based on the abovementioned report, as well as other reports prepared by the UN authorities, US State Department, local civil society organizations, and Public Defender's Office of Georgia, the general picture can be analysed on the human rights situation in Abkhazia. However, it should be highlighted that only Hammarberg report provides first-hand information from the ground, and, therefore, represents the most reliable source of information,[281] while other reports originate from the available open sources, media reports, and the human rights violation cases that cause public outcry.

While there are certain institutional and legislative grounds for human rights protection in Abkhazia, they still have many deficiencies and implementation is uneven.[282] De-facto constitution of Abkhazia recognizes human rights and freedoms of all people of Abkhazia.[283] However, implementation of this assertion has numerous drawbacks, and not all the constitutional rights are applied to all the people of Abkhazia, since many rights are restricted for non-citizens. Ethnic Georgian returnees of Gali are mostly discriminated in attaining Abkhazian citizenship which restricts their access to various abovementioned rights. Further, inefficient and corrupted judiciary, law enforcement, and prosecution, scarce resources to support human rights protection and human rights culture in de-facto institutions, lack of accountability on serious crimes due to politicization are some of the major institutional problems on a local level. This creates an unfavorable systemic background for an effective human rights system. Apart from this, the situation in penitentiary institutions is extremely bad and it may cause severe health problems, including a psychological nature for the inmates.[284] The detainees for the so-called "illegal border crossing" declare that there were no adequate conditions during their detention in Russian military bases – they were not provided with food and water, and many of them reported physical abuse.[285]

Human Rights monitoring mechanisms are restricted on a local level. The office of Ombudsperson was established only in 2016, which can be considered an important step

[281] UNCHR, 'Report on cooperation with Georgia' (2020) A/HRC/45/54, para 41.
[282] Hammarberg and Grono, 7.
[283] Constitution of Abkhazia (26 November 1994), Article 11, https://unpo.org/article/697, accessed 12 February, 2022.
[284] Hammarberg and Grono, 24
[285] Public Defender of Georgia, 'Report of the Public Defender of Georgia about the Situation of Human Rights and Freedoms in Georgia' (2019), 342.

forward. Before that, there was a special plenipotentiary for human rights who was directly reporting to the president, but it was less impactful and independent.[286] Civil Society Organizations are generally free in their activities, although, since August 2008, various NGOs reported that it is hard for them to receive funds from abroad, as the control in that regard has tightened.[287]

The right to education is one of the fundamental rights, whose violation is established as administrative practice by the de facto authorities against ethnic Georgians living in Abkhazia. While Russian and Armenian languages used for teaching and bilingual schools are functioning, the Georgian language is banned in teaching. Since 1995, Abkhazian authorities have pursued a strictly Russian-language national curriculum that prohibits Georgian-language schools to operate.[288] Georgian schools were formally shifted into Russian language instruction in 1994. Georgian was taught as a foreign language or an elective subject, which was later disallowed. 11 Georgian Schools in Gali district maintained the Georgian language for instruction, but, in 2015, de-facto authorities instructed full transfer to the Russian language. This significantly hindered access to education, as teachers, themselves speaking Gali, were not capable to instruct in the Russian language, nor were students able to study in language other than their native.[289]

The property right is among the most sensitive human rights issues in Abkhazia, which is as much politicized as the issue of IDPs return. After the conflict, a controversial and arbitrary process of property acquisition started, which means that houses and accommodations of displaced Georgians appeared in the Abkhaz hands, who took this property under their ownership. As Georgians were not able to return, their property was owned by ethnic Abkhazians. Georgian Law on Occupied Territories considers any transactions related to immovable property as illegitimate and illegal.[290] No mechanism was created to provide a remedy for those who lost property and this right was being violated continuously.

In general, ethnic Georgians, who managed to return to Abkhazia after the conflict experience discrimination and inequality in the exercise of their fundamental rights and

[286] Hammarberg and Grono, 27.
[287] Ibid, 32; Interview with Ucha Nanuashvili (18 May, 2021).
[288] Human Rights Watch, *Living in Limbo,* 48.
[289] Hammarberg and Grono, 35-38;
[290] Georgian Law on Occupied territories (30 October, 2008) Article 5.

freedoms. Abkhaz political leadership could not decide on granting civil and political rights to ethnic Georgians living compactly in the Gali district. As mentioned above, most of these rights, such as right to vote or run for public office or to work in public sector is related to the Abkhazian citizenship. Abkhazian law does not allow citizenship for non-ethnic Abkhazians. It only allows citizenship to non-ethnic Abkhazians who were residents of Abkhazia for at least 5 years at the time of declaration of independence, 1999. This automatically excludes ethnic Georgian returnees to gain Abkhaz citizenship, thus to have access on civil and political rights, as they were displaced since the war in 1991-1992 and do not qualify for the above-named legal requirement.[291] Moreover, if a person is a citizen of Georgia and wants to get Abkhazian citizenship, he has to renounce its Georgian citizenship.[292] Furthermore, the Law on Legal Status of Foreigners was adopted in 2016, which defines that ethnic Georgians have the status of foreigners who need to undergo special procedures to gain Abkhaz residence permits or citizenship. The subsequent law on Exit and Entry in Abkhazia was also adopted, which also regulates how ethnic Georgians as foreigners could enter the Abkhaz territory, which had negative consequences on their capacity to cross the dividing lines towards the Georgian-controlled territory.[293] While Georgian returnees need to get documentation in Abkhazia to proceed in their daily lives, these documents are illegitimate for Georgian authorities, although they still accept documentation issued in Abkhazia for identification purposes for all the services they offer to the Abkhazians. The lack of documentation of ethnic Georgian returnees and unclear status impact every aspect of their lives, as their civil and political rights could not be recognized by the de-facto regime, including the right to vote, access to education, freedom of movement, etc. The statelessness severely infringes individual's rights and specific areas of international law are dedicated to reduce statelessness and its harsh impacts.[294] While Abkhazia is not regarded as a state under international law and residents of Gali can also get the citizenship of Georgia (if they are not), such approach can still be *mutatis mutandis* regarded as violation of human rights standards concerning the eradication of statelessness.

[291] Law of the Republic of Abkhazia on the Citizenship of the Republic of Abkhazia (8 November, 2005), Article 5 (b).
[292] Human rights watch, *living in Limbo,* 32.
[293] Hammarberg and Grono, 54-57.
[294] Foster Michelle, Lambert Hélène, 'Statelessness as a Human Rights Issue: A Concept Whose Time Has Come' (2016), 28 International Journal of Refugee Law 4, 564-584; Walker Dorothy Jean, 'Statelessness: Violation or Conduit for Violation of Human Rights' (1981) 3 Human Rights Quarterly 1, 106-123.

Lack of documentation and clear status results in various problems, such as: registering births is not possible for ethnic Georgians living in Gali with no Abkhaz passports. A local hospital simply issues a document confirming birth based on which Georgian authorities in the controlled territory issue a birth certificate, which itself is not recognized by Abkhaz authorities. Similarly, they cannot register marriage nor exercise other civil rights. With the problems related to documentation, ethnic Georgians struggle to receive education, they can enroll the schools, but problems are raised when they need to get diplomas. Ethnic Georgians cannot make property transactions without property documentation.

Apart from the problems of exercising civil rights on the territory of the non-recognized state, freedom of movement is one of the major concerns, particularly for ethnic Georgians. The movement to Tbilisi-controlled territory becomes essential for them for trade, education, family connections, and, more frequently, for medical treatment as access to quality health is extremely limited in Abkhazia. According to the Russian Border Service, the number of detentions in 2011-2016 across the dividing line of Abkhazia reached 14.000 individuals.[295] There were 6 crossing points by 2013, but the situation deteriorated later, and now only two crossing points are operating, which are frequently arbitrarily closed by the de-facto authorities for political reasons.[296]

The restrictions related to the freedom of movement and gap in documentation results in high numbers of detentions by the de-facto authorities, which is worsened by the so-called process of "borderization". The representatives of de-facto authorities, as well as Russian armed forces, regularly install barbed wires and so-called borderlines in the territory controlled by Georgia, which causes loss of agricultural lands and property owned by the Georgian population residing nearby the administrative line of Abkhazia.[297] According to the State Security Service information, the illegal borderization process occurred in 7 villages of Abkhazia, close to the administrative line in the Georgian-controlled territory.[298] This process became more intensive and arbitrary since 2013 and violation of fundamental human rights becomes an integral part of it, including the right to liberty and security,

[295] Human Rights Center, *Zone of Barbed Wires, Mass Human Rights Violations along the Dividing Lines of Abkhazia and South Ossetia* (7 March, 2019), 6.
[296] ibid, 7.
[297] Human Rights Center, *Human Rights Situation in occupied regions of Georgia - Abkhazia andSouth Ossetia/Tskhinvali region and dividing lines* (2020), 11.
[298] Ibid, 12.

freedom of movement, right to private and family life, rights to health, property, and education.[299] Apart from these rights, the right to life was violated by the de-facto authorities during the so-called border crossing, for example, in 2016, a Georgian man was deadly wounded by the Abkhazian so-called border after a verbal argument. Abkhaz de-facto authorities have not taken any measures to investigate punish the perpetrator.[300] It is noteworthy that, while respective application waits ECHR adjudication, relatively similar case on application *Solomou v. Turkey*[301] was decided in 2008. The court found that Turkey violated procedural and substantive parts of Article 2 of the convention when its soldiers killed Solomou with five shots when he crossed the UN Buffer Zone and failed to effectively investigate respective facts. Further, it is frequently reported by the detainees and local CSO-s that Russian and Abkhazian border officers often cross the border signs installed by them, enter Georgia-controlled territory, and abduct/arrest people in this way.[302]

The practice of arbitrary detentions along the dividing line of Abkhazia contradicts the principles and case law of the European Court of Human Rights. The legal certainty requirement is not satisfied in any of these cases, as conditions of liberty deprivation are not clearly defined, and neither the law itself is foreseeable. As the assessment of detention cases reveals, it is neither enforceable for the individuals to know the grounds of their detention, nor they can determine which territory may be dangerous for detention, as de-facto and Russian forces often detain bypassing the territory controlled by Georgia or no signs are indicating the dividing line.[303]

To sum up, prolonged conflict has its human cost. On the one hand, the sense of isolation created by the non-recognition policy from the international community affects all people living under the de-facto regime. Traveling abroad is practically impossible as the documentation by the de-facto regime or the patron state (Russia) is not recognized by the international community. So, locals find various limitations to travel for education, healthcare, business, or other purposes. The loss of contact with the outside world affects social and economic conditions, as the only partner appears to be the patron state. Regardless

[299] Human Rights Center, *Zone of Barbed Wires*, 4.
[300] Ibid, 8.
[301] *Solomou and others v. Turkey*, App no. 36832/97, (ECHR, 24 June 2008)
[302] Ibid, 9. see also: 'Three Detained on Georgia-Controlled Territory Near Abkhazia, Tbilisi Says', *Civil.ge* (19 January, 2021) https://civil.ge/archives/391842 accessed 5 February, 2022
[303] Human Rights Center, *Zone of Barbed Wires*, 29.

of being apart for nearly 30 years, Abkhazia remains a de-jure part of Georgia in the eyes of the rest of the world. Therefore, Georgia effectively holds the keys to Abkhazia's access to the rest of the world.[304] Apart from this, the local de-facto regime pursues various administrative practice of discrimination and rights violations on ethnic/political motives. The prolonged conflict also left areas of human rights that are continuously violated like the right to return for IDPs and their rights to property, whose resolution is directly interconnected to conflict resolution.

The prolonged conflict and non-recognition policies also affect the engagement of international actors. Yet, there are three independent international bodies in Abkhazia, UNHCR, UNICEF, and ICRC, but their mandates are limited and cannot provide full-scale human rights monitoring. Further, the authorities in breakaway Abkhazia have pledged to open a human rights office in the Georgian-populated Gali District, which was announced by the Council of Europe (CoE) Commissioner for Human Rights, Thomas Hammarberg in 2007. [305] This news seemed extremely promising but was not implemented due to the future deterioration of the conflict situation.

Human rights abuses in fields such as discrimination, right to education, property right, right to vote and enjoy with other civil and political rights, occur in Abkhazia and, sometimes, killing and ill-treatment is conducted by de-facto authorities. International human rights organizations have no mandate to assess the human rights situation in Abkhazia and, consequently, they do not issue guide de-facto authorities to fulfill human rights obligations.

3.2. Human Rights Implications in South Ossetia

The human cost was also high in South Ossetia, as a result of hostilities in 1992 and renewed full-scale war in 2008. The first one resulted in 1,000 deaths and displacement of around 60,000 people, mainly ethnic Ossetians throughout Georgia. Most of them found refuge in Russia, while nearly 10,000 ethnic Georgians fled to other parts of Georgia.[306] As a result of

[304] De Vaal Thomas, Uncertain Ground, 20.
[305] 'CoE Official: Sokhumi Pledges Human Rights Office in Gali' *Civil.Ge* (16 February 2007) https://civil.ge/archives/111934 accessed 6 February 2022
[306] Amnesty International, *Georgia: In the Waiting Room: Internally Displaced People in Georgia*, (Amnesty International, EUR 56/002/2010, 2010)

the hostilities in August 2008, 26.000 ethnic Georgians were displaced.[307] The absence of international monitoring mechanisms is filled by the EU monitoring mission (EUMM), but, as their role and engagement are analysed in Chapter 3, they do not have access to the region. Therefore, no direct reporting of the human rights situation in South Ossetia is available. The information on human rights violations comes to the public when severe crises or violations occur.

Significant human rights violations in South Ossetia include unlawful or arbitrary deprivation of life and killings by Russian and de facto authorities, arbitrary detentions, significant problems with the impartiality of the judiciary, and investigations and prosecutions considered to be politically motivated; social and humanitarian crisis due to isolation, arbitrary restrictions on freedom of movement, so-called borderization process and subsequent loss of property by ethnic Georgians, torture, and ill-treatment by Russian and de-facto authorities during the detention and in prisons, restriction of freedom of expression, etc.

One of the most critical problems is related to the so-called "borderization" process which causes isolation of families behind the barbed wires, loss of land and property, isolation from social life, and arbitrary restriction of freedom of movement.[308] The constraints imposed on the freedom of movement trigger numerous daily problems and erode living standards, restrict access to healthcare, and establish discriminatory practices. Borderization process includes the installment of artificial barriers, patrolling by de-facto and Russian so-called border guards, and crossing regime requiring special documents and the only use of "official crossing points". This process was intensified since 2013 and, as of 2018, at least 34 villages were divided by artificial installments and in 20 cases, barbed wires cut through the yards of the families living there, left them isolated from the basic infrastructure, lands, pastures, etc. [309] Regardless of explicit non-recognition policy, Russia and de-facto authorities perceive these artificial installments as an "international border" between the Republic of Georgia and the Republic of South Ossetia, a violation of which ends up with detention.

By 2018, only ethnic Georgians living in Akhalgori district had the opportunity to use special crossing points towards Georgian-controlled territory, and few other remote villages used

[307] Amnesty International, *Behind Barbed Wire,* 11.
[308] Ibid, 19-21.
[309] ibid, 20. See also UNCHR, Report on Cooperation with Georgia (2021) A/HRC/48/45, para. 47.

two other crossing points, but people from other villages or Tbilisi-controlled territory were not allowed. However, since 2019, de-facto authorities arbitrarily shut down the Akhalgori crossing point and made it a bargaining chip to impose political pressure on Tbilisi, as Tbilisi authorities opened a police guard post close to the administrative border with South Ossetia.[310] Complete isolation of the ethnic Georgian population in Akhalgori left them without access to the pension which they received from Georgian authorities regularly and represented their only source of income, which also left them without access to quality health, which, in dozens of cases resulted fatally.[311] De-facto authorities often decide arbitrarily to close the "crossing points" to increase political pressure and tension.[312]

Restriction of freedom of movement also entails deprivation of liberty and administrative practice of arbitrary detentions. The statistics reveal that not only ethnic Georgians try to reach Georgian-controlled territory by ethnic Ossetians as well for various daily reasons.[313] The practice of arbitrary detentions increases the sense of insecurity, particularly when such detentions occur in the territory controlled by Georgian authorities.[314]

Incidents of ill-treatment are reported by the detainees in various cases, with the most brutal being against an ethnic Georgian man who died after de-facto and Russian authorities tortured them during the detention in 2018.[315] It is noteworthy that neither for this crime nor in the other cases of illegal killing and deprivation of life, no one has been held accountable by the de-facto authorities and they have not cooperated with Georgian authorities.[316] Impunity for crimes further stimulates violation of human rights and general tensions between conflict parties.

[310] 'Social Justice Center Responds to the Humanitarian Crisis in Akhalgori', Social Justice Center (October, 2019) https://socialjustice.org.ge/en/products/emc-akhalgorshi-shekmnil-humanitarul-kriziss-ekhmianeba accessed 6 February, 2022, See also UNCHR report (2020), para 48.

[311] 'The Joint Statement of Human Rights Organizations concerning pressing human rights conditions in South Ossetia, Georgia' (27 November, 2019) https://osgf.ge/en/the-joint-statement-of-human-rights-organizations-concerning-pressing-human-rights-conditions-in-south-ossetia-georgia/ accessed 8 November, 2021. Public Defender of Georgia, (2019) 396.

[312] Public Defender of Georgia (2019), 397.

[313] Amnesty International, *Behind Barbed Wire,* 29.

[314] Public Defender Report (2019), 399-401.

[315] 'On the Death of Georgian Citizen Archil Tatunashvili in Georgia's South Ossetia Region', *Council of Europe News* (27 February, 2018);

[316] UNCHR report (2020), para 44. The victims were David Basharuli (in 2014), Giga Otkhozoria (in 2016), Archil Tatunashvili (in 2018) and Irakli Kvaratskhelia (in 2019). See UNCHR 'Report on Cooperation with Georgia' (2017) A/HRC/36/65, paras. 46–47; UNCHR 'Report on Cooperation with Georgia' (2018) A/HRC/39/44paras. 54– 55; UNCHR 'Report on Cooperation with Georgia' (2019) A/HRC/42/34, paras. 47-51.

Torture and inhuman treatment in the penitentiary system of South Ossetia were also widely reported as several video footages were disseminated in media, demonstrating beating and ill-treatment of prisoners.[317] Later, the death of a local Ossetian in Tskhinvali prison caused public outcry about the detention conditions and torture practices in the local penitentiary system.[318]

Similarly to the situation in Abkhazia, local Georgians in South Ossetia are not allowed to study in their native language, which continuously violates their right to education.[319] According to the Georgian government's estimations, nearly 5000 students are affected by this restrictive policy of de-facto authorities.[320]

Civil society is continuously oppressed by de-facto authorities, in several cases ending up with politically motivated criminal allegations and persecution.[321] With such practice, freedom of expression is severely violated and critical opinions are oppressed.[322] Civil society is strictly controlled in terms of getting funding from international organizations.[323]

Compared to Abkhazia, South Ossetia is even more closed for humanitarian and human rights organizations. However, ICRC has regular access and the de facto authorities have denied other organizations to enter and operate in the region.[324] As mentioned in Chapter 3, since 2008, all UN agencies, OSCE mission, international funds, and programmes were closed in South Ossetia after the war.

3.3. Human Rights Implications in Northern Cyprus

The implications of non-recognition policy on the human rights situation in northern Cyprus were also assessed per the above-stated methodology, based on the detailed examination of all available international reports issued by the U.S. State Department, UN Human Rights Council, UN Special Rapporteurs, other UN bodies, and reports issued by local human rights organizations. Further, as a part of the methodology, interviews were taken from the human

[317] UNCHR report (2020), para 53.
[318] Amnesty International Public Statement, 'Georgia's breakaway South Ossetia/Tskhinvali region: a crisis fueled by impunity for human rights violations', EUR 56/3158/2020 (2 October 2020).
[319] US State Department, *Country report on Human Rights Practices*, Georgia, (2019), Section 6.
[320] UNCHR, (2020), para 60.
[321] Ibid, 64.
[322] Public Defender of Georgia (2019), 406-407.
[323] Interview with Tamar Mearakishvili (2 May, 2021); Interview with Ucha Nanuashvili (18 May, 2021);
[324] Amnesty International, *Behind Barber Wire*, 12.

rights defenders and government officials who work locally on both sides of the buffer zone.[325]

The human rights situation in the Turkish part of Cyprus has been transformed from the reality of aggression, inter-ethnic tension and it relies more on laws and politics, where various local and international actors play a significant role. While it is explicitly recognized that human rights do not have borders and their application should be universal,[326] significant gaps remain in terms of international engagement to monitor human rights and issue-specific recommendations, as well as to provide effective protection and remedies, both locally and internationally. However, it should also be noted, a certain level of international engagement, as well as the cooperation between authorities of both communities and a sense of self-responsibility of local de-facto authorities, has positively influenced human rights situations even in the situation of non-recognition and protracted conflict. The analysis of the abovementioned documents serves to demonstrate the above stated.

While the US does not recognize independence of Northern Cyprus, State Department issues an annual report on the human rights situation in Cyprus, which includes a separate chapter reflecting the information on human rights in Turkish Republic of Northern Cyprus "TRNC". Annually, the US evaluates the situation in TRNC, its "legislation", election processes, and major human rights challenges. For evaluation, State Department frequently addresses the information shared by the local human rights defenders and organizations from the northern part, as well as by UN peacekeeping missions and other UN bodies, like UNHCR. As it was mentioned in one interview with local human rights defenders, the US is not officially visiting and monitoring human rights, but they always have a representative who meets local organizations and gathers information, informally.[327] The way US State Department describes the situation primarily prevents granting any legitimacy or recognition to the de-facto authorities in Northern Cyprus, using brackets and informal wordings while analysing legislation of de-facto regime, or referring to the local institutions or de-facto agencies. For the sake of comparison, a similar report was prepared by Thomas Hammarberg and Magdalena Grono under the EU mandate, which was blocked by the Georgian

[325] Interview with Achilleas Demetriades (17 March, 2021); Interview with Emine Colak (25 March, 2021), Interview with Öncel Polili (1 April, 2021); Interview with Fezile Osum (26 April, 2021); Interview with Andreas Photiou (20 April, 2021)
[326] UNCHR 'Report on the question of human rights in Cyprus', (22 January 2014) A/HRC/25/21, para.2;
[327] Interview with Emine Colak (25 March, 2021).

government as it assessed Abkhazian legislation and human rights situation standing separately from Georgian statehood. Hammarberg's report as US annual reports explicitly declared that they should not be considered as any source of granting legitimacy to the de-facto states. Simultaneously, these reports represent a valuable source of information on what the human rights situation in the regions is, even in the case of non-recognition. Cyprus and Georgian states' approaches towards such reporting apparently differ from each other.

Apart from US annual monitoring, the UN is the key international actor with its special bodies that are involved in monitoring and implementing human rights, aiming to solve those challenges caused by the conflict and its protracted nature. UN established a special Committee on Mission Persons (CMP), which is a tripartite forum uniting UN, Greek, and Turkish Cypriots, established in 1981 by UN General Assembly resolution.[328] For decades, the CMP was working to negotiate a common official list of persons who disappeared after the armed conflict of 1974-77 and since 2006, once the list and bi-communal forensic team were organized and trained, remains of Greek and Turkish Cypriot individuals are being returned to their families.[329] Since that period, the total number of missing persons as of December 2020 was 2002, and 1188 are already identified and exhumed.[330] CMP is one of the few institutionalized bicommunal bodies, that is mostly funded by the EU, and funds are administered by UNDP.

UN Peacekeeping Force (UNFICYP) remains a major international actor permanently represented in the region since the emergence of the conflict, which is mandated, firstly, to prevent a recurrence of fighting; secondly, to contribute to the maintenance and restoration of law and order; and, lastly, to contribute to a return to normal conditions.[331] UNFICYP activities have developed in three main areas, including civil affairs - to promote day to day communication with authorities on the issues affecting civilian population; humanitarian affairs – the mission is providing regular humanitarian aid to the Greek Cypriots and Maronites living in Northern Cyprus and delivers humanitarian supplies to meet educational, medical and welfare needs.[332] In general, UNFICYP has played a valuable role to maintain

[328] UN GA/Res 34/164 (1981).
[329] US State Department, *Country Report on Human Rights Practice*, Cyprus (2007), Section 1.B.
[330] Ibid.
[331] UNFICYP MANDATE https://unficyp.unmissions.org/unficyp-mandate accessed 12 May 2021
[332] US State Department, *Country Report on Human Rights Practice*, Cyprus (2018); UNCHR, 'Report on the question of human rights in Cyprus' (2014), para 23.

peace and stability and monitor human rights even from the very beginning of the conflict.[333] In 2017, TRNC annulled its decision to tax humanitarian deliveries to the Greek Cypriots and Maronites living in the north. Thirdly, UNFICYP is involved in community relations - encourages inter-community dialogue, promotes the preservation of cultural heritage, facilitates a technical level of cooperation and access to religious sites on both sides.[334]

Apart from this, bicommunal technical committees working on 11 thematic issues (culture, humanitarian matters, health, education, commercial matters, criminal matters, cultural heritage, crossing points, broadcasting, gender equality, environment) is aimed to promote the resolution of day-to-day challenges of both communities, support confidence-building and eradicate obstacles to civilian population's daily lives and human rights caused by the protracted conflict. The technical committees are composed of representatives of both communities and UN good offices.[335] The work of technical committees is positively assessed by UN OHCHR, particularly on cultural heritage, mission persons, crossing points issues, health, education.[336]

Another UN mechanism that is represented in Cyprus on regular basis and cooperates with Turkish Cypriot Authorities in the Office of the UN High Commissioner for Refugees (UNHCR). It is providing protection and assistance to asylum seekers and conducts procedures under annually renewed projects with Turkish Cypriot authorities for their rehabilitation. UNHCR is represented by a Turkish Cypriot representative in the north.[337]

Besides, the Office of the United Nations High Commissioner for Human Rights issues annual reports of human rights in Cyprus, involving the human rights issues caused by the protracted conflict situation.[338] Interestingly, UN OHCHR numerously referred in its reports that UN treaty bodies and various special procedures addressed with relevant

[333] UN Commission on Human Rights 'Report on Question of Human Rights in Cyprus' (10 March 1999), E/CN.4/1999/25, para 17;
[334] UNFICYP, Civil Affairs https://unficyp.unmissions.org/civil-affairs accessed 18 March, 2020.
[335] UNFICYP, Technical Committees, https://uncyprustalks.unmissions.org/technical-committees-0 accessed 18 March, 2020
[336] UNCHR, 'Report on the question of human rights in Cyprus' (2014), para 41; UNCHR, 'Report on the question of human rights in Cyprus' (2021) A/HRC/46/23, paras 5,57; UNCHR, 'Report on the question of human rights in Cyprus' (2019) A/HRC/40/22, paras 45-62.
[337] US State Department Report, Cyprus (2007)
[338] The reports of Secretary General on Human Rights since 1993, available here https://ap.ohchr.org/documents/dpage_e.aspx?c=48&su=57

recommendations to the Republic of Cyprus, Turkey, and de-facto authorities, in the norther part of the island.[339] One of them was Special Rapporteur on freedom of religion or belief whose visit to Cyprus was held in 2012 and its follow-up report recommendations were given to the northern Cyprus de-facto authorities.[340] Special rapporteur advised de-facto authorities to lift restrictions on the accessibility of religious buildings, to investigate allegations of vandalism of religious sites and cemeteries, etc. Further, OHCHR highlights the importance of having access to the whole island and cooperate with the government of RoC as well as with Turkish Cypriot Authorities.

In recent years, international organizations/missions have been active in terms of monitoring certain rights in the northern part of Cyprus. For example, the first-ever visit of the special rapporteur on freedom of religion or belief took place in 2012, who had access to both the southern and northern part of Cyprus, including the relevant authorities.[341] UN High Commissioner for Human Rights further encouraged special rapporteur visits concerning cultural rights, internally displaced persons, enforced or involuntary disappearances, and the right to education.[342] The next visit of the Special rapporteur was held in 2016 to monitor the implementation of cultural rights.[343] The Special rapporteur visited various sites of cultural, historical, and religious significance on both sides of Cyprus without any impediment or restriction. Similar to the previous visit of the special rapporteur on religion, the recommendations were issued for both administrations of Cyprus, whether they are recognized or not. [344]

International human rights monitoring mechanisms are not permanently presented in northern Cyprus (apart from UNFICYP whose mandate does not directly cover monitoring of human rights but their presence maintains general peace and security and supports intercommunal cooperation), but international missions have fragmental access to monitor

[339] UNCHR, 'Report on the question of human rights in Cyprus' (2013) A/HRC/22/18, para 8; UNCHR, 'Report on the question of human rights in Cyprus' (2016) A/HRC/31/21.
[340] UN Special Rapporteur on freedom of religion or belief to Cyprus, Follow-up Table, (29 March-5 April 2012), paras 81-85.
[341] UNCHR report, (2013), para 57.
[342] ibid.
[343] UNCHR, 'Report on the question of human rights in Cyprus' (2017) A/HRC/34/15, para 11.
[344] UN Special Rapporteur 'Report in the field of cultural rights on her Mission to Cyprus' (24 May-2 June 2016) A/HRC/34/56/Add.1, para 108

certain fields of human rights. Local human rights actors are a major source of information for international organizations and missions.

International human rights treaties and legal frameworks are unilaterally recognized by the TRNC parliament, regardless of its recognition by international organizations.[345] Due to non-recognition, international organizations do not monitor the implementation of these human rights treaties by the TRNC, but unilateral recognition of human rights obligations can still be considered a positive measure.[346]

Generally, there are many human rights organizations with the authority to investigate and publish human rights violation cases in Northern Cyprus . Human Rights organizations, as well as journalists, have access to prison facilities and freedom to report on violations, which is annually reflected in State Department reports.[347] According to the US State Department report, authorities are often cooperative and responsive to their views,[348] but they have little impact to improve their legislation from a human rights perspective.[349] As US State Department assessed in its annual reports, generally, TRNC has an independent and impartial judiciary for civil matters, permitting claimants to bring lawsuits seeking damages for human rights violations.[350] They apply to ECHR for human rights violations either against the Republic of Cyprus or against Turkey.

Local human rights organizations have become more active in recent years in terms of submitting alternative reports and information to the international organizations on the

[345] Cyprus Dialogue Forum, 'Report to CEDAW Pre-sessional Working Group for the 70th session of the CEDAW Committee on Cyprus, Gender Equality and Anti-discrimination against Women' (2018) Section B(1).
[346] CEDAW (Ratification: 1996); CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Ratification:2011); CoE Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) (Ratification:2011); International Covenant on Civil and Political Rights (Ratification:2004); International Covenant on Economic, Social and Cultural Rights (Ratification:2004); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Ratification:2004); Convention on the Rights of the Child (Ratification:1996); C100 - Equal Remuneration Convention (No. 100) (Ratification: 1993); European Convention on Human Rights and the Protocol No.1 (Ratification: 1962 by the Republic of Cyprus)
[347] US State Department, *Country Report on Human Rights Practice*, Cyprus (2007), Section 1c.; US State Department, *Country Report on Human Rights Practice*, Cyprus (2015) Section 1c; US State Department, *Country Report on Human Rights Practice*, Cyprus (2017), Section 1c.
[348] US State Department, *Country Report on Human Rights Practice*, Cyprus (2007), Section 4.;
[349] US State Department, *Country Report on Human Rights Practice*, Cyprus (2016) Section 5; US State Department, *Country Report on Human Rights Practice*, Cyprus (2018) Section 5.
[350] US State Department, *Country Report on Human Rights Practice*, Cyprus (2016), Section 1(e).

human rights situation in northern Cyprus.[351] For example, the Cyprus Dialogue Platform coordinated local Greek and Turkish Cypriot Organizations and submitted an alternative report on gender equality and anti-discrimination against women to the Pre-Sessional Working Group for the 70th session of the CEDAW Committee on Cyprus.[352] This represents a valuable experience of cooperation between the organizations of two communities to monitor, report, and advocate human rights before international organizations. However, international organizations are reluctant to provide specific recommendations to TRNC on human rights implementation issues.

The office of Ombudsperson in TRNC was also established in 1997. Its powers and duties are stipulated in the respective "Ombudsman Law," which includes controlling, investigating, and reporting on local authorities, to warn of any unlawful activity by them under local legislation and constitution. However, as US State Department assessed, its activities were not effective as authorities did not implement Ombudsman's recommendations.[353]

International human rights organizations are still not present in the area administered by Turkish Cypriots due to political sensitives related to the non-recognition.[354] The only international organization is UNHCR, who is not represented in this area, but systematically cooperates with de-facto authorities via local implementing partner - the Refugee Rights Association (RRA) on refugee and asylum seeker issues.[355]

The study of the US State Department annual reports, as well as UN High Commissioner for Human Rights reports on human rights in Cyprus demonstrates major challenges in Northern Cyprus, including property rights, human trafficking, inhuman conditions in local prisons, corruption, and lack of transparency, the question of mission persons, protection of LGBT rights, protection of rights of asylum seekers, implementation of freedom of religion and

[351] Cyprus Turkish Union of Shipowners, 'Report to UN Committee against Torture within the 5th periodic cycle' (2019); TRNC Association of Martyr's Families and War Veterans, 'Report to UN CPT within the 5th periodic cycle' (2019); Turkish Cypriot Human Rights Foundation, 'Report to UN CPT within the 4th periodic review' (2014)

[352] Cyprus Dialogue Forum report (2018).

[353] US State Department, *Country Report on Human Rights Practice*, Cyprus (2019), Section 1c.

[354] US State Department Report, 2007, Section 4.

[355] US State Department, *Country Report on Human Rights Practice*, Cyprus (2015), Section 2(d).

belief; vandalism on worship places, violation of non-discrimination principles.[356] These reports indicated that, in general, human rights are respected in the area administered by Turkish Cypriots, but there are still various factors and difficulties that impede the implementation of international human rights standards because of the protracted conflict.

In the annual reports, it is explicitly stated that no arbitrary or unlawful killings, no politically motivated disappearances by the local authorities are reported,[357] which can be remarked as a positive track compared to the situation in Georgia, where similar harsh violations of human rights by the local authorities are reported. Nevertheless, since 2017, politically motivated persecution and detentions were reported by the State Department concerning the so-called "Fethullah Gulen Terrorist Organization (FETO)".[358] On the other hand, human rights violations during the detention and inhuman treatment and inhuman conditions in the local prisons have a continuous and systematic character as is observed in the annual reports of the State Department.[359] Nevertheless, monitoring of human rights situations in the penitentiary institutions is allowed, including by the independent human rights observers and journalists.[360]

Human trafficking is one of the key human rights challenges in the north and there are widespread reports of women trafficking to and within the Turkish Cypriot administered area for sexual exploitation purposes.[361]

Discrimination on ethnic grounds was also reported by the State Department by the Turkish Cypriot authorities against Greek Cypriots and Maronites living in the unrecognized area, which included illegal surveillance and restrictions on immovable property inheritance rights.[362] The special legal protection is provided under the 1975 Vienna III Agreement,

[356] US State Department Report, 2007, US State Department Report, 2015; UNCHR Report, Cyprus, (2013), para 12; UNCHR, 'Report on the question of human rights in Cyprus' (2014) A/HRC/25/21; UNCHR Report, Cyprus (2016)
[357] US State Department Report, Cyprus, 2007, Section 1a; US State Department Report, Cyprus, 2015, Section 1a; US State Department Report, Cyprus, 2016, Section 1a.
[358] US State Department Report, Cyprus, 2017, Section 1e; US State Department Report, Cyprus, (2018), Section 1e; US State Department Report, Cyprus, (2019), Section 1e.
[359] US State Department Report, Cyprus, 2007, Section 1c; US State Department Report, Cyprus, 2015, Section 1c; US State Department Report, Cyprus, 2016, Section 1c
[360] ibid.
[361] US State Department Report, Cyprus, 2007, Section 5-6
[362] US State Department Report, Cyprus, 2007, Section 6.

which authorizes the UN peacekeeping mission to visit local ethnic minority communities in the North (Maronites and Greek Cypriots) to provide humanitarian/medical aid regularly and any other additional visit if approved by the de-facto authorities.[363]

Freedom of movement is a rather well-settled issue.[364] In-country movement is freely available via established crossing points across the "Green Line" with identification cards. The first four crossing points were opened on April 23, 2003, at Ledra Palace, Strovilia, Pergamos, and A. Domethios. Before the adoption of Green Line regulation and opening the above-mentioned crossing points, ECHR adopted a decision on *Djavit v Turkey* case,[365] where the applicant alleged violation of his freedom of expression, also freedom of association and assembly as Turkish Cypriot and Turkish authorities refused him to cross the "green line" into southern Cyprus to participate in bicommunal meetings. The court found that applicants' complaints were not limited to freedom of movement, that is to have physical access to southern Cyprus, but also to participate in bicommunal talks and to have a meeting with Greek Cypriots.[366] The court assessed that the applicant was granted the right to cross the "green line" only in 6 cases, out of 46 requests, which, according to the Court's conclusion, prevented him from participating in bicommunal meetings and thus, engaging in peaceful assembly with people from both communities.[367]

Later, the Green Line regulation adopted by the Council of EU in April 2004 aims to establish special rules for crossing goods, services, and persons to facilitate economic development in the concerned areas and to facilitate trade and other links between the communities.[368] The regulation established 7 crossing points through which movement of persons and goods were allowed.[369] The Green Line regulation had facilitated people-to-people contact and business links. In 2015, the leaders of both communities announced the opening of two new crossing points Lefka-Aplici/Lefke-Aplıç and Deryneia/Derynia. In

[363] UN Commission on Human Rights 'Report on Question of Human Rights in Cyprus' (10 March 1999), E/CN.4/1999/25, para 14.
[364] UNCHR, Report on Cyprus, (2013), para 25.
[365] *Djavit An v. Turkey* App no. 20652/92 (ECHR, 20 February 2003).
[366] ibid, para 54,
[367] Ibid, paras 58-62.
[368] COUNCIL REGULATION (EC) 866/2004 on a regime under Article 2 of Protocol 10 to the Act of Accession, (29 April 2004) L 206/51, Preamble, paras 4-5.
[369] ibid, Annex 1.

2016, Turkish authorities unilaterally lifted the requirement imposed on Greek Cypriots and foreigners to fill out a "visa" form.[370]

The freedom of movement is rather restricted for the Turkish settlers and their descendants who were born in northern Cyprus, which was considered as an unlawful violation of freedom of movement by the OHCHR.[371]

As for travel abroad, Turkish Cypriots can get Republic of Cyprus passports and they can travel to Europe freely. While Turkish Cypriot authorities are not EU partners, the individuals are considered to be EU citizens since 2004 (Turkish Settlers are excluded from this rule). At least 100.000 Turkish Cypriots have received Republic of Cyprus passports, but this opportunity does not apply to the settlers from Turkey mainland or even to someone who has one Turkish Cypriot parent and another from the mainland.[372] It should also be noted that Turkish Cypriots born after the war to parents who were ROC citizens before 1974 obtained passports relatively easily, unlike Turkish Cypriots born after 1974 to one Cypriot parent.[373] Moreover, for many years, France, the UK, and the United States have allowed Turkish Cypriots to travel abroad on TRNC passports with visas issued by consular officials based in Nicosia.[374] In other words, TRNC passports are accepted as travel documents but not as identification from an official state, which has not ended up with the official recognition of TRNC by these states.

Property rights became one of the most controversial issues, which triggered dozens of applications to EHCR submitted by the Greek Cypriots who claimed their properties left in the North after the armed conflict of the 70s. Property is the key negotiation issue, where ECHR rulings played a pivotal role, particularly the Loizidou v. Turkey case. In *Loizidou*, the court had several important findings: 1) firstly, it found that, without consideration of the lawfulness of legislative/administrative acts of TRNC, international law recognizes certain legal arrangements and transactions in similar situations, whose effects can be

[370] US State Department Report, Cyprus, 2016, Section 2(d).
[371] UNCHR, Report, Cyprus (2016) para 32.
[372] De Vaal Thomas, Uncertain Grounds 55.
[373] US State Department Report, Cyprus, 2007, Section 2(d) , US State Department Report, Cyprus, 2015, Section 2(d) etc.
[374] De Vaal Thomas, Uncertain Grounds 53.

ignored only to the detriment of residents.[375] The court found that, as TRNC is not recognized as a legitimate entity under international law, it cannot attribute validity to the provisions of the TRNC constitution, which stipulates that local inhabitants lost their property rights. Therefore, Greek Cypriots retained their ownership rights regardless of their loss of control on the property left behind.[376] 2) Secondly, Court clarified that State responsibility may arise when as a consequence of military action, "it exercises effective control of an area outside its national territory. The obligation to secure, the rights and freedoms set out in the Convention, derives from the fact of such control whether it be exercised directly, through its armed forces, or a subordinate local administration."[377] Interestingly, the court considered the existence of Turkish troops in Northern Cyprus sufficient to determine effective control of the respondent state and to find its responsibility for human rights violations. The court did not go into a detailed analysis of Turkish control over policies and actions of TRNC authorities. 3) The court concluded that there has been a continuous breach of property rights as the applicant has been refused access to her property since 1974, she has effectively lost all control over, as well as all possibilities to use and enjoy it.[378] As neither Turkey nor Turkish Cypriot authorities adopted credible remedies for the loss of use of Greek Cypriots' property, they had an obligation to compensate.

Based on this judgment, the court was applied by dozens of Greek Cypriot applicants requesting the exercise of their property rights as well as the right to home under Article 8. Xenides-Arestis v. Turkey became a "pilot judgment" for similar repetitive cases,[379] where the court relied on its previous reasoning of *Loizidou* and *Cyprus v Turkey* cases and found that property right was continuously violated by Turkey as the applicant was denied access to and control, use and enjoyment of her property and any compensation for the interference with her property rights.[380] Apart from this, the Court reiterated its finding of *Cyprus v. Turkey* case, that violation of applicant's right to property originated from the widespread practice of TRNC that was affecting a large number of people (the court was dealing 1400 similar cases brought by Greek Cypriots against Turkey). Therefore, the respondent state is

[375] *Loizidou v. Turkey*, paras 45-46.
[376] Williams Rhodri., Gürel Ayla, 'The European Court of Human Rights and Cyprus Property Issue: Charting a Way Forward' (2011), PCC Paper 1/2011, 3-5.
[377] *Loizidou v. Turkey*, paras 52-56
[378] *Loizidou v. Turkey*, paras 63-64.
[379] *Xenides-Arestis v. Turkey* App no. 46347/99 (ECHR, 22 March 2006)
[380] *Xenides-Arestis*, para 32.

obliged not only to pay compensation but also adopt measures in its domestic legal order to put an end to the violation and introduce a remedy that secures genuinely effective redress for the Convention violations.[381] This legal development and its following decision in the *Demodopulos case* was highly criticized by the Greek Cypriot side. This adjudication does not hint at the Greek Cypriot right to home and focuses only on material compensation for the property loss. While in previous decisions related to Cyprus, the Court ruled that wrongful eviction of Greek Cypriots does not terminate their right to home and does not immediately break the link between the applicants and their previous homes. This bond is an important legal element while assessing the right under Article 8.[382] In *Demodopulos*, the Court deciding between restitution and compensation discussed that passage of time affected this bond, which affected the definition of applicant's properties as their homes, and if restitution was granted, it would cause mass eviction of present occupants of these houses, which would itself violate their rights.[383]

As a result of this judgment, TRNC established the Immovable Property Commission (IPC), which represents a local remedy that needs to be exhausted before the applicant goes to EHCR. Later in *Demopoulos Case,* the Court approved that IPC was an effective local remedy,[384] which offered an accessible and effective framework of redress in respect of property-related claims by Greek Cypriots. Court highlighted that if the applicant wants to invoke his or her rights under the Convention, their complaints have to be in line with the established principle of subsidiarity, meaning that all avenues available at the local level have to be exhausted.

As of 2021, 6804 applications are lodged with the IPC by the Greek Cypriots, 1224 of them have been concluded with friendly settlement and 34 cases through the formal hearing. IPC has awarded more than 300.000 GBP to the applicants for compensation, which is not yet paid.[385] As it was mentioned during the interview with the local human rights defender, the IPC is now totally frozen, left without any funding, and proceeds the cases with extreme

[381] Ibid, 38-42.
[382] Williams, Gürel, 16-17.
[383] Ibid, 18.
[384] *Takis Demopoulos and Others vs Turkey* App nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04 (ECHR, 12 April 2010) para 127.
[385] Immovable Property Commition http://www.tamk.gov.ct.tr accessed 18 February, 2022.

delays.[386] In 2018, ECHR ruled on the *Joannou v Turkey*[387] case, where the applicant alleged a lack of effectiveness of IPC proceedings concerning her claims on the compensation of real property loss in the North. The court emphasized that this judgment was not calling into question the effectiveness of IPC remedy as such, but it dealt with an applicant's allegations in these specific circumstances, how IPC operated in her particular case.[388] The Court relied on the principles and standards adopted at *Demopoulos Case,* evaluated two principles issues while examining the effectiveness of IPC proceedings: Firstly, effective participation in the proceedings and, secondly, their protracted length. The court found that nine years without formal resolution of the case was a significant delay, which can be considered unacceptable for the resolution of a property claim, and that IPC "did not act with coherence, diligence and appropriate expedition concerning the applicant's compensation claim." [389]

This was the first case when IPC was assessed as non-effective, comparing to the previous case of *Eleni Meleagrou and Others v. Turkey*, where the court found that a period of some four years and eight months at two levels (including appeals against the decisions of the Commission) was deemed "not unreasonable given the newness of the procedure, the nature of the proceedings which incorporated a specific settlement procedure, the number of claims raised and the technical nature of property disputes)."[390]

Besides, another part of the property rights issue is related to the Turkish Cypriot property in the south. After the armed conflict, all Turkish-Cypriot properties were moved under the administration of the Ministry of Interior Affairs, acting as a guardian of these properties under the respective law on Guardianship no. 139/1991. The Ministry of Interior Affairs is responsible to administer properties temporarily until the final resolution of the conflict. In 2010, the law was amended, allowing Turkish Cypriots to challenge their property rights by introducing civil proceedings before the District Court. The amended law also provides that local district courts take into consideration standards established by EHCR.[391] Further, guardianship might be lifted under this law if the property owner intends to return from

[386] Interview with Öncel Polili (1 April, 2021)
[387] *Joannou v. Turkey*, App no. 53240/14, (ECHR, 12 December 2017).
[388] Ibid, para 82-87.
[389] Ibid, 91-95, 104.
[390] *Eleni Meleagrou and Others v. Turkey* App No. 14434/09 (ECHR, 2 April 2013) para. 18.
[391] *Nasia Hadjigeorgiou, Kazali and Others V. Cyprus* App No 49247/08 (ECHR, 6 March 2012); European Human Rights Law Institute, *Cyprus Human Rights Law Review* (vol 2, issue 1, 2013), 105.

abroad for permanent residence in the Government-controlled areas or is permanently settled there. After the amendments, in several cases, ECHR declared the applications submitted by Turkish Cypriots inadmissible due to the non-exhaustion of local remedies available in ROC.[392]

Interestingly, ECHR also played an important role in the protection of LGBT rights in northern Cyprus, where legislation criminalized LGBT relations. In case H.Ç. v. Turkey, applicants claimed that the jurisdiction of TRNC, which criminalized same-sex relations, violated the right to family life and privacy, freedom from discrimination, and freedom from inhuman and degrading treatment. Before the decision was rendered by the court, the TRNC parliament repealed the anti-homosexuality laws effectively bringing the court proceeding to a conclusion.[393] This gives a good example of how international legal remedies can play a role in improving human rights and in filling the gaps of protection in non-recognized states.

Güzelyurtlu and others v. Cyprus and Turkey have appeared as another important decision of ECHR when the court found both Turkey and Cyprus responsible for violation of the right to life under its procedural aspect. Both states failed to cooperate on a criminal matter to effectively investigate triple murder on the Nicosia-Larnaca highway in 2005, which remained unsolved after the killers fled to the north of the island.[394] Therefore, the court found that there was an obligation to cooperate with TRNC officials to prevent human rights vacuum and that it "did not accept that steps taken with the aim of cooperation to further the investigation, which, in this case, would amount to recognition, implied or otherwise of the 'TRNC'.

To sum up, international engagement in northern Cyprus is present at a certain level, which allows annual regular monitoring of human rights. The findings of international judicial organs, as well as human rights treaty bodies recognize TRNC authorities as the objects who need to comply with human rights obligations, regardless of their recognition. The local remedies and mechanisms are present in the non-recognized state for human rights

[392] *Niazi Kazali and Hakan Kazali v Cyprus* App no 49247/08 (ECHR, 6 March 2012), paras 115-116. *Hatice SAHAP v. Cyprus* App no 24536/10 (ECHR, 4 September 2012), para 152; *Ali Kamil Karamanoğlu and Others v. Cyprus* App No. 16865/10, (ECHR 12 March 2013) paras. 16-17.
[393] *H.Ç. v. Turkey* App no. 6428/12 (ECHR, 3 June 2014)
[394] *Güzelyurtlu v. Cyprus and Turkey* (ECHR, 2017)

violations, including some of them, which are created after the international ruling – Immovable Property Commission was created to enforce the EHCR decision. Civil society and local non-governmental sector can freely monitor human rights, have access to the local institutions, and send their monitoring reports to the international organizations. The obligation to protect human rights is unilaterally recognized by the de-facto authorities, as they have ratified international human rights treaties and recognized them in their domestic "legislation."

Chapter 4. Theoretical and legal drawbacks of persistent non-recognition policies

The above-described situations of so-called "frozen conflicts," which gave birth to non-recognized, de-facto states, caused various problems to the international legal system. Therefore, legal system needs to develop in the face of new realities. As the given research is focused on human rights, this chapter will be restricted to those international legal doctrinal challenges that hinder human rights protection in non-recognized states. Persistent non-recognition policies and the "frozen" nature of secessionist conflicts left various lacunas in international human rights law. International human rights jurisprudence tried to fill the gaps, but, from practical and legal perspectives, these attempts are not sufficient as people leaving in these territories still face systemic human rights challenges (see Chapter 3). This chapter will analyse the legal side of non-recognition doctrine, what are the international legal and doctrinal drawbacks of long-lasting non-recognition policies concerning the de-facto states, what are the legal challenges in terms of human rights application and implementation, particularly, how the responsibility gaps damage universal application of human rights and what alternatives are left or can be developed in international law to fill the existing lacunas.

4.1. Non-recognition as a challenge to international legal order

4.1.1. De-facto states in legal and political disciplines

International lawyers and scholars claim that non-recognized states are frequently influenced by the global political and legal attitudes, labeling de-facto self-proclaimed states as black holes, atypical temporary situations, or as criminal zones. In international relations and normative legal disciplines, it is argued that de-facto states are treated as "what they

symbolize in geopolitics rather than what they are."[395] In International Relations, de-facto states are envisioned as "no peace, no war" situations, they over-emphasize institutional deadlock and the absence of diplomatic solutions. Four possible solutions are offered to un-freeze the situations: 1) inclusion/annexation in patron state, 2) acquisition of full independence, 3) reabsorption in central/parent state, 4) the inclusion into the patron/parent state as a separate, autonomic entity.[396] But, from an empirical viewpoint, their only possible and most realistic future is the maintenance of the *status quo* and abovenamed alternatives are not expected in near future.[397] In International Relations, this issue is also analysed from geopolitical perspectives of patron states as they often instrumentalize frozen conflicts to advance their agenda in the region or globally.

As for the International legal discipline, the research on non-recognized entities is focused on the legal notions of "statehood," "self-determination," and "sovereignty," which also enters the deadlock due to antagonism between the principles of territorial integrity and self-determination. As a result of stalemated situation and gaps in research, recently, the IR scholarship made steps forward to analyse the situation of de-facto states from the perspective of their internal developments. In particular, the aim is to analyse the architecture of their fragmented authority and how they develop and transform into the political entity while revealing their unbelievable endurance.[398] The capability to militarily oppose the central state and obtain support from the patron state is also accompanied by the endurance of political elites to create new political reality, social order, infrastructure, as well as to normalize the situation. Dembinska and Campana call this process an "active nation-building and state-building" situation, which is dedicated to surviving and gaining internal legitimation, to approve that their claims for independence are justified.

According to the most widely accepted determination, de-facto states are "territories that have achieved de facto independence, often through warfare, and now control most of the area upon which they lay claim. They have demonstrated an aspiration for full de jure independence, but either have not gained international recognition or have, at most, been

[395] Broers Laurence, 'Recognizing Politics in Unrecognized States: 20 Years of Enquiry into the De Facto States of the South Caucasus.' (2013) 1 Caucasus Survey 1, 59–74.
[396] Kolsto P.A., 'The Sustainability of Unrecognized Quasi-States' (2006) 43 Journal of Peace Research 6, 723–40.
[397] De Vaal Thomas, Twickel von Nikolaus, *Beyond Frozen Conflict Scenarios for the Separatist Disputes of Eastern Europe*, (CEPS, Rowman & Littlefield International, London, 2020), 4-7.
[398] Dembisnka Magdalena, Campana Aurelie, 'Frozen Conflicts and Internal Dynamics of De Facto States: Perspectives and Directions for Research' (2 June 2017) 19 International Studies Review 2, 254–278.

recognized by a few states."[399] Recognition is the cornerstone of the state-building process in international law and policy, which guarantees a newborn state's cooperation with international society, as well as its obligations and responsibilities under international law. The above-described human rights challenges in the de-facto states frequently stem from non-recognition policy and legal doctrine. Below it will be critically analysed how this legal doctrine emerged and why it is still important, whether it has any legal meaning.

Attitudes towards the self-proclaimed "states" emerged within the de-jure recognized borders of sovereign states that have been mostly in favor of sovereignty and integrity of those states. It has not only been reflected within the attitudes and politics of states but also acknowledged in international legal documents and doctrines. The key international document, which enshrines sovereignty of states, is the United Nations founding document- the UN charter. Article 2 of the Charter is considered the foundation of international doctrine on the prohibition of the use of force and the state's inherent sovereignty. Particularly, the Charter acknowledged that "states shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state"[400] Moreover, the same article acknowledges the principle of sovereign equality of all member states.[401] 193 states are a member of UN, which makes this organization unique as a unifier of all states in the world. In this way, UN membership has become an indicator for being a "state" since only states can become its member.

The principle of sovereign equality comprises various other related principles, such as the principle of non-interference, the principle of territorial integrity as well as political independence of states.[402] These principles create the foundation of international law as well as presents founding principles of interstate relations. As all states have agreed on the major rules of play in the international area, it is not surprising that the same states now agree not to recognize situations or regimes which have been created in violation of these principles.

4.1.2. Development of non-recognition doctrine

[399] Caspersen Nina, *Unrecognized States in the International System* (Routledge, 2011)
[400] UN Charter, article 2(4).
[401] ibid, article 2(1).
[402] Moslemi Behrooz, Babaeimehr Ali, 'Principle of Sovereign Equality of States in the Light of the Doctrine of Responsibility to Protect' (2015) International Journal of Humanities and Cultural Studies, 691-692.

The principle of non-recognition is claimed to have deep roots and history. The idea of non-recognition is noticeable in the works of Hugo Grotius since the 17th century with the Latin name of *ex injuria jus non oritur*.[403] The development of related legal practice started in the 19th century in several Latin American treaties and statements when they agreed not to recognize forcible territorial acquisition/conquest.[404] The duty of non-recognition was then reflected in the Draft Declaration on Rights and Duties of the States adopted by the UN General Assembly in 1949, in the Montevideo Convention, etc.[405] These early documents, which reflected the duty of non-recognition, stemming from the principles of territorial integrity and prohibition of the use of force had various legal statuses and nature. Notwithstanding their binding or non-binding nature, they show the history this principle has and how important it was for the states right after the end of the Second World War to guarantee that nobody would grant legitimacy to the occupation, forcible acquisition of territories, or any violation of the use of force.

Regardless of its rather long history in the early 19th century, the duty of non-recognition is mostly connected with the name of State Secretary of USA Henry Stimson. In 1931-1932 Japan's forcible take over the Chinese territories and occupation of Manchuria was assessed by the USA as the illegal use of force. Stimson delivered identical notes to the rival states China and Japan, which declared that "the American government deems it to be its duty to notify both the Government of the Chinese Republic and the Imperial Japanese Government that it cannot admit the legality of any situation *de facto*."[406] Stimson's declaration was only related to the US and its decision not to recognize the illegal use of force by Japan, which derived from the political relationship with China and Paris Pact of 1928, to which China, Japan, and the US were parties. However, Stimson's declaration was followed by the resolution of the Assembly of League of Nations, which obliged its member states not to recognize any situation, treaty, or agreement contrary to the Paris Pact and League of Nations Covenant. As it can be translated into contemporary reality since the 1930 international

[403] Sprudzs Adolf, 'Ex iniuria ius non oritur" and the Baltic case: A brief western perspective' in Talavs Jundzis (ed) *The Baltic States at Historical Crossroads: Political, economic, and legal problems in the context of international cooperation on the doorstep of the 21st Century*, (Academy of Sciences of Latvia 1998), 651.
[404] Pert Alison, 'The "Duty" of Non-recognition in Contemporary International Law: Issues and Uncertainties' (2013) Sydney Law School 2; UN Secretary General *Preparatory Study Concerning a Draft Declaration on the Rights and Duties of States,* (15 December 1948) UN Doc A/CN.4/2, 111-113.
[405] Montevideo Convention, article 11.
[406] McNair Aronld D., 'Stimson Doctrine of Non-Recognition', (1933)14 British Yearbook of International law 65.

community agreed that nothing contrary to the prohibition of the use of force and principles of the UN shall be recognized as legal and this obligation has *erga omnes* nature. Since then, the principle of non-recognition gained the name of Stimson's Doctrine.[407]

Subsequently, collective non-recognition policy was adopted on several occasions by states and international organizations, such as in case of invasion of Iraq in Kuwait,[408] South Africa Bantustans,[409] self-proclaimed Turkish Republic of Northern Cyprus "TRNC."[410]

4.1.3. Normative and practical aspects of non-recognition doctrine

From a rather politically connoted concept, non-recognition slowly emerged as an international *erga omnes* obligation, imposed on everyone. There is a long list of legal documents,[411] which reaffirms the duty of non-recognition resulting from illegal use of force and acquisition of territories. All of these documents and existing state practice reiterate the customary nature of this obligation.[412]

The duty not to "recognize as lawful" is reflected in the Articles of the International Law Commission (ILC) on the Responsibility of States for Internationally Wrongful Acts (ARSIWA). Article 41(2) stipulates that 'no State shall recognize as lawful a situation created by a serious breach of an obligation arising under peremptory norms of general

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[407] Brownlie Ian, *International law and use of force by states* (University of Oxford, 1963), 410; Jennings Robert & Watts Arthur (ed.), *Oppenheim's International Law,*(9th ed, 2008) 183; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (Namibia Case)*, Advisory opinion, International Court of Justice (21 June 1971), para 16;

[408] UN SC/Res 660 (1990), para 9(b):

[409] Organization of African Unity, Resolution on non-recognition of South African Bantustans (September 1976); UN GA A/RES/3151, *Policies of apartheid of the Government of South Africa* (14 December 1973)

[410] UN SC/Res 365 (1975); UN SC/Res 367 (1976).

[411] Draft Declaration on the Rights and Duties of States 1949, article 11: *'every State has the duty to refrain from recognizing any territorial acquisition by another State' in violation of the prohibition of the threat or use of force'.* Cairo Declaration on Peaceful Coexistence and the Codification of its Principles by the United Nations 1964: *'States must abstain from all use or threat of force directed against the territorial integrity and political independence of other States; a situation brought about by the threat or use of force shall not be recognized'*; Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations 1970; Declaration on the Strengthening of International Security, A/RES/2734(XXV) 1970;

[412] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Wall Case),* Advisory Opinion, ICJ (2004), para 87; Talmon Stefan, 'The Duty Not to 'Recognize as Lawful' a Situation Created by the Illegal Use of Force or Other Serious Breaches of a Jus Cogens Obligation: An Obligation without Real Substance' in Christian Tomuschat and Jean-Marc Thouvenin (eds) *The Fundamental Rules of the International Legal Order* (Brill Nijhoff 2006), 102.

international law.'[413] In this way, non-recognition duty has been extended beyond the prohibition of the use of force to the violation of any serious breach of *jus cogens* norms of international law.[414] There are several *jus cogens* norms in modern international law, including the prohibition of torture, prohibition of racial discrimination – apartheid, prohibition of genocide, slavery and slave trade, crimes against humanity, etc.[415] ILC commentaries on article 41 of ARSIWA do not provide further information about this obligation except mentioning that states should not formally recognize the situations as lawful, but it is also prohibited to commit such acts which amount to implied recognition. Specifically, what acts would amount to implied recognition is not mentioned in the Commentary which gives states broad scope of interpretation and creates a problem of so-called "creeping recognition" fears, which was discussed above.

The International Court of Justice (ICJ) in the famous *Wall Case,* concerning the occupation of Palestinian Territory, reaffirmed the *erga omnes* obligation reflected under Article 41 of ARSIWA. The Court assessed the situation resulting from the construction of the Wall in the Palestinian Territory as illegal and all states have an obligation not to recognize or grant any legitimacy to such an illegal situation.[416] Wall case was not only example when ICJ discussed the duty not to recognize, 30 years earlier to this decision, in another advisory opinion delivered by ICJ on Namibia case, the court affirmed the obligation of the whole international society not to recognize illegal administration of South Africa and its respective acts in Namibia as legal.[417] The reflection of non-recognition *erga omnes* obligation under the Articles on State responsibility bears the meaning that non-recognition is one of the forms of responsibility for the acts, which constitute a gross violation of international law and its founding principles.

Regardless of the wide-scale acknowledgment and endorsement of this obligation in international law, the content and real substance of this obligation still deserve criticism.[418]

[413] Articles on State Responsibility for International Wrongful Acts (ARSIWA), A/RES/62/61 (2008), article 41(2).
[414] Talmon (2006), 103.
[415] Nieto-Navia Rafael, 'International Peremptory Norms (JUS COGENS) and International Humanitarian Law, in Lal Chand Vohrah *et al*(eds) *Man's Inhumanity to Man' Essays on International Law in Honor of Antonio Cassese* (Kluwer Law International, 2003, 595-640.
[416] *Wall case*, paras 158-159.
[417] *Namibia Case,* para 16
[418] See Talmon (2006)

The questions about the content of the duty not to recognize illegal act was raised by judge Kooijmans in the *Wall Case.* He argued that the actual construction of the Wall and inclusion of a vast amount of territory by Israel is illegal, it is vague what the actual obligations for the third states are, except non-recognizing this situation as legal.[419] This obligation is different from the duty not to render any aid or assistance in maintaining such an illegal situation. For example, it is arguable whether the financing of new road webs or provision of food by UN special missions for people, who are cut off from their fields by the Wall, implies recognition of illegal situation or is it aid or assistance. [420] It is argued that none of them is a consequence of such acts, as it is a simple relief for people left in isolation by the wall. Scholars mostly avoid answering the question of what should states do to prevent implied recognition and in this way violation of their *erga omnes* obligation. The way to narrow the meaning of non-recognition was found by the Swedish representative to the Special Committee of Friendly Relations Declaration, who specified that this is a "duty not to recognize the situation as legal." This would only bear the meaning of *de jure* recognition and would allow *de-facto* recognition of such illegal situations. Such formulation could give third states broader scope of *de facto* relationship with the perpetrator of an illegal act.[421]

The practice of non-recognition obligation went in a rather different direction in light of several resolutions of the UN Security Council that obliged states to refrain from acts that might constitute *implied recognition.*[422] Such practice was developed by the UN in cases of Northern Cyprus, Namibia, Iraqi annexation of Kuwait, etc. The concept of implied recognition is not compatible with the direct obligation of non-recognition as legal. However, in practice, states extend their scope and refrain from any communication or cooperation with de-facto states or illegal regions. Such extension of its content triggered states' political fears of so-called "creeping recognition" and, therefore, they refrained from acts that may be interpreted as recognition. The fears of implied recognition sometimes prevent states and international organizations from forming any relationship with de-facto states, including the ones that might be necessary to protect human rights in these territories. As it is discussed in Chapter 2.6, implied/ "creeping" recognition doctrine does not have clear legal ground and presents the state's political approach to extend non-recognition

[419] *Wall case*, paras 43-44.
[420] Talmon (2006), 106.
[421] Ibid, 112.
[422] UN SC/Res 662 (1990)

policy on every act that might concern de-facto states. With such a political approach, state's enlarged understanding of non-recognition duty consequently ends with isolation and total exclusion of people in de-facto states. However, from a legal point of view, this duty is not as wide as it is interpreted with state practice.

The international practice varies in what actions will be considered as the non-recognition obligation by the states, international organizations, or judicial organs. The content of the obligation depends on the factual circumstances of the situation.[423] Several *jus cogens* norms dominated in various cases that were discussed in light of this duty, for example in the situation of Northern Cyprus, the prohibition of the use of force was violated, in South Africa, the prohibition of racial discrimination (apartheid); in Rhodesia – the right to self-determination, etc.[424] In cases where states are not recognized as lawfully created states like TRNC or Abkhazia or South Ossetia, the rights and privileges, which are inherent to the statehood, are denied. Cooperation between states might be precluded.

ICJ had an attempt to determine the meaning and content of non-recognition duty in well-known *Namibia Advisory Opinion* while considering non-recognition of South African administration in Namibia. The court found that states are obliged to refrain from any cooperation with the government of South Africa that would imply recognition of the legality of South Africa's presence in Namibia.[425] However, not all *dealings* are precluded, but *some* might imply recognition. How one should distinguish between those two dealings is also debatable. Three categories are separated in practice: actions implying recognition of the legality of a situation (which may also aid or assist in maintaining the illegal situation); actions amounting to aid or assistance in maintaining the situation (without implying recognition of the legality of the situation) and actions which do neither of these.[426] The court elaborated more about the content of the obligation of non-recognition and clarified that third states are obliged *not to send any diplomatic or special missions to the wrongdoer state, nor to send any consular agents, abstain from entering into economic and other relationships*.[427] This means that the court called on the states not to form any formal international relations with de-facto states, which would amount to their legitimation. The

[423] Talmon (2006), 118.
[424] Ibid.
[425] *Namibia case*, para 133 (emphasis added).
[426] Talmon (2006), 114.
[427] Namibia case, para 121-122.

court does not refer here any action, other than formal cooperation, which would be considered as implied recognition. ICJ further determined that non-recognition duty also precludes any act that would imply recognition of legality.[428] It left this issue unanswered while discussing the non-recognition duty in the Wall case.[429]

The practice of applying non-recognition obligation to the situations of illegal acquisition of the territory is quite rich. This was applied by European Union agencies while not recognizing Israeli occupation of Palestinian territory and did not spread the privileges offered under the EU-Israeli Association Agreement to the *de-facto* annexed Palestinian territory.[430] Further, states withdrew diplomatic and consular offices based in East Jerusalem, and the missions in Israel do not extend to the Israeli side of the Wall. A similar practice was established concerning illegally established, self-declared states of Abkhazia, South Ossetia, and Northern Cyprus – TRNC. In the decades of their existence, they received almost zero support and recognition from the international community, while there is no international judicial judgment (apart from the UN Security Council resolutions), which discussed and found that their creation is illegal under the principles of international law. Such practice leads to the conclusion that decisions on non-recognition are mostly politically motivated rather than legally determined.

The views on the existence of duty not to recognize is dualistic in literature and both for and against positions have been developed. Strong criticism is directed at the question of whether this duty emerges automatically stemming from its customary law nature or should be authorized by an authoritative political/legal decision.[431] Since the late 1970s, it can be more assuredly said that the territorial acquisition resulting from the threat or use of force was widely acknowledged as illegal and that, in such a case, no valid title to the territory existed.[432] Its customary law nature was later recognized by ICJ in the Wall case.[433] While asserting this ICJ derived from the nature and importance of the rights and obligations (right of self-determination and international humanitarian law rules), it held that all states are

[428] Ibid, p. 55.
[429] Separate Opinion of Judge Koojmas in *Wall case*.
[430] Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, (Brussels, 20 November 1995). article 83: ('This Agreement shall apply […] to the territory of the State of Israel.')
[431] Alison, 48-71
[432] Ibid, 56.
[433] *Wall Case,* para 87.

obliged not to recognize such situations as legal. Further, later non-recognition emerged as a sanction for the internationally wrongful act under ARSIWA as mentioned above.

4.1.4. Difficulties of interpreting non-recognition duty

The wide acceptance of this obligation and its *erga omnes* status is, on the one hand, promising, as the international community stands together not to accept the situations which violate the fundamental principles of international law and the key values. However, there are several **practical and doctrinal difficulties** driven by the establishment of this obligation in general as well as due to the protracted existence of non-recognized, de-facto states.

The first doctrinal difficulty lies in the debatable question—**when the duty of non-recognition arises,** does it automatically emerge once a wrongdoer has violated international legal order, resting upon the states to assess the existence of this duty or should an authoritative political organ, like UN or its principal judicial organ ICJ decide.[434] It is argued that if states individually decide whether to recognize or not, this would negatively affect the stability of international law and would create chaos.[435] ILC articles on state responsibility rest on the assumption that the violation *of jus cogens* norms will be responded to by the international community and believes that they will reveal solidarity while facing such mass violations. The commentary of ARSIWA also notes that, usually, the UN organ will determine when the international crime/wrongful act was committed and its legal consequences.[436] However, the internationally wrongful act also implied that individual states may disregard such acts but this does not entitle them to make their judgments.[437] ARSIWA commentators were very cautious not to render the individual states the status of "policeman of the international community," as it would create a mess in international law as well as in international relations. **Therefore, ARSIWA does not make any specific requirements whether the finding should be made by a competent international organ or not**. However, there is the international practice wherein UN Security Council does not leave such violations unanswered and renders an authoritative finding for the international

[434] Talmon (2006) 121.
[435] Ibid.; Arangio-Ruiz Gaetano, 4th Report on State Responsibility, A/CN.4/461/Add.1, (26 April 1994) para. 18.
[436] Report of the International Law Commission on the work of its fifty-third session, Commentary on Articles on State Responsibility, p 114, para (5)
[437] Ibid, paras 5-6.

community and obliges them not to recognize.[438] It is also argued that non-recognition should not be dependent on the resolution of SC or General Assembly, but it is a consequence of serious breach as it is cited in article 41 of ARSIWA and it is a minimum response of the international community to such breach.[439]

In this way, the question of whether non-recognition was a self-executing obligation or required authorization from the international organ remained open in several discussions, including in ILC deliberations. In the *East Timor case,* dissenting judge Skubiszewski stated that the duty was self-executory.[440] However, the court implicitly agreed to Australia's argument that there was no obligation imposed on other states to respond to any illegal situation unless a collective decision on that was rendered.[441] Judge Higgins in *Wall Case* also shared the majority opinion of the East Timor case's judges and noted that this obligation derived from the UN competent organ's findings, which might be ICJ or UN Security Council.[442] It is also noted that, since qualification of a certain legal or illegal act becomes a subject of discussion (Japan claimed self-defense and to protect its citizens in Manjuria, Russia claimed invitation while intervening in Hungary), authoritative impartial decision is needed, which will be followed with an obligation not to recognize.[443] In this way, the non-recognition duty might derive from the UN SC resolutions, which, implicitly or explicitly, call for the international community not to recognize the created illegal situation.[444]

The second difficulty connected with the duty of non-recognition is related to its timeframes, **whether it is an open-ended obligation or that it only ends with the achievement of the status quo ante?**[445] James Crawford noticed at the pleadings before ICJ in the case concerning East Timor, between Australia and Portugal, that such obligation not to recognize based on customary international law might last for years, decades, indefinitely. Further, he

[438] Talmon, pg 121, Cf. Report of the International Law Commission on the Work of its 48th Session, GAOR, 51st Session, Supp. No. 10 (A/51/10), 1996, pp. 169-170.
[439] Report of the International Law Commission on the Work of its 48th Session, GAOR, 51st Session, Supp. No. 10 (A/51/10), 1996, 169-170.
[440] *East Timor Case* (Portugal v. Australia) [1995] ICJ, para125
[441]
[442] *Wall Case,* at 216.
[443] Alison,15.
[444] UN SC/Res 217 (1965) on Rhodesia situation; UN SC PRS S/13549 (1979) on Bantustans situation; UN SC/Res 541 (1983) on TRNC situation; UN SC/Res 662 (1990) on Iraq sitation.
[445] Talmon (2006), 122;

also stated that "if the duty of non-recognition emerges automatically without any authoritative decision or judgment, then how can this obligation be controlled, limited, or qualified by UN organs?" Duty of non-recognition lasts for decades in cases like Abkhazia, South Ossetia, and TRNC. The establishment of the *status quo ante* might not happen and how the international community should cooperate with the non-recognized states remains in question. After all, Talmon correctly notes that this duty does not operate in a vacuum, separated from the international community's response.[446] The reality of international relations will require some acknowledgment in dealings with a wrongdoer state or with a non-recognized entity,[447] but according to this duty, such dealings should not entail rendering legality to illegal situations.

The third doctrinal, as well as practical difficulty, is related to the **collision of duty of non-recognition with the duty to cooperate to bring to an end through lawful means any serious breach.**[448] It might be argued here that the duty to cooperate is directed at the third states, including cooperation in terms of responding to the internationally wrongful act and in terms of non-recognizing the created situation. In light of this argument, the German **Federal Constitutional Court found that duty to cooperate has priority over duty not to recognize as its primary aim in practical terms, to mitigate the violation of peremptory norms while safeguarding the interests of both parties**.[449] The same approach was found by ICJ in the Namibia case while holding that the international community should cooperate with South Africa (occupying power) to finish the occupation of Namibia, which does not entail a violation of the duty of non-recognition.[450] The necessity

[446] Ibid.
[447] Alison, 18.
[448] ARSIWA, article 41(1).
[449] Order of the German Federal Constitutional Court of 26 October 2004, 2 BvR 955/00, Deutsches Verwaltungsblatt 2005, 175-183, available at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2004/10/rs20041026_2bvr095500en.html accessed 13 February, 2022. The case concerned expropriation of German-owned property by the Soviet Union in the zone of Soviet occupation in German-owned territory during 1945-1949 and possible violation of public international law by German Federation. Upon reunification of Germany, the unification treaty declared that expropriations under the Soviet Regime was not reversable. The court found that the expropriations by the occupant regime constituted violation of *jus-cogens* norm, but Germany was not under obligation of non-recognition, as duty to cooperate was of primary importance, in order to mitigate the consequences caused by the violation of peremptory norm. The court held that Germany achieved its obligation to eradicate occupation and reached unification by successful cooperation and negotiation with the occupying power. Furthermore, legal acts on equalization of payments Germany mitigated the negative results of expropriation laws, therefore Germany was not bound by duty not to recognize, since duty to cooperate had primary importance in this case.
[450] Talmon, 124.

of cooperation was also upheld by ECHR in *Ilascu vs. Moldova and Russia*, where court clarified that Moldova's cooperation with Transdniestrian authorities for the purpose to improve everyday life of people living in Transdniestria was in live with Moldova's positive obligations under the Convention. The Court considered that such cooperation cannot be regarded as support or recognition of Transdniestrian regime, but, on the contrary, it demonstrated Moldova's intent to reestablish control over its lost territory, which is an important element of state's positive obligations.[451]

The fourth and rather strong criticism directed towards the non-recognition duty is that its **real substance is limited to the non-recognition of factual circumstances that also takes the form of a legal claim**, such as to statehood, territorial sovereignty, governmental capacity, etc. In these cases, non-recognition appears **as a powerful tool and sanction**. However, in practice, this duty has limited scope as it does not have any real meaning and support concerning the breach of other *jus cogens* norms such as slavery, genocide, etc.[452] It should also be noted that the reason beyond the power of non-recognition duty in the context of statehood and territorial sovereignty is the role of recognition in the formation of states.[453]

As the full content of non-recognition duty remains under open discussion, the legal consequences of breaching the duty are also vague. Generally, these legal consequences will be related to the obligation to withdraw its recognition and cease the activities that will amount to implied recognition. Any treaty that violates this duty will be null and void.[454] However, which actions amount to the implied recognition are not clear and well-prescribed under international law, and there is no test which applicable to check the importance of such dealings with the wrongdoer state/illegal entity/secessionist state.

It would take the research into a rather broader context if the deficiencies and general developments of non-recognition duty will be discussed in detail. Due to the context and objectives of the given research, the study is more focused on the protracted non-recognition policy that influenced the human rights situation in de-facto states. The imprecise and still questionable content of the duty not to recognize and its respective policy cause practical

[451] *Ilaşcu and Others v. Moldova and Russia*, App no 48787/99 (ECHR, 8 July 2004), paras 336-345.
[452] Ibid, 125.
[453] Crawford James, *Creation of States in International Law* (Oxford, 2007) 19 ff.; Raic David, *Statehood and the law of Self-determination* (Kluwer Law International, Hague 2002) 28-32.
[454] Viena Convention on Law of the Treaties 1969, United Nations, Treaty Series, vol. 1155, p. 331, article 53.

problems and challenges particularly when the non-recognition duty continues for a long period (and does not have any expectations of ending). The above-given critical overview of the human rights situation in self-proclaimed *de-facto states of* TRNC and Abkhazia and South Ossetia aimed to represent what human rights challenges and systemic problems can be raised due to protracted non-recognized existence. As analysed here, non-recognition has its political and legal dimensions that are both vague and broadly interpreted by the states in favor of protecting sovereignty and territorial integrity principles. The human rights situation in these territories demonstrates that this political and legal concept needs adaptation and development in response to the given humanitarian and human rights challenges. The analysis below of international human rights jurisprudence reveals that this approach is reconsidered and changed in favor of basic principles and goals of human rights.

4.2. Legal challenges to apply human rights law in non-recognized states

Apart from the above-analysed practical obstacles that non-recognition policies create for human rights application, another dimension of problems is related to the legal gaps created by the protracted non-recognition of de-facto states, in particular, lack of effective remedies and problems of responsibility and accountability for human rights violations. In international human rights law, generally, international law is state-centric, which means that states are considered major actors capable to fulfil human rights obligations under respective treaties/conventions and, therefore, capable to infringe them. For that reason, de-facto non-recognized states which do not fall within the international human rights system do not feel accountable and therefore do not provide the appropriate standard of protection. The state-centric nature of international human rights law does not see the role of non-state actors within the multi-level system of human rights protection and their responsibility for violations. To this end, the human rights situation might be unstable in these territories, as the political will of de-facto authorities to protect human rights may change from time to time and there is no solid legal ground to find them accountable. In various cases, they are themselves the violators or giving shelter to the perpetrators for political purposes.

International human rights courts shifted the responsibility to protect human rights in two directions while adjudicating who is responsible for human rights protection in non-recognized de-facto states: Firstly, the parent state maintains its ution to protect human rights as it is internationally recognized and holds de jure jurisdiction over the territory of the self-

proclaimed state. The fact that the parent state does not exercise effective control over the non-recognized entity does not discharge it from its positive obligations.[455] From the legal point of view, its responsibility is apparent and it has solid legal as well as theoretical ground. This was agreed by ECHR in *Ilascu v. Russia and Moldova Case,* which recognized that conventional obligations can be "divided and tailored" between the duty-bearers and as Moldova cannot exercise effective control over Transdniestrian territory due to Russian occupation, these obligations were shared between Russia and Moldova. The absence of its control simply reduced Moldova's obligations and at the minimum it had to take "diplomatic, economic, judicial and other measures in its power … under international law to secure to the applicants the rights guaranteed by the Convention."[456] The positive obligations imposed on Moldova were derived by the fact that it did not cease having its de-jure jurisdiction over the territory where it lost control.[457] Further, the Court obliged Moldova to cooperate with the authorities of MRT to secure the rights of individual applicants.[458] The obligation of cooperation was later reaffirmed in *Guzelyurtlu v. Turkey case*. Additionally, the court affirmed these findings in the *Catan* case, which dealt with the violation of educational rights in the context of Transdniestria. The court found that Moldova's jurisdiction was limited due to a lack of effective control over one part of its de jure territory, although it maintained its positive obligations "to use all legal and diplomatic means available to it to continue to guarantee the enjoyment of rights and freedoms under the Convention."[459]

However, the level of protection offered by ECHR in *Ilascu* and *Catan* cases is so low and vague that it can easily create a lacuna, where the state's direct obligations cannot be enforced. Moreover, the observation on the extraterritorial jurisdiction cases demonstrates that human rights courts interpret jurisdiction as "all or nothing" concept.[460] This is a "threshold criterion," which means that, in extraterritorial situations, human rights

[455] UN Human Rights Committee (HRC), CCPR 'General Comment No. 26: Continuity of Obligations' CCPR/C/21/Rev.1/Add.8/Rev.1 (8 December 1997) para 4; *Ilaşcu Case*, para 333.
[456] *Ilascu Case*, paras 330-341.
[457] ibid, para 331.
[458] ibid, para 339.
[459] *Catan and Others v Moldova and Russia,* para 110.
[460] Altwicker Tilmann, 'Transnationalizing Rights: International Human Rights Law in Cross-Border Contexts' (2018) 29 EJIL 2, 581–606; Besson Samantha, 'The Extraterritoriality of the European Convention on Human Rights: Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts to', 25 Leiden Journal of International Law (2012) 857 at 878.

responsibility may apply or not for harmful effects. Thus, if specific situation do not qualify the established threshold (control test), human rights responsibility will not be raised.

From a practical viewpoint, parent states who lost control over a certain area within their jurisdiction cannot guarantee human rights protection and they often make such disclaimers in international reports to human rights monitoring bodies. Moreover, the parent state does not have information on the ground that would allow responding to violations and systemic infringement of rights. The content of a state's positive obligations is determined on a case-by-case basis by the international courts but since the level of control is limited, the content and scope of parent states' positive obligations are also restricted. Such limitations create a gap in protection when a de-facto state continues to exist for decades.

To fill this lacuna, human rights courts extend state's jurisdiction extraterritorially and impose human rights obligations on the state which exercises effective control over the de-facto states. However, international jurisprudence is not consistent in that regard and cannot provide such level of protection that would prevent the gap in case of protracted non-recognition and long-term existence of de-facto states. This shift of responsibility cannot guarantee complete application of human rights law in non-recognized states due to their protracted existence and requires further development of international legal practice to fill this gap in protection. The divergence on political status and conflict resolution affect human rights as none of the involved parties recognizes its responsibility for violations. For example, the Georgian side considers the Russian Federation as the responsible party, since it exercises effective control over the occupied territory.[461] Russia does not find itself responsible as it recognized Abkhazia as an independent state responsible for human rights protection in its own country. Such approaches on a political level increase the accountability gap that already exists on a legal level. The analysis of ECHR jurisprudence below will demonstrate these gaps and inconsistencies.

Beyond that, recent international doctrine and legal documents also indicate the de-facto authority's responsibility of human rights protection, but this assertion is not mature enough and does not have solid legal and remedial mechanisms to impose sanctions for violations. The given subchapter provides a critical analysis of state-centric international human rights

[461] Hammarberg and Grono, 3.

law and tries to find alternatives and legal grounds to impose human rights obligations to non-recognized states.

4.3. Concurrent and tailored responsibility of de-facto and de-jure states

As mentioned above, the court's jurisprudence has developed in two directions to fill the vacuum in the human rights protection system. Firstly, the territorial state may be held responsible for violations in the de-facto state because it maintains its de-jure jurisdiction, and, secondly, the other state that exercises effective control over the de-facto state can also be held responsible.

Article 1 of ECHR obliges states to "secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention." The convention's primary position is that it applies to the whole territory of the sovereign state, regardless of any difficulties the state may have in certain parts of its territory to enforce conventional obligations.[462] The lack of effective control over one part of the territory does not extinguish the state's jurisdiction and its responsibilities, but it may be limited due to the lack of control. To fill the vacuum caused by the loss of territorial state's control, the court established the concept of extraterritorial jurisdiction. However, it should be noted that if the other state does not have extraterritorial jurisdiction, then, from the pure legalistic viewpoint, the only territorial state is left which may be held responsible under public international law. In the context of loss of control, this statement has a simple declaratory meaning, as the territorial state cannot effectively implement its positive obligations. In such situations, rethinking the state-centric international law system gains more importance, which will be discussed in the following subchapter.

The responsibility and corresponding obligations can be attributed to another state that exercises effective control over that territory, directly or through the non-state armed groups, and/or to these groups. European Court of Human Rights developed respective jurisprudence with the sole purpose to avoid a "regrettable vacuum" in the human rights system.[463] The most prominent among such cases is the interstate dispute between Cyprus and Turkey, where the court made it clear that the human rights of individuals living out of the officially

[462] *Assanidze v. Georgia*, App no 71503/01 (ECHR, 8 April 2004), 146.
[463] *Banković v. Bel*gium App no 52207/99 (ECHR, 12 December 2001) para 59.

recognized government's control are at risk of isolation and the international community should not allow this. However, its jurisprudence is not straightforward and consistent in the determination of the state's responsibility for wrongful acts beyond their national borders, i.e., extraterritorially. The conceptual nature of extraterritorial jurisdiction is quite vague and it compromises explicit understanding of the extent and nature of the respondent state's obligations and responsibilities. This is particularly true in the situation of protracted existence of de-facto states where other state exercises effective control and the extent of their human rights obligations is not straightforward.

4.3.1. Jurisdictional threshold criteria in European Court's practice

As Rick Lawson argues, the extent to which states have to secure human rights depends on their ability to do so - thus depending on their degree of authority and control.[464] This scholarly assumption derives from the ECHR case law, which mostly extends jurisdiction based on control test because when state exerts a high degree of administrative or territorial control, they are responsible to secure most rights under the Convention. Lawson argues that when there is a direct and immediate link between the extraterritorial activity of the state and an individual's right, the jurisdictional force of human rights convention extends.[465] This approach is supported by the normative understanding of human rights, which recognizes that the fundamental objective of human rights is universality. If a state is in the position to control the exercise of one's rights, the jurisdiction should be expanded in order to prevent the black holes in protection. However, it is noteworthy that the Court's jurisprudence does not specify whether the obligations imposed on the states extraterritorially are positive or negative, determination of which would clarify the scope of obligations and the level of protection that is secured for the inhabitants of de-facto states. The positive obligations are mostly attached to the factual ability of the state to control and provide protection, while negative obligations require enjoyment of the rights.[466]

[464] Lawson Rick, 'Life After Banković: On the Extraterritorial Application of the European Convention on Human Rights', in F. Coomans and M.T. Kamminga (eds), *Extraterritorial Application of Human Rights Treaties* (Intersentia, 2004) 86.
[465] Ibid, 120.
[466] Demetriades Alexandros, 'Reconceptualizing Extraterritoriality Under the ECHR As Concurrent Responsibility: The Case For a Principled and Tailored Approach'; 12 European Journal of Legal Studies 1, 159.

Further, there is criticism in literature according to which states signed the Convention because they knew its scope of application, which would not stretch their obligations beyond their territorial limits.[467] The ECHR case law tried to maintain the balance and it seemed more explicable as the court tried to assure strong nexus between the state's physical territory and its jurisdiction. All categories of extraterritorial jurisdiction include the exercise of state functions (functional sovereignty) in another state's territory.

In its case law, the European Court of Human Rights defined narrow categories of cases, where the Convention applies extraterritorially and these limited exceptions require a strong connection between individual rights and the signatory state's physical territory. The court attempted to maintain a balance between its aspirations to protect the universality of human rights and the Convention's regional identity.[468] The first category of extraterritorial jurisdiction cases is the "effective control of an area" model (spatial concept of jurisdiction) and the second is "state agent authority" model (personal concept of jurisdiction). This means that the court attributed responsibility to the states for their extraterritorial acts if they exercise effective control of an area or if their agent exercised authority over a certain area or situation.

The criterion of effective control became *conditio sine qua non* for ECHR to exercise its jurisdiction in case of the state's extraterritorial wrongful acts.[469] This approach is criticized as artificial and imprecise under Public International Law, and the state is directly responsible for its wrongful acts, either within its borders or beyond.[470] This criticism derives from the fact that the court wrongly mixed the issues of attribution and jurisdiction and the effective control test is relevant to find attributability of wrongful conduct to the wrongdoer state. It is considered that, if a state's direct wrongful act violated international law, it should be held responsible regardless of where the wrongful act took place, whether within the limits of the state's territorial borders or not. According to the ECHR's logic, effective

[467] Miller Sarah, 'Revisiting Extraterritorial Jurisdiction: A Territorial Justification for Extraterritorial Jurisdiction under the European Convention', EJIL 2010, EJIL (2009), Vol. 20 No. 4, 1236; See also: Boyle O., 'The European Convention on Human Rights and Extraterritorial Jurisdiction: A Comment on "Life After Banković,"', in Coomans and Kamminga, 125–139.

[468] Miller, 1223–1246

[469] Tzevelekos Vassilis, 'Reconstructing the Effective Control Criterion in Extraterritorial Human Rights Breaches: Direct Attribution of Wrongfulness, Due Diligence, and Concurrent Responsibility' (2014) 36 Michigan Journal of International Law 1, 142.

[470] Ibid, 175.

control cases derive from the understanding that jurisdiction comes from an effective control of another state's territory, where the Contracting state exercises functional control. *Cyprus vs. Turkey* case is a foundational case in this regard,[471] where it was concluded that the armed forces of Turkey 'bring any other persons or property in Cyprus "within the jurisdiction" of Turkey . . . to the extent that they exercise control over such persons or property because Turkey had already established functional control over the region.[472] Later, the court's decision in the Bankovic case was highly criticized in that regard as a mistake which further served to feed the accountability gap during extraterritorial control.[473]

Here, the Court found that "jurisdiction was primarily territorial" and that Article 1 of the Convention reflected ordinary and essentially territorial jurisdiction of the state. The court noted that extraterritorial jurisdiction is exceptional and should be assessed individually, requiring special justification in each case.[474] It asserted that any extension of jurisdiction beyond the territorial limits of the state was "exceptional," requiring "special justification."[475] In *Bankovic*, the court ignored the "state agent authority" model and later case law further lacked consistency and certainty.[476] The court developed an argument that the states engaged in extraterritorial military mission never indicated any belief that their action involved an exercise of jurisdiction within the meaning of Article 1 by making derogations under Article 15 of the Convention. Moreover, the Court developed its reasoning on the issue of *espace jurisdique,* arguing that ECHR is a multilateral treaty in an essentially regional context and legal space of European states. The court's desire and aspiration to prevent a "regrettable gap or vacuum of human rights protection" was referred to by the court as "exceptional circumstances."[477] Such a finding jeopardized a general goal to prevent a human rights vacuum as it declared that the state might be held responsible for its extraterritorial violations only in exceptional circumstances. The court found that the positive obligations under Article 1 of the convention required the state party to secure all

[471] Miller, 1237.
[472] *Cyprus v. Turkey*, App 25781/94 (ECHR, 28 June,1996) 21.
[473] Miller, 1234.
[474] *Banković v. Belgium and others*, paras 59-61.
[475] Ibid, para 59.
[476] Miko Samantha, 'Al-Skeini v. United Kingdom and Extraterritorial Jurisdiction Under the European Convention for Human Rights' (2013) 35 Boston College International & Comparative Law Review, 70.
[477] *Banković v. Belgium and others*, para 80.

human rights to those within its jurisdiction and, therefore, these rights and freedoms cannot be divided and tailored.[478]

Later in *ISSA v. Turkey* and *Loizidou v. Turkey* cases, the European Court developed radically different reasoning, arguing that, in addition to the "effective control of an area" test, extraterritorial jurisdiction may be found in situations when individuals are found to be under authority and control of the Contracting State on the territory of another state.[479] Further, ECHR decided that the state jurisdiction extends beyond its national territory, in the area where it exercises "effective overall control." The effective overall control can be exercised directly, through the armed forces of the state, as well as through the subordinate local administration.[480] In these cases, the Court rejected *Bankovic* reasoning that jurisdiction is primarily territorial, as the state has a responsibility to protect human rights abroad, no different from its obligations at home.[481] The Court emphasized that effective control may be found when the respondent state has *factual control* over the territory even if the control is unlawful. ECHR did not follow general rules of international law established by ICJ and found that the mere existence of Turkish troops in the north of Cyprus qualified a test of effective overall control.

The effective overall control test was lowered and its scope was expanded in *Ilascu vs. Moldova and Russia* case, which confirmed Russia's extraterritorial jurisdiction over MRT (Moldovan Republic of Transdniestria) due to Russia's decisive influence.[482] This was later explained in *Catan vs Moldova and Russia Case*, which focuses on "military, economic, financial and political support" rather than on military support in order to establish the "decisive influence" of Russia over MRT.[483] Effective overall control and decisive influence tests are used interchangeably in later judgments related to the Nagorno Karabakh - *Chiragov v Armenia* case.[484]

[478] Cowan Anna, 'A New Watershed? Re-evaluating Banković in Light of Al-Skeini', (2012) (1)1 Cambridge Journal of International and Comparative Law 213–227
[479] *Issa v. Turkey* App. No. 31821/96 (ECHR, 16 Nov 2004), para 71.
[480] *Loizidou v Turkey*, para 52
[481] Miller, 1228.
[482] Cullen Anthony and Wheatley Steven, 'Human Rights of Individuals in De Facto Regimes' (2013) 13 Human Rights Law Review 691^728, 705.
[483] *Catan and other v. Moldova and Russia,* paras 111-123.
[484] *Chiragov v Armenia* App no 13216/05 (ECHR, 16 June 2015), para 186.

The second model of cases when attributing responsibility for state's extraterritorial acts is the situation when non-state armed actors are proxies of another intervening or occupying state, and the latter exercises effective control over this territory**.** Articles on State Responsibility for Wrongful acts directly address such situations and impose responsibility to the state for the conduct of a person or a group of persons if they were acting on the instruction of or under the direction and control of the State.[485]

4.3.2. Hybrid model of extraterritorial jurisdiction – Al-Skeini case

In the Al-Skeini case, the Court attempted to reconcile conflicting lines of its case-law by re-evaluation of the concept of jurisdiction within Article 1 of the Convention and applied both models of extraterritorial jurisdiction.[486] In this case, the coalition mission of armed forces led by the US in 2003 completed major combat operations in Iraq and divided it into regional areas controlled by the coalition states, including the UK. All six Al-Skeini plaintiffs' claims arose from the deaths of their civilian relatives, which occurred in Basrah during the UK occupation. Five of these six victims were allegedly killed by British troops on patrol. All six applicants appealed on procedural grounds to the ECtHR, alleging that their relatives were within U.K. jurisdiction when killed and that the United Kingdom violated ECHR Article 2 by not investigating the deaths. The ECtHR then had to answer whether the deaths took place within the jurisdiction of the UK to fall within the scope of the ECHR and, if so, whether there should be an independent inquiry to investigate the violations.

The Court applied to both models while assessing UK's extraterritorial jurisdiction and, firstly, clarified that it is not necessary to find detailed control over policies and actions of subordinate local administration while evaluating effective control: "The fact that the local administration survives as a result of the Contracting State's military and other support entails that State's responsibility for its policies and actions. The controlling State has responsibility under Article 1 to secure, within the area under its control, the entire range of

[485] ARSIWA, article 8
[486] Miko, 63

substantive rights set out in the Convention and those additional Protocols which it has ratified. It will be liable for any violations of those rights."[487]

Secondly, the Court discussed the jurisdiction, which arises when **the rights guaranteed by the convention are violated by the official representatives of the state**. In *Al-Skeini*, the ECtHR noted that, in certain cases when the state representatives exercise control and authority over an individual, and thus it extends its jurisdiction, the State is obliged under Article 1 to secure to that individual the rights and freedoms.[488] **Here, the Court created the so-called third pseudo model by incorporating "effective control of an area" and "state agent authority control" models with an attempt to define what the "exceptional circumstances" are to justify the state's extraterritorial jurisdiction.** ECtHR did not rule on whether the United Kingdom maintained effective control of the area of Basrah during the relevant period; it, instead, applied the "State agent authority" model to all six applicants, concluding that all of their relatives had been within the United Kingdom's jurisdiction at the times of their deaths.[489] But the court also highlighted that this situation was exceptional as the UK was exercising "public power" in Southeast Iraq.[490] The Court pointed out that jurisdiction may arise if the state is exercising all or some public powers on the territory of the third state with its consent, invitation, or acquiescence of that government and if the extraterritorial activities are attributable to that state which gives rise to the Convention liability. The Court mentioned that the decisive element is physical control and power by state agents over an individual in question.[491] ECHR did not discuss whether the UK was exercising effective control of an area, as a jurisdictional link was found by asserting the "physical power and control" element.[492]

Therefore, as Milanovic argues, "public powers" became an amorphous, hybrid combination of "effective control" and "state agent control" models, due to which all six applicants fell under UK jurisdiction. The court changed Bankovic findings in Al-Skeini in three major directions: it recognized that the convention's legal space is not restricted to the European states. Secondly, rights and obligations under the convention can be "tailored and divided"

[487] *Al-Skeini v. UK*, para 138
[488] Ibid, para 137
[489] Milanovic Marko, 'Al-Skeini and Al-Jedda in Strasbourg', (2012) 23 European Journal of International Law 121, 129–31.
[490] Miko, 77.
[491] *Al-Skeini v UK*, paras 133-136.
[492] Cowan, 220.

in individual circumstances; and, thirdly, the Court developed state agent authority control as an exception from territorial jurisdiction.[493]

The Court affirmed that both models are applicable in analysing extraterritorial jurisdiction, also acknowledging chaotic conditions in Iraq, which prevented the UK from fulfilling its procedural obligations. In doing so, ECHR demonstrated its reluctance to impose procedural obligations to the state beyond their jurisdictions. AL-Skeini, to some extent reflected policy considerations beyond the judgment not to micromanage the use of force in the field and to open the floodgates of litigation under the state agent authority model by considering every individual case against whom the force was used. This reveals court's desire to apply human rights universally and avoid being an arbiter of individual cases of killing abroad by the European States, which would be "institutionally unsuited for ECHR."[494] ECHR still left some questions unanswered, among which is the scope of positive procedural obligations owed by occupying governments. This question is relevant in the de-facto state situations of Georgia and Cyprus. If third states exercise control over the territory of another state for a long time, the absence of their obligation to provide procedural rights for persons under their control would leave a severe gap in human rights protection.

4.3.3. Unexpected fluctuation in ECHR practice – Georgia vs Russia

While the court's jurisprudence later rejected its reasoning in Bankovic case that the ECHR could not be "divided and tailored" to hold states accountable for their conduct even extraterritorially, this "regrettable"[495] argument was returned to the discussion table by the judgment of interstate application of Georgia against the Russian Federation.

The judgment, which was handed in January 2021, concerns human rights violations during and after the armed conflict that occurred in 2008 between the Russian Federation and Georgia and assesses Russia's responsibility for these violations. This was the first case when ECHR discussed Russia's responsibility for human rights violations in the occupied territories of Georgia and considered Russia to be responsible for violation of the rights guaranteed under the Convention due to its effective control over these territories. The Court's assessment on jurisdictional issues has two major aspects: firstly, it assessed

[493] Ibid.

[494] Milanovic, 123.

[495] Duffy Helen, 'Georgia v. Russia: Jurisdiction, Chaos and Conflict at the European Court of Human Rights' (JustSecurity.org, 2 February, 2021) https://www.justsecurity.org/74465/georgia-v-russia-jurisdiction-chaos-and-conflict-at-the-european-court-of-human-rights/ accessed 19 February, 2022

Russia's responsibility for alleged violations during the active phase of hostilities, during the so-called five-day war, 8 August—12 August of 2008, and secondly, Russia's responsibility after the end of hostilities until the official withdrawal of Russian troops.

The Court found that international armed conflict occurred between Russia and Georgia and that Russian troops carried out a military operation in South Ossetia, as well as in the undisputed territory of Georgia.[496] The Court directly compared this situation to the Bankovic case (NATO bombing of Belgrade), as it was the first case after Bankovic when the court had to assess jurisdiction during the international armed conflict concerning the military operations. The court has reiterated its finding that obligation to secure rights and freedoms under the convention derives from the fact of effective control, when it is exercised directly through armed forces, or through the subordinate local administration.[497] Apart from military control, the state may exercise control through "economic and political support for the local subordinate administration provides it with influence and control over the region."[498]

After revision of its previous jurisprudence, the court further developed its practice on extraterritorial jurisdiction in *Georgia vs. Russia case*, finding that military operations, including armed attack, bombing, and shelling cannot generally qualify as effective control over an area, as "the very reality of armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos not only means that there is no "effective control" over an area as indicated above."[499] The court has also excluded any form of "State agent authority and control" over individuals.[500] Therefore, the court concluded that Russia was not exercising jurisdiction during the active phase of hostilities, as assessment of acts of war in the context of international armed conflict was not within the court's mandate and it would need a necessary legal basis for such a task.[501] This part of the reasoning was also highly criticized, as the court again mixed up the issue of jurisdiction and applicable law/responsibility as IHL and human rights may be co-applicable

[496] *Georgia vs. Russia (II),* para 109.
[497] *Loizidou v. Turkey*, para 62; *Cyprus v. Turkey*, para 76; *Banković v Belgium and Others,* para 70; *Ilaşcu v Moldova and Russia*, paras 314-16; *Loizidou v Turkey* (merits) App no 40/1993/435/514 (ECHR, 28 July 1998) para 52; *Al-Skeini v UK*, para 138.
[498] *Ilaşcu v Moldova and Russia*, paras 388-94, *Al-Skeini v UK*, para 139
[499] *Georgia vs. Russia (II),* para. 126
[500] ibid. para 137.
[501] ibid. para 142.

during the armed conflict, which is well-established by other international and regional courts.[502]

With this finding about the chaos created by the acts of war, the Court increased the risk of creating human rights gap. After this major interstate judgment, the court issued two cases – *Shavlokhova vs. Georgia* and *Bekoyeva vs. Georgia* concerning the violation of fundamental rights and freedoms within the European Convention and within the context of August war, during the active phase of hostilities. In both cases, the court declared the application inadmissible, as Georgia could not exercise jurisdiction over that territory in the reality of war and chaos. The Court acknowledged that Georgia was not discharged from its positive obligations, but they are limited to taking diplomatic, economic, political, and other measures. As these measures would be impossible for Georgia during the chaos of war, the court declared cases inadmissible due to the absence of a jurisdictional link. With these judgments, we receive a situation that neither parent nor patron state is responsible for human rights violations when the war is ongoing.

As critics assess, ECHR's ad hoc, a controversial and restrictive approach that has developed from Bankovic to Al-Skeini, took a "perplexing turn" in case of international armed conflict.[503] Some argue that the distinction of the phases of hostilities is factually artificial and the court cannot explain what constitutes an "active phase." Even more dubious reasoning was developed by the court when it suggested that jurisdiction arose when the use of force involved "isolated and specific acts involving the element of proximity" (in Al-Skeini, when state agents killed an individual under their control). However, bombing and shelling, which caused an even larger scale of damage to the population, were excluded from jurisdiction,[504] while the court acknowledges a "large number of alleged victims and magnitude of the evidence" in the present case. The court argued that *the element of proximity* was not qualified in Georgian cases.

As for the alleged violations after the active phase of hostilities, the court discussed the military and economic support that Russia was providing for the authorities in the occupied

[502] Duffy (2021); Duffy Helen, 'Trials and Tribulations: Co-Applicability of IHL and Human Rights in an Age of Adjudication' in Ziv Bohrer, J. Dill, and Helen Duffy, *Law Applicable to Armed Conflict* (Max Planck Trialogues, Cambridge University Press, 2020, 15-105

[503] Duffy (2021)

[504] Ibid; See also dissenting Judges in *Georgia v. Russia (ii)* Yudkivska, Wojtyczek, and Chanturia, 192.

territories.[505] In determining whether the respondent state was exercising effective control extraterritorially in the occupied regions of Georgia, the court analysed its previous case law, relied on the *Ilascu* and *Loizidou cases,* as well as on *Al-Skeini* and *Catan and others vs. Moldova and Russia* to determine the objective criteria for its determination. The court asserted that a strong military presence, as well as the extent to which the military, economic and political support for the local subordinate administration provides it with influence and control over the region, were major determinants for effective control and, therefore, extraterritorial responsibility of the state.[506] Interestingly, the Court also **noted that, even after that period, "the strong Russian presence and the South Ossetian and Abkhazian authorities' dependency on the Russian Federation, on whom their survival depends, as is shown particularly by the cooperation and assistance agreements signed with the latter, indicate that there was continued "effective control" over South Ossetia and Abkhazia**."[507] Although the Court affirmed its previous case law, the nature and extent of Russia's extraterritorial obligations were not determined.

4.3.4. The drawbacks in ECHR reasoning in the context of protracted conflicts

To summarize the court's findings on extraterritorial jurisdiction of third states, if de-facto states' survival (economical, military, and political) depends on the third state and if it is exercising so-called "public power" on that territory, the third state is responsible for human rights violations. Court's findings has two major gaps, which cause criticism towards extraterritorial application of the Convention in the context of protracted non-recognition. Firstly, as demonstrated above, the practice is not consistent and it is difficult for the parties to determine whether their application will fall within the scope of the Convention. Secondly, it is questionable to what extent state's responsibility and obligations can be stretched, whether the state is responsible for systemic human rights violations that are established within the system of de-facto authorities and what is the scope of the state's positive and negative obligations.

[505] *Georgia v. Russia (ii),* paras 165-175.
[506] Ibid, para 164; See also *Ilaşcu v Moldova and Russia*, paras 388-94, *Al-Skeini v. UK*, para 139, *Catan v. Moldova and Russia*, para 107; *Chiragov v. Armenia*, para 168;
[507] *Georgia vs Russia (II*), para 174.

In fact, as both territorial state and the state that have effective control exercise jurisdiction over the de-facto state, concurrent obligations are raised and their implementation can be evaluated on a case-by-case basis. ECHR concluded in various cases that the territorial state maintains its *de jure* jurisdiction even if it lost control over a certain area of its territory, while another state that exercises effective control has concurrent jurisdiction.[508] Due to such fragmentation of jurisdiction and respective obligations, questions regarding the extent of their responsibilities are particularly striking. It is argued that concurrent jurisdiction requires the assessment of obligations to be tailored to the state's ability to protect human rights.[509] This was approved in the Al-Skeini case, which allows ECHR to tailor respondent states' obligations to the degree of control they exercise. However, it is questionable according to what standard the court assesses the degree of control during the protracted existence of de-facto states, where the so-called de-facto authorities govern and make decisions on a daily basis and third state's effective control might be rather broad. In public international law, the term "jurisdiction" describes "limits of legal competence of the state to make, apply, and enforce rules of conduct upon persons."[510] Taking such description of the term, it is questionable whether respondent state which exercises effective overall control over the de-facto state can make, apply and enforce rules of conduct while this is managed by the de-facto authorities.

Two doctrinal tools are applied to establish the nature and extent of obligations in the context of concurrent jurisdiction. 1) positive and negative obligations under Article 1 of ECHR; 2) territorial and non-territorial responsibilities.[511]

The standard of a state's positive or negative obligations is clear when it operates in its territory but, in cases of extraterritoriality, this needs more clarifications. In general, negative obligations to protect do not have territorial limitations and they can be extended extraterritorially, while application of positive obligations requires existence of a situation where a state has full control over the area.[512] Given the state's non-territorial responsibilities, it has numerous limitations: Firstly, the state can be held responsible only

[508] Ilascu v. Moldova and Russia, para 333. Demetriades, 172-173.
[509] Demetriades, 160.
[510] Evans Malcolm (ed), *International Law* (4th edn, Oxford University Press 2014) 309
[511] Demetriades, 177.
[512] Milanovic Marco, 'Foreign Surveillance and Human Rights: Models of Extraterritorial Application', (EJIL: Talk, 27 November 2013), available at www.ejiltalk.org/foreign-surveillanceand-human-rights-part-3-models-of-extraterritorial-application/ accessed 16 March, 2020.

for those individuals under its control. Secondly, it will be held responsible only for those rights that are relevant to the situation, and, thirdly, the extent of positive obligations depends on the state's ability to secure relevant rights.[513] These limitations are related when the state is exercising control over specific individuals extraterritorially – in other words, this is named as a personal model of the state's extraterritorial jurisdiction. On the other hand, when the state exercises de-facto control, the so-called spatial model extraterritoriality, it is obliged to secure an entire range of Conventional rights, both negative and positive obligations. This creates further obstacles and hardships how the state, even in the case of effective control, could provide an entire range of conventional rights. The standard of protection is rather vague in that direction that is apparent in the court's case law as well.

In such situations, positive obligations require the state to act in due diligence, while negative obligations impose strict liability standards. Negative obligations impose state not to interfere with an individual's enjoyment of his conventional rights. The state should have absolute control over the actions of its organs and violation should be conducted by its organs to find that the state violated its negative obligations. While the standard of state responsibility is evident in the case of negative obligations, it is obscure when the state violates its positive obligations. The fulfillment of positive obligations requires affirmative measures by the state, which means creating conditions where individuals could freely enjoy their fundamental rights and freedoms. As defined by Judge Martens, the positive obligation is "requiring the state to take action."[514] The level of positive obligations is derived from the level of control the state exercises over a specific conduct, its relationship with the perpetrators, and the state's ability to conduct such measures to prevent damage. While the court refused to make a clear distinction between negative and positive obligations in *Joanou vs. Turkey* case, this needs to be distinguished and the key difference lies in the level of attribution. Negative obligations are directly attributable to the state organ, while positive obligations have an indirect connection to the state.[515]

The fulfillment of positive obligations, when the respondent state did not exercise such level of control to take the needed measure, becomes unfeasible and contains risks of creating human rights vacuum. In the situation when de-facto states continue to exist for a long period

[513] Demetriades, 180.
[514] Dissenting Opinion of Judge Martens in *Gul v Switzerland* App no 23218/94, (European Commission on Human Rights, 10 October 1994) 165.
[515] Demetriades, 178-179.

without recognition, therefore without international legal personality, de-facto authorities are exercising public powers without direct control of any other state (even though it may be recognized that the other state is exercising effective control). There might be dozens of situations when actions that infringe human rights are taken by de-facto judicial or administrative organs, e.g., inhuman and degrading treatment by law-enforcement authorities, ineffective investigation, and violation of the right to a fair trial by de-facto judicial organs, violation of right to education, property rights violations, etc. For example, systemic violation of the right to education in a native language is administered by local authorities in Abkhazia and South Ossetia as they made decisions to eliminate the Georgian language from school curriculums. While Russia, as an effectively controlling state, might have the power to change the situation, the role of de-facto authorities is vital in taking pro-human rights decisions.

The Court's standard of judgment is vague and unpredictable in terms of applying positive obligations to the parent and patron states and it has taken a superficial and shallow meaning. The observation on case law rises the doubts that the Court's purpose was to fill the gap from the legal point of view and did not take into consideration the protracted existence of de-facto states that gained a certain level of independence, while not every action and policy is coordinated with patron state. Although a de-facto state might survive by virtue of the patron state's military or economic support, decades of the so-called independent existence rise the need to impose certain responsibilities to de-facto authorities. In *Cyprus v. Turkey*, court found that Turkey's responsibility went beyond the actions of its soldiers and officials operating in the territory of TRNC, but also the acts of local administration of TRNC were attributable to Turkey as survived by virtue of Turkish military and other support. The court uses the obscure term "responsibility engaged," which does not specify how Turkey's responsibility is raised. This finding is extremely broad and indicates that Turkey is responsible for every action of TRNC organs although, from a practical viewpoint, Turkish authorities might not be aware of certain violations occurring in TRNC within the period of its long-term existence. It is also noteworthy that this decision was taken in 2001 and, since then, TRNC is existing for two decades. Later, in 2008, in *Manitaras and Others v. Turkey* case, ECtHR reiterated that Turkey's jurisdiction extended to the entire range of convention rights and the violation of these rights are imputable to Turkey.[516] Such finding from the

[516] *Andreas Manitaras and Others v. Turkey*, App no. 54591/00, (ECHR, 2008) para 27.

human rights perspective is broad and imprecise in the given context and requests more specificities on the extent of positive obligations. This would raise the standard of protection as well as enforceability and implementation.

With one interpretation, the Court may be stating that Turkey is responsible for the acts of its agents and the local administration under Article 4 of ARSIWA. However, it would be difficult to impose responsibility under Article 4 because TRNC local administration is not Turkey's official organ and this article imposes a responsibility to the state for the wrongful acts of its own official organs. On the other hand, we may find that Turkey is responsible for TRNC's acts under Article 8 of ARSIWA, which imposes responsibility if respondent state exercises "direction and effective control." ICJ has established a higher standard of control in the *Bosnian Genocide Case,* finding that the respondent state should be exercising control in respect of each operation and not general overall control.[517] ECHR is maintaining a lower threshold as it found in *Loizidou*, finding that it is not necessary to have detailed control over policies and actions of TRNC authorities. It is highly unlikely that within the effective control test, which was established by ICJ, the acts of local administration will be attributable to the patron state. This lenient approach is criticized as it may increase incoherence in the law of extraterritoriality as the issue of attribution is raised in two cases:[518] Firstly, when the acts of state agents are attributed to the state and, secondly, when state's positive obligations are triggered in the case of omission. The Court's approach is vague as it does not clarify how positive obligations are raised when the patron state fails to prevent the agents of local administration from committing a violation.[519]

Courts' reasoning in the *Catan case* is interesting while adjudicating Russia's responsibility for the violation of the right to education in the native language in MRT, where Russia exercised effective control. The court simply relied on its previous finding of Russia's effective control and, even though there was no evidence of Russia's any direct involvement or approbation of either measure taken against applicants and their schools or language policy in schools in general, it was held responsible for violation of the right to life. The court ascertained that there was no need to find if Russia exercised detailed control over the policies and actions of subordinate administration.

[517] *Bosnian Genocide Case* (Bosnia and Herzegovina v. Serbia and Montenegro) (1996) ICJ, paras 396-400.
[518] Demetriades, 183-184.
[519] Ibid.

Apart from being vague and superficial from the legal point of view, such broad argumentation gives the ground of thinking that the Court's judgments simply aim to prevent the human rights gap legalistically, not considering the practicality and enforceability of such findings. It does not provide any indication of how a state that exercises effective control should implement its positive obligations and what measures should be taken by that state to ensure the protection of human rights in the individual case. The rationale beyond such broad judgments might be to prevent the gap and transfer all responsibilities to the effectively controlling state, but this seems more like a policy decision than legal judgment, and the court's jurisprudence needs development in that direction, particularly in the given contexts.

4.3.5. The chances for filling the gaps

The forward-looking interpretation of the above-analysed case law is suggested to be the "concurrent and tailored" approach, which would provide new thinking to the superficial and vague jurisprudence of ECHR. With this model, the court has an opportunity to specify the extent of obligations that patron and parent states have concerning the non-recognized territory. As demonstrated above, Court's current approach is to impose full-scale conventional obligations to the state if it exercises effective control over the territory and retains jurisdiction. The respondent state could not challenge the scale of its responsibilities as if it has jurisdiction, it bears both negative and positive obligations under ECHR. A concurrent and tailored approach allocates responsibilities between patron and parent states following the level of control they hold over certain territory. As illustrated above, this understanding of jurisdiction has its valid grounds in the court's case law.

The court's recent jurisprudence tends to rely on a "concurrent and tailored" approach but this approach is rather new and needs more development. With such approach, states can be held concurrently responsible not only for the direct acts of their agents but for the omissions of their positive obligations. The responsibility is shared between parent and patron states in accordance with the level of control they are holding on a specific territory. For example, in *Guzelyurtlu vs. Cyprus and Turkey* case,[520] Grand Chamber held that both respondent states were responsible for the investigation of murder which has occurred on the territory controlled by Cyprus. Court established that both states had a positive procedural obligation under Article 2 of the Convention. Moreover, the court acknowledged

[520] *Güzelyurtlu v. Cyprus and Turkey*, para 200.

that the duty to cooperate was a part of the right to life and it required a two-way obligation to cooperate. The nature and extent of this obligation should be ascertained on a case-by-case basis, depending on the factual circumstances of the case.[521] This finding is interesting as it tries to establish a new approach in court's jurisprudence by adopting concurrent and tailored responsibility of patron and parent states. Further, in the *Guzelyurtlu case*, the court has adopted a relaxed approach in relation to the exhaustion of local remedies. This means that, in the case of concurrent jurisdiction, the applicant is not required to exhaust remedies in both states but only in one jurisdiction where authorities had an opportunity to remedy the alleged violation but failed to do so.[522]

A concurrent and tailored approach recognizes both parent and patron states jurisdictions and aims to more comprehensively fill the human rights vacuum.[523] Firstly, concurrent jurisdiction is recognized when one state has legal right to protect human rights – in case of de-jure jurisdiction of parent state and another state has the de-facto possibility to protect human rights – in case of de-facto, extraterritorial effective control of the territory. Secondly, this model suggests that obligations can be tailored as the respondent state may be subject to positive obligations when acting extraterritorially.[524] Therefore, it provides more comprehensive protection for the applicant's rights. This also means that respondent state's responsibilities can be more accurate and predictable for the applicant and, therefore, the standard of protection will increase. Within the current approach, when the court shifts the whole burden of protection of all conventional rights to the de-facto controlling state, that state may not have such level of control on the non-recognized entity and, therefore, may not be able to protect every conventional right, although non-recognized entity survives by de-facto controlling state. With the tailored responsibility model, more specific obligations will provide higher standard of protection to the residents of a non-recognized state. Furthermore, a tailored responsibility approach would guarantee a better execution of judgments.[525] Court's standardized judgments that accorded full scale of obligations to the respondent state, without examination of the level of control on the specific situation undermined effective protection of human rights and their execution, caused doctrinal uncertainty and could not ensure tailored responsibilities under the convention.

[521] Ibid, para 233.
[522] Ibid, paras 197-201
[523] Demetriades, 190.
[524] Ibid, 193.
[525] Ibid.

In face of the protracted existence of non-recognized de-facto entities concurrent and tailored responsibility approach is even more critical to clear up the mess that exists now in terms of identifying which state is responsible for what. However, this model of interpretation of the human rights court's jurisdiction cannot suggest an exhaustive response to the human rights vacuum that is created in non-recognized entities. Even when both de-facto and de-jure states imposed negative and positive human rights obligations, one should not underestimate the role of de-facto state entities that continue to operate as state-like entities for decades. Therefore, the issue of their responsibility is increasing.

4.3.6. *Rethinking a state-centric approach*

a) Necessity to rethink

The state-centric nature of international law and international human rights law poses major doctrinal challenge in the given context. The keystone principle of international law is that the state is a primary entity holding an international legal personality.[526] In its landmark case of *Reparation for Injuries*, ICJ recognized that states are direct subjects of international law; they are political entities, equal in law and similar in form.[527] Simultaneously, the Court expanded the concept of legal personality and found that international organizations may also hold such personality, which derives from its purposes and functions.[528] While extending the understanding of legal personality, ICJ defined that "the subjects of law in any legal system are not necessarily identical in their nature or the extent of their rights."[529] This means that various actors can hold legal personalities, and the extent of their rights and obligations may vary.[530] However international legal doctrine has not gone beyond that finding to grant even limited legal personality and therefore impose specific human rights responsibilities to the non-state actors.

Legal personality entails various legal consequences, including the capability to possess international rights and duties, to bring a claim against another subject of international law

[526] Menon P.R, 'The Legal Personality of International Organizations' (1992) 4 Sri Lanka Journal of International Law, 80. Mishra Anumeha,'State-Centric Approach to Human Rights: Exploring Human Obligations' (2019) Rev Quebecoise de Droit Int'l, 49

[527] Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, 1949, ICJ Rep, pfg. 177.

[528] ibid, 180.

[529] *Reparation for Injuries Suffered in the Service of the United Nations* Advisory Opinion, International Court of Justice (11 April 1949) para 174-178.

[530] Tan Daron, 'Filling The Lacuna: De-Facto Regimes and Effective Power in International Human Rights Law' (2019) 51 International Law and Politics 435, 459. Cullen and Wheatly, 728.

before an international tribunal, to be held responsible for violation of international duties, to make international treaties/agreements, to enjoy privileges and immunities from the national legal system, to become a member of international organization (if such organization is based on state membership only, like UN).[531] Therefore, those actors who do not hold international legal personalities are not subject to the abovementioned legal consequences.

The conventional understanding of human rights envisions states as major entities capable of infringing them,[532] and non-state actors mostly remain behind the system and therefore behind the accountability. Human rights provisions enshrined in international treaties and conventions entail both negative and positive obligations for the state vis a vis individuals. Mechanisms of protection established unter international human rights treaties such as ECHR are subsidiary to national systems that safeguard human rights. This means that individuals who seek redress for vioalations should exhaust local remedies at their national levels and afterwards they can address to the international community.[533]This approach has two major understandings: the claims on the infringement of rights can be brought against a state, as the state is holding primary legal personality in international law and thus, has a major obligation to protect. The international community has a secondary responsibility in that sense, which means that it has the authority to monitor states and find them accountable if they do not protect the rights of their citizens.[534] The international community monitors states' compliance with international standards, offers economic incentives, imposes sanctions, and in case of gross human rights violations, authorizes even military intervention.[535] Within the state-centric concept, if the state is unable to protect human rights, it may receive international assistance to strengthen its capacity and institutions. The state may become subject to international sanctions and responsibility when it is unwilling to protect and intentionally violates human rights.[536]

[531] Menon P.R, 79-80.

[532]Mishra, 49. Beitz Charles, *The Idea of Human Rights* (OUP Oxford 2011) 13-14.; Lafont Christina, 'Accountability and global governance: challenging the state-centric conception of human rights' (2010) 3 Ethics & Global Politics 3, 198.

[533] Nuzov Ilya, 'Between frontiers: The ambiguous status of the 'grey zones' of Eastern Europe under international human rights law' in Ekelove-Slydal Gunnar, Hug Adam, Pashalishvili Ana, Sangadzhiyeva Inna, *Disputed territories, disputed rights* (2019) Norwegian Helsinki Committee, 24.

[534] Lafont, 199.

[535] Ibid.

[536] Ibid, 200.

Breach of treaty-based human rights obligations can give rise to the international responsibility on two levels- on individual level, if a person violates any provision under the Rome Statute, they could face international criminal responsibility before ICC, while state's responsibility can be engaged on international forum, like European Court of Human rights.[537] However, the situation becomes more complicated when a non-state actor is committing human rights violations. While a representative or combatant of that non-state actor can be prosecuted on individual level at the criminal court (if the crime is under jurisdiction of ICC and if other strict jurisdictional critieria are also met), there is no international forum that can adjudication international responsibility for non-state actor itself.

Moreover, the gaps and ambiguities in human rights jurisprudence (as analyzed in Chapter 4.2.1) further increases the necessity to enlarge the scope of human rights system over non-state actors. This becomes particularly inevitable in case of lack of effective control over non-recognized states by the third states. In such situation obligation to protect human rights should be exclusively in the hands of non-state actors (de-facto authorities) in order to prevent total exclusion of these territories and their inhabitants from human rights system. Indead, in its Resolution 2240 of 2018, Parliamentary Assembley of Council of Europe explicitly mentions that de-facto authorities should have a duty to respect the rights of all inhabitants of the territory in question: "even illegitimate assumption of the powers of the State must be accompanied by assumption of the corresponding responsibilities of the State towards its inhabitants. This includes a duty to co-operate with international human rights monitoring mechanisms."[538]

b) The prospect to reduce the state-centric limitations

The state-centric approach is criticized as ill-suited for practical purposes to advance human rights protection worldwide. With the functional consideration of human rights in general, the state-centric perspective becomes less relevant in face of contemporary globalization.[539] It requires adapting to new realities and needs reforming of the legal structures accordingly. The discussion on non-state actor responsibility has existed in the international legal sphere for a long time. Still, there is no clear-cut answer to those doctrinal and practical challenges

[537] Nuzov, 25.
[538] Parliamentary Assembly of the Council of Europe, Resolution 2240 (2018), Unlimited access to member States, including "grey zones", by Council of Europe and United Nations human rights monitoring bodies, http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=25168&lang=en
[539] Ibid, 202.

it meets due to the existing state-centric system of international law. These discussions are particularly relevant from human rights and humanitarian law perspectives as the role of non-state actors have increased, affecting both human rights and humanitarian interests, either in peace or in wartime.

It is highly argued that non-state actors may have functions that entail their obligation to protect human rights.[540] The understanding of a state as a primary entity capable and responsible for protecting human rights is challenged as the role of other actors, including non-governmental organizations, international organizations, civil society, and other non-state actors who assumed functions of the state, has increased. [541] International organizations like WTO, IMF, and World Bank have extensive influence on human rights worldwide.[542] Several examples are brought to demonstrate that the state-centric approach of human rights is being rethought, i.e., when the laws of hate speech are developed or environmental law accumulates specific resources to protect human rights in the hands of private individuals.[543] The current rising trend of global governance structures challenges the above-mentioned monistic approach of human rights obligations. The state can no longer guarantee human rights when violations are related to transnational action or actions taken by non-governmental entities.[544] The problem is that international legal institutions who stand on the state are reluctant to directly recognize non-state actors having full responsibility to protect human rights. It is argued that the non-state actor is not obliged to protect human rights *per se.* However, it may be held responsible as it functions as a state.[545]

Non-recognized de-facto states can be included among such non-state actors if we examine their functions, structure, control over the territory, and protracted existence. Non-recognized de-facto states surprisingly revealed persistent endurance against non-recognition and isolation. Their endurance is mostly attributable to the support and assistance of patron states.[546] As defined by Jonte van Essen, a de-facto state is a geographical and political entity that has all the features of a state, but it is unable to attain

[540] Lafont, 201.
[541] Math Noortmann, August Reinisch and Cedric Ryngaert (eds), *Non-State Actors in International Law* (Hart 2015) 113; Mishra, 63;
[542] Lafont. 199.
[543] Mishra, 60.
[544] Lafont, 193-215.
[545] Mishra, 55.
[546] Demibinska Magdalena and Campana Aure Lie, 'Frozen Conflicts and Internal Dynamics of De Facto States: Perspectives and Directions for Research' (2017) 19 International Studies Review, 254–278.

a substantial degree of recognition and therefore remains illegitimate in the eyes of international society.[547] Such entities seek 'full constitutional independence and widespread recognition as a sovereign state' and "pursue secession or independence from the parent state."[548] These states have separate legislation, state-like structure, constitutional system and institutions, governance, judiciary, law-enforcement institutions, social, economic, and political life, and other generally recognized states' features.[549] Therefore, they have the opportunity to affect human rights implementation in the territory under their de-facto control.

The principle of effectiveness is a decisive factor in determining if de-facto states can be equated to the notion of state under the Montevideo Convention. Montevideo Convention considers states to possess a permanent population, a defined territory, government, and capacity to enter into international relations.[550] It is considered that these factors emerge from "effectiveness."[551] Even if we assume that de-facto states of Abkhazia, South Ossetia, and northern Cyprus hold the abovementioned effectiveness, there is one important condition that determine statehood under international law. One such determinant is recognition by the international community and duty not to recognize something that has emerged from illegal acts.[552]

The subchapters below will analyse legal grounds and alternatives that allow a rethinking of non-state actors' human rights responsibility. This may open certain avenues to find de-facto administrations of non-recognized states accountable for systemic human rights violations in their so-called "grey zones".

c) Legal grounds and alternatives to imposing responsibility to non-state actor

Irrespective of the lack of direct legal personality and respective duties and rights under international law, there are still certain legal arguments and logic for why de-facto states can be held responsible for human rights violations. While deconstructing the state-centric

[547] Van Essen Jonte, 'De facto Regimes in International Law' (2012) 28 Utrecht Journal of International and European Law 74, 2.
[548] Ibid, 33
[549] Cullen and Wheatley, 700.
[550] Montevideo Convention, Article 1,
[551] Raic, 50
[552] *Namibia Case*, para 54. *Cyprus v. Turkey*, para 70; Talmon Stefan, Recognition of the Libyan National Transitional Council, (2011) 15 ASIL INSIGHTS.

perspective of human rights law, we may argue that de-facto states have a limited legal personality. They gain quasi-governmental functions when they exercise effective power over a particular area, which enables their participation in the international community.[553] In this case, effective control and power over territory are *sine qua non* to gain limited legal personality, allowing the de-facto regime to have human rights obligations.[554] *Raison d'etre* of human rights is to protect human dignity,[555] which is the primary reason to argue that human rights should not be limited to the regulation of state-individual relations but beyond that, "human rights are entitlements enjoyed by everyone to be respected by everyone."[556]

The analysis by Daron Tan offers that the de-facto regime's conduct has its consequences even if the non-state actor is not a party to the human rights treaty and does not hold international recognition.[557] He bases this judgment on the hypothesis that recognition is not relevant as long as a non-state actor remains an effective actor, and this effectiveness determines rights and duties under international law. To support this statement, he reviews international case law, including the US Circuit court decision on *Kadic v. Karadzic*, which found that an "unrecognized state is not a judicial nullity" and its political leader can be held responsible for atrocities committed during their official power.[558] While discussing the statehood signs that the Republic of Srpska had when the atrocities occurred, it noted that "the inquiry, after all, is whether a person purporting to wield official power has exceeded internationally recognized standards of civilized conduct, not whether statehood in all its formal aspects exists." Therefore, the court emphasized the responsible for massive human rights violations instead of careful examination whether this entity qualified as a state under international law or not.

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[553] Tan Daron, 440.
[554] Ibid, 438-439.
[555] Ibid, 456.
[556] Ibid, 457.
[557] Ibid, 458-459.
[558] *Kadic v. Karadzic* [1995] 70 F.3d 232, 2d Cir. Available https://casebook.icrc.org/case-study/united-states-kadic-et-al-v-karadzic; accessed 12 February, 2022. The case concerns liability of Radovan Karadzic, President of the self-proclaimed Bosnian-Serb republic of "Srpska". The plaintiffs, victims and representatives of victims of atrocities committed under the leadership of Karadzic was claiming within the scope of Aliens Tort Law. The court found that this case fell under the U.S. Jurisdiction and its domestic legislation because the action for which responsibility issue was raised were related to the violation of international law peremptory rules: Genocide, war crimes, torture, and summary execution and Karadzic could have been liable as a private individual. It had no significance that republic of "Sprska" was not recognized as a state under international law, this republic had some signs of statehood, it exercised sovereignty over the land and people and Karadzic who was a leader of that de-facto state could be held liable for the committed atrocities.

Additionally, recognition of the effectiveness of de-facto authorities to fill the human rights vacuum does not entail recognition of its legitimacy in any way, as found by ECHR in *Cyprus v. Turkey.*[559] However, it should be mentioned that the abovementioned hypothesis is developed concerning de-facto regimes (DFR), which differs from de-facto states. DFR aims to be recognized by the international community as the official government of an already existing state, and they exercise effective control over the territory. As defined above, de-facto states seek full independence and recognition as a separate new state. The methodology which Tan develops to approve that DFR can have quasi-governmental functions that enables it to engage with the international community and therefore has limited international legal personality and is not fully applicable to de-facto states, but this logic is relevant and valid for the discussed non-recognized states. Daron Tan argues that if DFR qualifies the following criteria, human rights obligations can be imposed on them: (i) ability to assert authority, which means that they have the institutional capacity to exercise authority and factual exercise of power. Particularly, the de-facto regimes should be organized enough and exercise quasi-governmental functions to assume human rights obligations. Further, a de-facto administration can factually exercise socio-economic, legal, and military powers and maintain this power militarily. (ii) DFR displaces the original government, and its authority is exclusive; (iii) DFR existence is independent. Daron Tan considers that if the armed group is independent and its authority is exclusive, this creates a legal vacuum.[560]

Applying abovenamed elements to Abkhazia, South Ossetia, and norther Cyprus's de-facto states, it is apparent that even if de-facto states can assert authority, they displace the original government with their effective power, they cannot be considered fully independent. The de-facto states' main feature stands precisely on their non-recognition due to the illegality of their existence and illegal effective control exercised by third states, Russia and Turkey, respectively. The threshold for effective control is lower in human rights jurisprudence (compared to its interpretation under the Article on State Responsibility or within the international humanitarian law perspective). Still, effective control of a third state was acknowledged in both situations, Georgia[561] and Cyprus.[562]As these de-facto states cannot

[559] *Cyprus v. Turkey*, para 92.
[560] Tan Daron, 464-483.
[561] *Georgia v. Russia II* , paras 82-84.
[562] *Cyprus vs. Turkey* (1996), 20-21;

be considered fully independent, which means to be free from third states' military and financial support, they do not hold effective power/control and respectively limited legal personality.

However, Tan has not considered what happens if the de-facto state, which is partially still depended (militarily, economically, financially) on the third state's support, continues to exist as a non-recognized state for decades. These states have separate legislation, judiciary, law-enforcement system, government that is based on local non-recognized constitution and even human rights institutions. The authorities of de-facto states survived and endured regardless of full international recognition and cooperation with the international community. People in these territories continue to live in the constitutional system and regime offered by the authorities of de-facto states, elections are held accordingly, and life continues in the same way as in every normal, recognized state.

In this context, de-facto states are stuck in a situation where they cannot attain full independence (since they cannot get international recognition, nor the patron state will allow it due to its geopolitical interests) but they still can continue to operate an entity like a state, with quasi-governmental functions. In such a situation, the role of local de-facto authorities cannot be ignored for the sake of improving human rights and humanitarian situation on the ground. Although the extraterritorial responsibility of patron states is acknowledged, they may do not hold such degree of direct control to be responsible for every human rights violation or systemic failure. As discussed in Chapter 4.2.1., ECHR's attitude on imposing responsibility to the state for its extraterritorial acts is rather broad, and the threshold is lower, and it does not determine the scope of positive obligations that patron state may have extraterritorially. Clear delianation of positive obliagtions and resposnibilities between de-facto and de-jure authorities and rethinking of "all or nothing" approach developed in EHCH jurisdpudence is much-needed to improve access to human rights for local inhabitants.[563]
As determined in Cyprus v. Turkey, it is not necessary to determine if a third state has control over the policies and actions of subordinate local administration.[564] However, the third state may have no control over policies, legislation, and acts of de-facto administration, and the local population is directly affected by de-facto authorities' decisions. Therefore, to prevent

[563] Nuzov, 28
[564] Cyprus v. Turkey (2001), para 138

the lacuna de-facto, authorities should not be precluded from human rights obligations even if they are not fully independent.

Subsidiarity - another argument to weaken rigid state-centric approach

Besides, the principle of subsidiarity in international human rights courts and the right to effective domestic remedies require recognizing a certain degree of legal personality of de-facto states. Within the principle of subsidiarity, the international court is assigned to supervise the implementation of human rights in national systems, and it is their primary responsibility to ensure fundamental rights and freedoms on domestic levels.[565]

Nevertheless, as ICJ noted in the *Namibia case,* the duty of non-recognition (maxim – *ex injuria jus non oritur)* is not absolute, and life continues in the territory concerned for its inhabitants. Therefore, daily life should be tolerable and protected by de-facto authorities.[566] Based on this reasoning, ECHR found in the *Cyprus v Turkey* case that if the international community and third states ignored de-facto authorities, this would deprive inhabitants of the minimum standard of protection to which they are entitled.[567] To this end, ECHR concluded that it could not simply disregard TRNC judicial organs and considered them as "domestic remedies" that must be exhausted by TRNC inhabitants unless their absence or ineffectiveness is proven on a case-by-case basis.[568] To prevent the regrettable gap in human rights protection, ECHR granted a certain level of legal personality to de-facto authorities. Exhaustion of domestic remedies is a significant prerequisite to commencing litigation before an international tribunal; therefore, recognition by ECHR that de-facto state's judicial organs can be considered domestic remedies was another attempt to overcome jurisdictional barriers and fill the existing protection gap.

Furthermore, in ECHR's opinion, a judicial tradition in the courts of northern Cyprus was compatible with Convention's standards since they were not essentially different from the courts that operated before the Turkish invasion.[569] On the other hand, the Court's finding

[565] *Takis Demopoulos v Turkey*, para 69-70.
[566] *Namibia Case*, para 166-167.
[567] *Cyprus v. Turkey*, (2001) paras 95-96.
[568] Ibid, 98.
[569] Ibid.

in the *Loizidou case* differs from *Cyprus v. Turkey* approach, where TRNC legislation and constitution were considered "legally invalid," which had no legal effect on the local inhabitants.[570] Here, court's finding is related to the fact that the TRNC constitution abolished Greek Cypriots property rights on the immovable property left in the North after the Turkish occupation. The court found that a legally invalid constitution cannot lawfully expropriate property. This approach was changed in the *Cyprus v. Turkey* case, where Grand Chamber accepted that the judicial system in TRNC could be considered as "established by law." Such change of attitude is derived from the context, as the court interprets the factual circumstances to prevent the human rights gap. While, in *Loizidou*, court rejected to acknowledge TRNC legislation which abolished Greek Cypriot's property rights, it later recognized local remedies and legislation to prevent the gap – "regrettable vacuum" in the human rights protection system and in this way, it agreed with ICJ approach on Namibia case.

This ruling was upheld in subsequent cases of *Foka v. Turkey*[571] and *Protopapa v Turkey*,[572] where the Court considered fair trial guarantees in TRNC to be in line with ECHR requirements. If TRNC authorities complied with local legislation in force, it should, in principle, be regarded as a domestic remedy for ECHR purposes.

Another case where ECHR discussed the TRNC remedies is *Djavit An v. Turkey.* It concerned the Turkish Cypriot national of TRNC, who was repeatedly denied crossing into the buffer zone and participate in bi-communal meetings in the government-controlled area. The court upheld its *Cyprus v. Tukey* case finding and declared that TRNC courts might be considered "domestic remedies" for article 35 of the Convention.[573] Apart from this, court has also acknowledged in *Demodopulos*[574] and *Foka*[575] cases that legal remedies established by de-facto authorities concerning TRNC inhabitants or persons affected by their actions are valid to prevent a vacuum, which would be the detriment of those who live under occupation of Turkey. In *Demodopulos*, the court found that any domestic remedy available at TRNC may be regarded as a domestic remedy or national remedy *vis-à-vis* Turkey. The logic beyond such finding is that if acts and omissions of de-facto authorities are attributable to

[570] *Loizidou v Turkey*, para 44.
[571] *Foka v Turkey* App no 28940/95 (ECHR, 24 June 2008)
[572] *Andreou Papi v. Turkey* App No 16084/90 (ECHR, 24 February 2009)
[573] *Djavit v. Turkey*, para 30.
[574] *Takis Demopoulos v Turkey*, paras 95-96;
[575] Foka v. Turkey, paras 83-84.

Turkey, TRNC "laws" and legal remedies can also be regarded as part of Turkey's legislation and remedies.[576] It is also noteworthy that the court refers to the so-called "Namibia principle" based on the ICJ judgment in *Namibia advisory opinion* and upholds that the recognition of specific legal arrangements by de-facto authorities does not grant them total legitimation. Such a level of recognition is vital as living continues in the de-facto state, and "it must be tolerable and protected by de-facto authorities."[577]

The court's position is also explained with practical necessities to avoid all complaints going to the international tribunal and to impose human rights obligations extraterritorially, in case of effective control.[578]

Guzelyurtlu v. Cyprus and Turkey case was another interesting development in that regard, where the court adjudicated that TRNC authorities who commenced an investigation of a murder case could be considered as domestic remedies within the scope of Article 35. ECHR clarified a jurisdictional link between applicants and Turkey, which is responsible for acts and omissions committed by TRNC.[579] Moreover, the court has indicated that the duty to cooperate involved cooperation with a de facto entity in this case. While this entity is not internationally recognized and therefore is not a party to the international treaties, states can apply informal or indirect cooperation channels through third states or international organizations.[580] The court acknowledged that states should cooperate with de-facto entities to protect human rights and prevent a vacuum by identifying such obligations. This obligation involves indirect or informal cooperation. The duty to cooperate with de-facto entities will not entail implicitly lending legitimacy to them as found by the court in the Ilascu case.[581]

Therefore, de-facto authorities should accord a certain degree of recognition to prevent human rights lacuna. In line with Tan's argument, the question of granting legitimacy to the de-facto entities is not relevant when the purpose of imposing human rights obligations

[576] *Takis Demopoulos v Turkey*, para, 89.
[577] Cyprus v. Turkey (2001), para 96.
[578] Cullen and Wheatly, 711.
[579] *Güzelyurtlu v. Cyprus and Turkey*) para 191.
[580] *Djavit v. Turkey*, para 30.
[580] *Güzelyurtlu v. Cyprus and Turkey,* para 237.
[581] *Ilaşcu v Moldova and Russia*, paras 177 and 345

derives from the general goal to prevent the legal gap. If human rights obligations rely simply upon the third state's that exercise effective control, this cannot be the effective guarantor for individual rights protection as de-facto authorities act as quasi-governmental authorities for decades, and the local population is affected by socio-economic, legal, administrative, and military decisions and orders issued by these authorities. The direct control of third states on such decisions is limited or even absent. Thus, if human rights obligations of de-facto authorities are disregarded, they will not be bound under any human rights framework. At the same time, the third state that exercises effective control will not provide an effective remedy as they recognize the de-facto state as an independent sovereign entity. These practical considerations create a gap in human rights protection that requires rethinking the state-centric character of the international human rights system.

Approaches developed in General International law and Humanitarian Law

The humanitarian and human rights obligations of non-state actors are also recognized under the international humanitarian law. It is argued that international humanitarian law acknowledges state and non-state actors, including de-facto regimes, to be bound by its rules.[582] The primary justification derives from the humanistic principles of this law and the increased engagement of non-state actors in armed conflicts. Suppose non-state actors are exempted from humanitarian law obligations. In that case, this will create an irreversible vacuum in human rights protection in humanitarian and human rights law as engagement of non-state groups in recent armed conflicts is apparent.

Certain obligations do not require legal personality or any status under international law. *De facto* authorities must respect, at a minimum, peremptory norms of international human rights law[583] and non-derogable rights (which are close by their nature to peremptory norms) that can never be limited.[584] Among such non-derivable rights are the prohibition of torture, genocide, and slavery, other crimes against humanity (such as deportation or forcible transfer

[582] Zegveld Liesbeth, *Accountability of Armed Opposition Groups in International Law* (Cambridge: Cambridge University Press, 2002)

[583] Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/19/69, para 106.

[584] Venice Commission 'Are there differentiations among human rights? jus cogens, core human rights, obligations erga omnes and non-derogability'' CDL-UD(2005)0 (21 September, 2005) https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-UD(2005)020rep-e; accessed 8 September, 2019,

of population, taking hostages or enforced disappearances); prohibition of arbitrary deprivation of liberty (including violations of IHL); prohibition of arbitrary arrest and detention; imposing collective punishments; fundamental principles of a fair trial, such as the presumption of innocence; prohibition of propaganda for war, advocacy of national, racial or religious hatred that would constitute an incitement to discrimination, hostility or violence; prohibition of discrimination and no punishment without law.[585] The authorities in de-facto states must also respect, at a minimum, the Common Article 3 of the 1949 Geneva Conventions, customary humanitarian law, and (when meeting the criteria) Additional Protocol II, all of which apply to a non-international armed conflict.[586]

Additionally, various arguments were developed in legal literature claiming that non-state actors are imposed with international humanitarian law obligations. Among them is the argument that insurgents that have reached a certain level of organization, stability, and effective control of territory hold international legal personality and are consequently bound by international humanitarian law obligations.[587] It is also argued that when the state accepts international obligations, they are also imposed on the individuals and non-state actors within the state's jurisdiction.[588] These legal arguments can be applied to the given context when arguing that de-facto authorities should be granted legal personality to impose human rights obligations and prevent the gap.

Furthermore, OSCE recommended that de-facto authorities stress their responsibility to guarantee peremptory human rights norms.[589] However, when there is no longer a situation of armed conflict and de-facto authorities maintain their power in the context of peace, the abovementioned norms of international humanitarian law lose their relevance. Further, international human rights law offers better and more comprehensive protection than

[585] UN Human Rights Committee (HRC), CCPR General Comment No. 29 on States of Emergency (11 31 August 2001) CCPR/C/21/Rev.1/Add; European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted 4 November 1950, ETS 5, article 15.

[586] Geneva Academy of International Humanitarian Law and Human Rights, 'Human Rights Obligations of Armed Non-State Actors: An Exploration of the Practice of the UN Human Rights Council', Academy in-Brief n. 7, https://www.geneva-academy.ch/joomlatools-files/docman-files/InBrief7_web.pdf.

[587] Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General Pursuant to the UN SC/Res 1564 (25 January 2005), para 172;

[588] Sivakumaran Sandesh, 'Binding Armed Opposition Groups' (2006) 55 International and Comparative Law Quarterly 369 , 381.

[589] OSCE, *Human Rights and Minority Rights Situation in Ukraine* (OSCE ODIHR, 12 May 2014) 125;

international humanitarian law limited to armed conflict. Thus, the protection offered by IHL cannot cover the extent that is needed in the discussed situations.

The responsibility of non-state actors can also be discussed within Article 10 of the Articles on State Responsibility for International Wrongful Acts (ARSIWA). It clarifies that "the conduct of a movement, insurrectional or other, which succeeds in establishing a new State in part of the territory of a pre-existing State or a territory under its administration shall be considered an act of the new State under international law." Therefore, insurrectional movements might also be held responsible if they have established a new state. In its commentary on Article 10, the International Law Commission explicitly mentions that unsuccessful insurrectional movements are not attributable to the state. ILC finds the support of this statement in several arbitral tribunal's awards and clarifies that "no Government can be held responsible for the conduct of rebellious groups committed in violation of its authority, where it is itself guilty of no breach of good faith, or of no negligence in suppressing insurrection."[590] However, the insurrectional movement which becomes successful in establishing a new state, the basis of attribution of responsibility *lies in the continuity between the organization of rebellious movement and the organization of the state to which it has given rise.* The responsibility of a new state is based on the logic that it is the only subject of international law to which the responsibility can be attributed.[591] If an insurrectional movement succeeds and becomes a new government of a state, the ruling organization becomes an organization of a state, and due to this continuity, it is responsible under international law.[592] Accordingly, if a movement becomes a new state, under the logic of the same continuity test, the new state becomes responsible for violations before it acquires statehood.

Insurrectional movement itself is defined within the threshold established under Additional Protocol II to Geneva Convention for the dissident armed forces or other organized armed groups that exercise control over a particular area of the territory. The existence of control enables them to implement Additional Protocol and sustained military operations compared

[590] Report of the International Law Commission on the work of its fifty-third session, Commentary on Articles on State Responsibility article 10, 50.
[591] Ibid, 50-51.
[592] Ibid. See also Crawford James, *State Responsibility: The General Part* (Cambridge University Press 2013), 175. Dumberry Patrick, 'New State Responsibility for Internationally Wrongful Acts by an Insurrectional Movement' (2006) 17 The European Journal of International Law Vol 3, 609-610.

to other sporadic riots and acts of violence that do not fall within the ambit of International Humanitarian Law. Therefore, the insurrectional movement under Article 10 of ARSIWA is understood as an organized armed group under IHL.

It is questionable whether this article is relevant for those movements that were not successful in establishing or being recognized as states, like Georgian and Cyprus secessionist states. Article 10 and its Commentary says nothing about whether the international obligation is actionable if an insurrectional movement becomes a state or a non-state actor.[593]

The commentary on Article 10 of ARWISA says nothing about recognition or state practice related to this matter. However, as explained in the logic of continuity, the newly established state becomes responsible as its legal personality is continued from the structure and organic body of the insurrectional movement; therefore, it gains legal personality.[594] Therefore, to claim that de-facto authorities can be held responsible for human rights violations, they need to have a certain level of legal personality under international law. Since de-facto states are not recognized in international law and their recognition is considered to violate international law (duty of non-recognition), their legal responsibility is not acknowledged. For that reason, de-facto states are doubtful to be viewed in the context of Article 10.

The non-state actor responsibility issue was highlighted in numerous reports prepared by UN bodies, including Human Rights Committee, CEDAW, OHCHR, etc. The resolutions and reports[595] prepared by these bodies often emphasize that protracted conflicts involve several duty-bearers, including state and non-state actors. UN bodies have recognized that in situations such as northern Cyprus and Hamas, the Palestinian Authority (PA), de facto National Transitional Council (NTC) in Lybia, non-state actors have an obligation to

[593] Cullen and Wheatly, 714.
[594] Dumberry, 609-610.
[595] UNCHR 'Report on the question of human rights in Cyprus" (2014), para 11; UNCHR 'Report on Human Rights Situation in Palestine and other occupied Arab Territories' (6 June 2008) A/HRC/8/17, para. 9; HRC 'Report on Human Rights Situation in Palestine and other Occupied Arab Territories' (29 May 2009) A/HRC/10/22, para. 22; HRC 'Report on Human Rights Situation in Palestine and other Occupied Arab Territories' (19 August 2009) A/HRC/12/37, para. 7; HRC 'Communications Report of Special Procedures' (5 December 2011) A/HRC/18/51, case No. OTH 2/2011, 53; HRC 'Communications Report of Special Procedures' (5 December 2011) A/HRC/18/51 (case No. OTH 3/2011), 93; CEDAW General Comment 30 on women in conflict prevention, conflict and post-conflict situations (1 November 2013) CEDAW/C/GC/30, paras. 13-16.

implement human rights. In situations when non-state actors exercise government-like functions and control over a territory, they have to respect human rights, as their daily conduct affects the human rights of the individuals under their effective control. From the international legal perspective, UN bodies ground their argumentation on the customary nature of human rights, like the Universal Declaration of Human Rights norms, which constitute customary international law. Therefore, International recognition and status cannot change the nature of these obligations. In the general recommendations of CEDAW on women in conflict prevention, conflict, and post-conflict situations, the Committee finds that in post-conflict situations, where state institutions are weakened, "there may be simultaneous and complementary sets of obligations under the Convention for a range of involved actors."[596] Additionally, the UN declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment clarifies that the guideline is created "for all States and other entities exercising effective power.[597] The Human Rights responsibilities of de-facto states was also emphasized by OSCE High Commissioner on National Minorities, who reiterated that "international norms and standards require that any authority exercising jurisdiction over population and territory, even if not recognized by the international community, must respect the human rights of everyone…"[598]

The Special Rapporteur on freedom of religion or belief stresses that to prevent the human rights gap in the situations of protracted conflicts, both member states and de facto entities exercising government-like functions should direct their efforts and fulfill their responsibilities.[599] He further explains that the violations committed by non-state actors often remain without response in the political climate of impunity, which further feeds the human rights vacuum. Therefore, the special rapporteur concludes that rights protection in such situations must be based on the principles of universality, freedom, and equality. The fact that non-recognized de-facto states cannot be a party to the international human rights

[596] Ibid, 13-16.

[597] United Nations' Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stated that the Declaration was meant to be a guideline for states and "other entities exercising effective power." (9 December, 1975) UN GA/Res 3452 (XXX)

[598] 'OSCE High Commissioner on National Minorities Deeply concerned by Recent Developments in Abkhazia,' Press Release, The Hague, April 14, 2009, http://www.osce.org/hcnm/item_1_37226.html; accessed March 20, 2021

[599] Report of the Special Rapporteur on freedom of religion or belief (24 December 2012) A/HRC/22/51, para 38.

conventions and cannot be held directly responsible before human rights bodies, neither legally nor politically, does not and should not prevent human rights bodies to refer international standards and to take necessary measures to secure their implementation.[600] Similarly, the Secretary-General's Panel of Experts on Accountability in Sri Lanka stated with regards to the Liberation Tigers of Tamil Eelam (LTTE), that non-state actors could not formally be a party to the human rights treaties, but due to their de-facto control over a particular area, they must be required to respect human rights.[601]

The logic behind human rights obligations of de-facto authorities lies in the hypothesis that human rights should not be abandoned in the absence of a government that carries out traditional governmental functions.[602] In various cases, insurgents sign human rights undertakings, but if they do not, this does not mean that they are not obliged to respect human rights.

Conclusion

The above-discussed practice and approaches developed in international human rights law, humanitarian law and in general international law aim to protect the idea of universality of human rights. This analysis leads to the conclusion that de-facto states hold limited legal personality and human rights obligations under international law. These state-like entities have a vital influence on the daily life of the local population, and their existence cannot be ignored to undermine the primary purpose of human rights protection. ECHR has developed extensive jurisprudence where it recognized that de-facto authorities, their decisions, and "legislation" cannot be ignored, and they can be considered "domestic remedies" to prevent the regrettable vacuum of human rights. Apart from this, the Strasbourg court acknowledged the duty of cooperation to de-facto authorities, which does not grant them any recognition but has the sole purpose of effective application of human rights. Beyond that, the legal documents mentioning non-state actors' human rights responsibilities become more frequent with the UN human rights system. The "strange endurance" of de-facto states requires to go beyond the understanding of the human rights system within the limits of the sovereign state. One of the functions of the human rights idea is to limit governmental power, whatever form

[600] Hammarberg and Grono, 13.
[601] Report of the Secretary General's Panel of Experts on Accountability in Shri Lanka (31 March, 2011) para 188.
[602] Heintze Hans-Joachim, 'Are De Facto Regimes Bound by Human Rights?' (2010) IFSH, 267-275.

it may have.[603] Therefore, it is essential to restrict de-facto authorities with human rights obligations, even if illegitimate and unrecognized. The future development of human rights case law requires such interpretations. It can be concluded that state-centric understanding of human rights is challenged due to the new realities and requires rethinking and modifications to protect human rights beyond its traditional understandings and rigid frames.

Chapter 5. Alternative understandings of international law and human rights system

As demonstrated above, legal and political approaches need adaptation and new perspectives to respond above-analysed challenges and drawbacks of the existing legal and political systems. This chapter will explore two modern concepts of "transnationalization" and "multi-level governance" as new conceptual models in finding solutions. Both models are presently *en vogue* as they are frequently discussed in the literature in the context of various contemporary human rights problems, including migration, pollution, environmental protection, with other issues having a cross-border impact, like terrorism, economic-business activities, etc. However, these concepts have never been compared to each other to critically analyse the given international human rights law system in the context of the protracted existence of non-recognized states. As concluded above, international human rights law and international political approaches lack solutions for situations like Georgia and Cyprus for one fundamental reason – the state-centric understanding and governance of human rights both on national and international levels. "Transnationalization" and "multi-level governance" will be applied as analytical, conceptual frameworks to challenge and question these attitudes. Critical analysis of both concepts can guide us to find which frameworks will be more comprehensive and appropriate for the given problem.

5.1. Transnationalization of human rights law

The application of transnationalization as a conceptual tool to understand the law under global governance, including human rights law, is not a novel attempt.[604] Phillip Jessup was

[603] Cullen and Wheatly, 728.

[604] Murphy Cian C, 'The Dynamics of Transnational Counter-Terrorism Law: Towards a Methodology, Map, and Critique' (2014) 42 Legal Studies Research Paper Series,

the first among many legal theorists and scholars to define "transnational law" as "all law that regulates actions and events that transcend national frontiers."[605] In his book "Transnational Law" Jessup's major concern was related to the incomplete and inadequate nature of national and international legal rules. At the same time, transnational law regulated those areas which complemented gaps and shortcomings. Since then, a vast amount of literature has been developed to theorize and define transnational law and legal ordering. While Jessup's approach was to think about transnational law as a separate source of law, other theorists focus on it as a process of reconstruction of law on various social levels that causes the transnationalization of law. As theorizing transnational legal order, different dimensions have been analysed. It is observed that these processes have top-down, bottom-up, horizontal, and transversal dimensions[606] since legal norms are diversified in various directions to cover gaps caused by the single (state-centric) sided approach in national and international legal orders. In this process, the state remains a major actor of transnational governance, nor national law or institutions are withdrawn from this legal order. However, it is assessed that lawmaking and legal practice interact across various social organization levels, from local to transnational and vice versa.[607]

With such interpretation, international law can become more open for non-state actors, particularly human rights, and international courts can expand their jurisdiction and interpret international law within the transnational prism.[608] By incorporating non-state actors in lawmaking and legal practice, the traditional centre of legal theory, the nation-state, will be altered.[609] The general lawmaking process will have numerous centres involving various actors. Transnationalization is considered a cross-border interaction, cooperation, and transaction between states and other actors, such as economic actors, civil society, etc.[610] It has emerged as a methodological tool that can transform the existing legal institutions in response to the evolving complexities of today's world.[611] Despite the proliferation of literature and thinking of transnational law and transnational interpretation of the law, it has

[605] Shaffer Gregory, 'Theorizing Transnational Legal Ordering' (2016) 6 Legal Studies Research Paper Series. 1-2.
[606] Shaffer, 8; Santos Boaventura de Sousa, *Toward a New Legal Common Sense* (Cambridge University Press 2002; Koh Harold, 'Why transnational law matters' (2006) Penn State. 24 International Law Review:745–53.
[607] Shaffer, 10
[608] Ibid, 9.
[609] Ibid, 21; Zumbansen Peer, 'Transnational law, Evolving' (2011) 7 CLGE Research Paper 27/2011, 6
[610] Altwicker, 581–606;
[611] Zumbansen Peer, 'Defining Space of Transnational Law: Legal Theory, Global Governance and Legal Pluralism' (2011) CLGE Research Paper 21/2011, 5.

never been analysed in the context of de-facto states to tackle the problem of non-recognition.

This concept draws attention in light of problems created by the state-centred nature of human rights law. While it is acknowledged that human rights are universal, the primary responsibility for violations rests on states limited by territoriality or citizenship.[612] The state is primarily responsible for implementing human rights within its borders, i.e., within its exclusive jurisdiction. The strict territorial approach in international law has changed over time in response to the new challenges posed to international law, e.g., concerning the laws against terrorism,[613] torture,[614] transnational environmental impact, etc., which disregarded territorial boundaries and extended state's jurisdiction beyond its borders.[615] However, new challenges like non-recognized states require new approaches and alternative visions that will break existing limitations and preserve the universality of human rights.

Despite some attempts to envision non-state actors as duty-bearers, they are still not recognized in the binding legal documents (human rights treaties can bind international organizations, but they are not direct parties to such treaties).[616] As for the international judicial findings issued by the international human rights courts, they have transnational nature since it goes beyond state's national law, but such international obligation binds only parties to the case, which can only be a state. Therefore, the findings do not have *erga omnes* nature unless the state reflects them in its legislation. The concept of transnationalization aims to fill the gap caused by the abovementioned drawbacks to address challenges such as cross-border harm caused by a state or non-state actor. Among such harms is the systemic human rights violations by de-facto (non-recognized) states beyond the parent state's control and by other states extraterritorially.

Human rights are often discussed within the context of transnational law from various angels, including to identify human rights duty-bearers beyond states, to litigate human rights beyond national jurisdictions, to conduct cross-border human rights advocacy where

[612] Altwicker, 583; Gibney Mark, Tomagevski Katarina, Vedsted-Hansen Jens, 'Transnational State Responsibility for Violations of Human Rights' (1999) 12 Harvard Human Rights Law, 267.
[613] Convention for the Suppression of Unlawful Seizure of Aircraft 1970, article 4; International Convention Against the Taking of Hostages, adopted 12 December, 1979, G.A. Res.34/146, article 5.
[614] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 10 December, 1984, G.A. Res. 39/46, Article 5.
[615] Gibney, Tomagevski, Vedsted-Hansen, 273-277.
[616] Clapham Andrew, 'Non-State Actors', in D. Moeckli, S. Shah, and S. Sivakumaran (eds), *International Human Rights Law* (2014) 531, 535–538.

non-state actors are engaged, to apply human rights duties outside states' national borders, to interpret human rights duties with transnational meaning, etc.[617]All of these attempts to determine transnational nature of human rights are related to its connection with new types of cooperations among multiple players and the extraterritorial nature of human rights itself.[618] Transnational perspectives spread the legal understanding over non-state originating norms.[619] Therefore, this concept becomes relevant in the context of non-recognized de-facto regimes, as the problem is related to the non-state actors' human rights duties and the state's extraterritorial human rights responsibilities.

The role of non-state actors in cross-border movement, transactions, and conduct has increased, triggering their human rights responsibilities caused by their extraterritorial impact. However, the followers of transnational interpretation of human rights concepts reject any idea of imposing human rights duties to the non-state actors as they consider that such expansion of duty-bearers is currently not possible for various reasons.[620] Altwicker believes that bringing non-state actors' responsibilities within the human rights system would require a paradigm shift. However, human rights legal instruments do not currently support this idea, as they do not provide the horizontal effect of its guarantees. Further, states are not ready to expand duty-bearers as they prefer to remain central subjects of the international legal system. Therefore, to fill the gaps caused by various cross-border interactions between state and non-state actors, transnational interpretation of certain core aspects of international human rights law norms, such as "jurisdiction," "obligation," "attribution," is suggested.[621]

In the process of transnationalizing human rights law, a state remains a central actor of the system. Still, its understanding is extended to cover human rights gaps caused by this process. The transnational interpretation of core human rights norms/concepts reveals that such an opportunity and separate legal source of transnational human rights are unnecessary.[622]

[617] Besson Samantha, 'Human Rights as Transnational Constitutional Law' in Anthony F. Lang; Antje Wiener (eds) *Handbook on Global Constitutionalism*, (Edward Elgar Publishing, 2017) 235.
[618] Altwicker, 594.
[619] Zumbansen, 7.
[620] Altwicker, 598-99.
[621] Ibid, 605.
[622] Ibid.

Jurisdiction

In a given human rights system, the state is obliged to protect human rights in the following two scenarios: if a violation happens within its jurisdiction and if acts and omissions are attributable to it. Jurisdiction, according to Besson, is an "all or nothing" concept[623] and answers the question of whether human rights obligations apply at all to the given case. As for the attribution, this concept provides answers if specific conduct is considered a "state's conduct" for which it should be held responsible.

As analysed above, the application of human rights norms and standards to extraterritorial jurisdictional actions is limited to certain thresholds established by the human rights courts (effective control test, agent authority, and control test). Various legal problems are associated with these tests concerning their application to the concerned context. These challenges comprise the requirement of physical control, the longevity of non-recognized situations and difficulty to find effective control in every violation, the unclear extent of positive and negative obligations, etc.

Due to the above-analysed legal problems to apply international human rights law in extraterritorial jurisdiction cases (in the situation of protracted conflicts and non-recognized illegal regime), transnational understanding of *jurisdiction* is suggested.[624] This interpretation relies on the factual necessity that control of persons or areas gives rise to the state's human rights responsibility in certain situations. The actual physical control is no longer needed to qualify the "effective control" test, and emphasis is given to *the control of harmful circumstances/situations*. The test referring to the "effective control of situations" was used in 2011 Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights.[625] Such interpretation of jurisdiction was applied in literature in relation to situations such as large-scale transnational pollution, cross-border surveillance activities that target individuals, harmful economic activities. In all cases, actual

[623] Besson Samantha, 'The Extraterritoriality of the European Convention on Human Rights: Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts to', (2011) 25 Leiden Journal of International Law, 878

[624] Altwicker, 590.

[625] Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, 2011. Principle 9, Available at: https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23 accessed 5 March 2020

physical control is not required; effective control of the situation is sufficient to expand the state's jurisdiction and impose responsibility for human rights violations.[626]

The expansion of the effective control test meets its first objection related to the unlimited growth of state's jurisdiction extraterritorially and, consequently, an extension of state responsibility area. The authors of extensive interpretation of jurisdiction suggest certain limitations: firstly, the jurisdictional link between the right holder and duty bearer should be established.[627] This means that affected right holders should be identifiable and their recognized legal interest. Beyond that, the impact intensity of the harmful effects is named as the second limiting factor since not every disturbance can trigger a foreign state's jurisdiction.[628]

ECHR implicitly applied this test in *Chiragov and others vs. Armenia* case. The Court explained that the Convention's jurisdiction is not restricted to the state's national borders. Its responsibility can be raised following the acts and omissions producing effects outside the borders.[629] Particular examples are given in the literature to demonstrate harmful extraterritorial effects of state's acts and omissions when they qualify the "effective control of situation" test. Among such cases are transnational surveillance[630] extraterritorial effects of the entry ban,[631] which trigger another state's human rights jurisdiction. With this interpretation of jurisdiction, harmful transnational impacts of the states can be captured since it covers the gaps of limited understanding of "effective control" and "state agent and authority control" tests.

Attribution

David Miller uses the term "outcome responsibility" in relation to attribution as it concerns the question of who is responsible for the committed acts and omissions.[632] Unlike jurisdiction ("remedial responsibility"), where human rights courts (especially ECHR) have developed an autonomous interpretation specific to the human rights concept, attribution is

[626] Altwicker, 590-594.
[627] Ibid, 591.
[628] Ibid.
[629] *Chiragov vs. Armenia*, para 167.
[630] Altwicker, 593.
[631] *Nada v. Switzerland*, App no. 10593/08 (ECHR, 12 September 2012); Altwicker, 594-95.
[632] Miller David, 'Holding Nations Responsible' (2004) 114 Ethics, 247.

a general international legal concept.[633] Human rights courts rely on the rules on state responsibility that are applied in the human rights context. Two articles on state responsibility regulate the attribution concept: One concerns government's authority exercised by non-state actors extraterritorially (Article 5 of ARSIWA), and another relates to the conduct of non-state actors directed or controlled by the state (Article 8). According to Article 5, the conduct of a non-state actor can be attributed to the state if that organ was empowered by the law of that state to exercise governmental authority. This article has a strict limitation that such an organ should be acting within the particular authority granted by the state under the law.[634] International Law Commission defines that the reason for attribution of "parastatal" entities' conduct to the state is that the state's internal rules have conferred on such entity certain elements of a government authority.[635] Therefore, the conduct can be attributed to the state if a non-state actor acted based on formal legal empowerment by that state.[636]

As for Article 8, it attributes responsibility to the state for non-state actors' acts and omissions if that non-state actor was acting under the direction and control of the state.[637] This article is reminiscent of the "control" criterion established in human rights jurisprudence. The rules of state responsibility define that two situations may exist within the framework of this article: first, when states supplement their authority by requiring private entities or groups who remain outside the state's official structure but act within the instructions given by the state.[638] The second scenario is when the "direction and control" test is met. According to this article, the state responsibility arises in very narrow circumstances when its actual participation and direction are proven, and general dependence and support are not sufficient to qualify this test.[639] This high threshold of state responsibility established by ICJ in the well-known *Nicaragua case* was questioned by ICTY in the *Tadic case*, although this case is not about state's but individual criminal responsibility

[633] Lawson Rick, 'Out of Control: State Responsibility and Human Rights', in M. Castermans et al. (eds), *The Role of the Nation-State in the 21st Century* (1998) 91, at 115
[634] ARSIWA, article 5.
[635] Report of the International Law Commission on the work of its fifty-third session, Commentary on Articles on State Responsibility,43. . See also: Ryngaert Cedric, 'State Responsibility and Non-State Actors', in M. Noortmann, A. Reinisch and C. Ryngaert (eds), *Non-State Actors in International Law* (Bloomsbury Publishing, 2015) 163, at 166.
[636] Altwicker. 600.
[637] ARSIWA, Art. 8.
[638] ILC Commentary on ARSIWA, 47.
[639] *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua vs USA) [1984] ICJ, para. 86.

and has a different context. Therefore, it is more accepted that a high threshold established by ICJ in *Nicaragua* has to be met to establish a state's responsibility.

It is practically unfeasible to complement above-mentioned rules of attribution to the given problem due to their narrow frames. Firstly, Article 5 is not relevant to the situation of de-facto states, as they do not act within the formal empowerment of a responsible state. Their actions contradict parent states' legislation and constitution, nor are they authorized to act so under the patron state's legislation. Besides, from legalistic and formalistic sides, patron states recognize their independence, and de-facto states are not formally empowered or authorized to act as such by the patron states. Therefore, it is unlikely to attribute a non-state actor's conduct to either state within Article 5. As for the state responsibility under Article 8, any of the two above-mentioned scenarios should be present. Either non-state actor should be acting on the instruction of the responsible state or under its direction and control. The operation of both criteria is so narrow that it limits the patron state's responsibility to minimal cases, which are directly instructed or controlled. These tests preclude parent states' responsibility at all, as from the factual background, de-facto non-state actors operate beyond parent states' legislation and consent.

Due to such narrow construction of attribution rules, transnational interpretation of "obligation to protect" is offered.[640] It is suggested to oblige states to take preventive measures against harmful acts from non-state actors abroad.[641] Here, the state is imposed positive obligations to protect the legal interests of individuals against the dangerous acts of non-state actors. Transnational obligation to protect has external and internal dimensions. In the first case, a state is obliged to protect persons abroad against harmful acts of non-state actors acting in its territory (external obligation). Such expansion of human rights obligation is not yet reflected by human rights courts. Still, it is supported in a wide range of literature, especially concerning the cross-border activities of transnational corporations.[642] As for the second case, the state is obliged to protect persons in its territory from transnational activities of foreign non-state actors (internal obligation to protect).[643] Such transnational

[640] Altwicker, 603-604.
[641] Ibid.
[642] McCorquodale and Simons, 'Responsibility beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law', (2007) 70 Modern Law Review 598; ILC, Articles on Prevention of Transboundary Harm from Hazardous Activities, UN Doc. A/56/10 (2001), Art. 3, at 370, 372.
[643] Ibid, 604.

interpretations of obligation to protect aim to increase state responsibility for the conduct of non-state actors within the frames of the positive obligation to protect. This interpretation is compatible with the existing human rights law system and does not require creating an alternative legal system or radical reforms within the given setting. This understanding creates a more comprehensive range of opportunities to avoid human rights gaps and raise state responsibility issues for non-state actor's conduct if the state is obliged to take positive measures within its borders (to protect from the actors outside its walls) and to take positive measures to protect beyond its borders when non-state actors in its territory conduct the harmful acts. This understanding of the obligation to protect goes beyond the existing tests of "control," direction," "instruction," and other narrowing concepts within the rules on attribution.

The implication of the given interpretation is interesting in relation to the non-recognized regimes. Apparently, it creates an opportunity to go beyond the standard norms of state responsibility and attribute wrongful acts of non-state actors (i.e., de-facto regimes of non-recognized states) to the state, who had a transnational obligation to protect. This means that if de-facto authorities violate human rights within the so-called borders of a non-recognized state, the parent state is responsible for protecting de-jure its nationals from the wrongful acts of non-state actors within its borders. On the other hand, from a purely legalistic perspective, this territory is also considered as the de-jure territory of the parent state; therefore, its jurisdiction and obligation to protect expands on that territory (even without the given transnational interpretation). Human rights courts also share this argument, and they impose a positive obligation to protect the entire territory of the state's de-jure jurisdiction, even beyond its effective control. The key problem here lies in the practical application of such positive obligations since the state cannot operate and effectively enforce human rights beyond its control. The scope of positive obligations is also vague, even with the transnational interpretation of this obligation.

As for the responsibility of the patron state for non-state actors' wrongful conduct, transnational understanding of the obligation to protect seems irrelevant. The non-state actors do not operate and conduct wrongful acts on the territory of the patron state. So, it is not relevant to acknowledge that the patron state is responsible for protecting outside its borders (in Abkhazia, in South Ossetia, or in Northern Cyprus) since the harm was spread from its territory. Therefore, the external dimension of this obligation is not relevant to this

case. As for the internal dimension, this is also distinct since non-state actors are acting beyond the patron state's national borders, and the harm is also done beyond that state. If the harm was done to the patron state's citizen, then such a scenario might be relevant. It is also noteworthy that the citizenship of the patron state is quite frequent among the residents of de-facto states since this is their only outcome of communication at the international arena in the situation of protracted non-recognition. Therefore, the patron state's positive obligation to protect may expand in such cases, and this becomes an attractive solution. In contrast, the state's positive obligation in extraterritorial situations is a relatively undeveloped legal scenario under the existing human rights jurisprudence.

From a theoretical and conceptual perspective, transnationalization of above-named concepts can fill the human rights gaps caused by the protracted existence of non-recognized states. With such interpretation, the state remains a central actor responsible for human rights violations. Still, an understanding of state responsibility is broader than in the existing system of human rights law. Firstly, the concept of jurisdiction, which is a major obstacle during human rights litigation, is expanded beyond the control tests now established by the human rights courts. The "effective control over situations" test requires a lesser degree of physical presence and control than required by the existing criteria and focuses more on harmful circumstances.[644] Such broader interpretation has more prospect to cover the situations of non-recognized regimes, meaning that effective physical control or direct presence of state agents is not required to find patron state responsible for human rights violation. Effective control over the specific situation, for example, initiation of legislation by de-facto authorities that discriminate ethnic minorities in non-recognized regime (e.g. ethnic Georgians or Greek Cypriots), or restriction of activities for human rights organization, or deficient investigation of severe violation (murder or illegal detention/torture case), can end up with responsibility of patron state (Russia or Turkey) if it was effectively controlling the situation (political pressure over de-facto authorities, interference with investigation process, aggressive lobbying and pressure on politicians, funding of radical separatist groups and using of so-called "soft power" tools over society, etc.).

As analysed above, this interpretation has its limitations: requirement of jurisdictional link between controlling state and the affected individual should be established and impact

[644] Altwicker, 590.

intensity of harmful acts should be sufficient to trigger state's jurisdiction. If in abovenamed scenarios, direct jurisdictional link between the controlling state and right-holders is established (e.g. between the patron state and individuals whose right to education was restricted, or whose family member's death was not investigated) and human rights violation reaches the sufficient intensity, then the jurisdiction test can be considered as qualified and responsibility of patron state can be raised. This hypothetical discussion can obviously be more reasonable when specific factual circumstances will be adjudicated by the human rights courts, but it serves to practically envisage the situation in the given context and apply given theoretical interpretations.

5.2. Multi-level governance of human rights

5.2.1. Idea and importance of MLG

The concept of multi-level governance is another theoretical framework that becomes increasingly relevant and even needed because it focuses attention on other levels of governance and other actors, including non-state actors. It also concentrates on other ways of governance where central authorities can be discharged by other levels of agencies.[645] Under this concept, governance is no longer understood as a central state monopoly. Ian Bache and Matte Flinders explain this concept as "the dispersion of central government authority both vertically, to actors as other territorial levels, and horizontally, to non-state actors."[646] European Union became the first vivid example of MLG experiment which further strengthened interest towards this concept. Besides, the challenging notion of the nation-state in the post-Westphalian world was another reason for MLG concept development. Bache and Flinders characterize new economic realities and political systems that created new world order as unprecedented unity and unprecedented fragmentation at the same time. They argue that new forms of interdependence, as in the European Union, do not mean that a new breed of super-states has emerged. Instead, the pattern is for fragmentation and reorganization of a state function, both horizontally and vertically.[647]

The concept describes a inovative form of organizing politics, replacing the vertical and hierarchical state-centric model with horizontal, non-hierarchical relations, involving a multitude of different actors acting autonomously in different layers and at varying levels of

[645] Bache Ian and Flinders Matthew (eds), *Multi-Level Governance* (Oxford University Press, 2005).
[646] ibid, 6.
[647] ibid.

the political system.[648] Further, in the context of proliferation of human rights mechanisms, the role of national authorities has increased for human rights compliance on local/national levels. To face the challenges related to the enforcement of human rights, the idea of localizing/strengthening human rights institutions has increased. In the context of non-recognized states, the establishment of such local authorities for human rights protection has even more critical meaning. For example, ECHR supported the creation Immovable Property Commission to solve the property rights problem in northern Cyprus. As described above, it was evaluated as an effective mechanism by the Court. This local remedy has its problems in terms of lack of funds and delayed proceedings, but on a theoretical level, it represents an attempt of the international organization to fill the gap in terms of human rights protection on a local level. The court realized that an international tribunal could not adjudicate every case related to the compensation of property loss in northern Cyprus, and it needed effective legal remedy, even in case of non-recognition.

The development of multi-level human rights governance has an interesting opportunity to fill the gap in protection that will allow increasing accountability of local actors for human rights protection, disregarding the issue of recognition. Human Rights is one of the most apparent fields in international law where the effects of multi-level governance are most tangible, and it can be further developed. International standards of protection influence national and local levels, while developments of local standards affect progressive development and improvement of international legal benchmarks. This interplay between domestic and international, centre and periphery, state and society are studied within this analytical tool. The framework can be applied when studying the human rights governance in de-facto states and the influence of international and national actors during their cooperation or lack of cooperation.

As it is claimed in the literature, multi-level governance has a single ambition – to reach universal recognition and protection of human rights. Within this concept, whatever differences might exist between various people and states, all of them have core set rights that unify them.[649] One device that universalizes human rights is the judiciary system and, in particular international human rights courts. They set out and interpret the rights that apply universally or regionally. Universalism might be understood both positively and negatively,

[648] Ibid.

[649] Mazzone Jason, 'The Rise and Fall of Human Rights: A Sceptical Account of Multi-level Governance' (2014) 3(1) Cambridge Journal of International and Comparative Law: 929–960, 930.

as it may support the advancement of rights standards domestically or limit their advancement as international standards might be lower than domestic. On the other hand, universalism in human rights has its drawbacks when various experiences show that the pursuit of human rights through multi-level government may diminish individual rights on the local level.[650] While criticizing this side of MLG in the field of human rights, it is argued that localized standards of human rights might be higher than international ones, and the benefits of localization should not be under-appreciated over globalism. This line of criticism is not relevant for the thesis as it does not aim to approve or disapprove the benefits of universalism.

Multi-level governance can provide analytical construction to demonstrate that non-state actors may play an essential role in preventing the human rights vacuum in de-facto states. The interplay between non-state and international actors is vital to this end. This interaction between non-state and international actors is also evidenced in the practice of ECtHR, which demonstrated that international human rights law is developing and it is not a strongly state-centric phenomenon.

MLG disperses the authority both vertically to a new level of governance and horizontally to non-state actors.[651] It implies that there is significant interdependence between governments and non-state actors across the various levels of governance. This concept hollows out the nation-state's understanding of international law and relations and rescales the state's powers upwards, downwards, and sideways.[652] Multi-level governance unites an argument that decision-makers shifted some of their competencies to other directions to respond the pressing challenges that exceed the reach of the central government. Two types of multi-level governance are distinguished in literature: the first one is territorially bounded and the second one is task-specific jurisdiction that overlaps each other. Type I multi-level governance is mostly characteristic to nations states with federal organization, where the central state has certain functions, and sub-nations in different territories have their local functionalities. Such governance is also typical for larger political systems.[653] Type II

[650] Ibid. 960.
[651] Bache and Flinders, 252
[652] Jessop Bob, 'Hollowing out the 'nation-state' and multi-level governance' in Patricia Kennet (ed) *A Handbook of Comparative Social Policy* (2nd ed, Elgaronline, 2013) 11-12.
[653] Maggetti Martino, Trein Philipp, 'Multilevel governance and problem-solving: Towards a dynamic theory of multilevel policy-making?' (2018) Wiley Online Journal, 357.

governance has a more flexible arrangement and structure and is designed to solve specific policy problems. Both models of multi-level governance have their upward, downward, and sideway arrangements that scatter power to various actors starting from international and ending with local, sub-national level, and non-state actors.

Concerning the first type of MLG setting, the upward arrangement relates to such situation when national states delegate their political authority to an international organization with all-embracing scopes, such as the establishment of EU federal governance settings such as in the US or Switzerland. Downward governance represents a situation when central government empowers subnational authorities and strengthens the decentralization of authority. As for the sideway organization of governance, this happens when political authority is delegated to private and non-state actors in various institutionalized settings.

Within the scope of the second type of multi-level governance setting, the upward arrangement is exemplified when specific issues are delegated to the respective international/supranational bodies. Such transnational organizations and informal networks are often organized around a specific topic, such as European Regulatory Network. The downwards denationalization in this type of governance is embodied by delegating certain functionalities on a local level, for example, cultural issues or budgeting. As for the sideway denationalization within this type of MLG, certain political power and functions are assigned to the non-state actors that are separated from central state institutions. Within these types of multi-level governance, various developments are brought together to strengthen the denationalization and empowerment of other actors apart from the state's central government. Among such developments are empowerment of regions, a delegation of political authority to independent agencies, the emergence of transnational networks, and others.[654] These settings are directed to mitigate state-centric organization of governance and increase the role of other actors at various levels.

This feature of multi-level governance is the starting point to discuss the role of non-state actors in human the rights system. It allows rethinking the state-centric nature of human rights legislation, both internationally and on a national level. MLG gives a conceptual space to discuss how the universal application of human rights can be extended to those areas where the traditional logic of international law does not extend. More specifically, as

[654] Ibid, 366.

demonstrated above, the state-centric nature of international human rights law does not recognize de-facto states as actors within this system. Therefore, it does not hold de-facto authorities accountable for human rights violations, even though these authorities have governed non-recognized states for decades. International human rights courts managed to find a solution to prevent a human rights vacuum. In the context of Georgia and Cyprus, ECHR found that de-jure states maintain their jurisdiction. Therefore, they are still responsible for protecting the whole scale of conventional rights, even though they do not control contested territories. De-jure state's jurisdiction entails both negative and positive obligations. To fill the gap caused by the lack of control, human rights obligations are imposed to those states that effectively control de-facto states, and their economic, political and military survival is dependent on them. The shared and concurrent responsibilities of de-facto controlling and de-jure states aim to fill the human rights vacuum, but in the context of a prolonged conflict situation and non-recognized existence of de-facto states, this approach is not sufficient to effectively apply international human rights standards and improve the protection of the whole range of rights. Multi-Level governance can suggest a rethinking of the international human rights system and provide such alternatives that are not possible within the given system.

5.2.2. The first type of Multi-Level Governance – territorial organization of jurisdiction

In general, as the first type of multi-level governance model stands on the state's territorial organization and considers a more comprehensive delegation of powers, it directly clashes with the major content of the above-discussed conflicts. This form of governance has its roots in the concept of federalism, where central authorities share power with the authorities on a subnational level. Such power-sharing has a rigid structure and setting mostly prescribed under the state's constitutions. The territorial organization of state and separating state's independence is the core aspect of concerned conflicts, therefore this model may be inappropriate to solve human rights problems in these areas. If it would be possible to make share governmental power in either direction (upwards downward or sideway) then ethno-political conflicts would be settled and it would not be necessary to make arrangements for purely human rights protection purposes. More specifically, within the upwards dimension of type 1 multi-level governance, specific international or supranational settings should be created where both state and non-state(de-facto) authorities would integrate and their governance would be organized from higher-level authorities. This would mean concession

of state sovereign powers in favor of the special supranational organization, that would mean legitimation of de-facto organs at a certain level. Such a solution would not be favorable for the parent state since their major concern is solving the problem that would not undermine their national borders and jurisdiction. On the other hand, if parent states want to solve their protracted conflicts (that has long-term negative consequences from political, social and human rights perspectives), this might be an alternative way that would re-unite conflict sides under one international setting. Obviously, power-sharing and status issues would be primary subjects of negotiation in such a case.

Similarly, another alternative of the downwards dimension of type 1 MLG would seem disadvantageous for parent states as it considers strengthening de-facto states' functionality on a local level. This would resemble a federation solution for the discussed conflicts, which is itself part of the lingering negotiation process. It is not favorable for de-facto states as well, as they strive for full independence. While it might be beneficial to strengthen human rights protection and accountability on a local level, this seems politically unfeasible due to the context of the conflicts which mostly stands on the territorial organization of the state and separation of sovereign powers. Within the sideway arrangement of MLG, full political authority is delegated to the non-state actors, which will not be favorable for either party of the conflict considering the abovementioned logic. In sum, as the nature of the delegation of power is rather broad, this type of MLG might also seem inappropriate for the given context.

5.2.3. The second type of Multi-Level Governance – task-specific organization of jurisdiction

As for the second type of MLG, it delegates political authorities to various entities both upwards, downwards, and sideways, but this power delegation is limited to the specific issues and does not extend exhaustively on the full range of governmental power as in the first type of MLG. Such a type of MLG is more relevant to solving the human rights gap in non-recognized territories as a delegation of power could be specifically oriented on human rights. The upward dimension of second MLG suggests to create an international or supranational judicial, semi-judicial or political setting with an encompassing scope to adjudicate human rights violations and impose specific human rights obligations to involved actors, including non-state actors, i.e., de-facto states. Such an international setting could be tailored to these specific situations and could serve as an *ad-hoc* judicial organ, that would be free from those restraints that are related to the accessibility to ordinary international

human rights courts. *Ad-hoc* judicial organs could also impose specific obligations and recommendations to the de-facto authorities. There is a higher probability that such a setting will be more favorable to the de-facto authorities as it may support them to de-isolate, get on the international area and gain some legitimacy. On the other hand, this opportunity may not seem promising to the parent states due to their political attitude and fears of legitimizing de-facto states or encouraging further stagnation of the conflict resolution process. Such solutions are subject to negotiations and need certain concessions from all involved parties. If the parent state is interested to improve human rights all over its de-jure territory, then it should consent to the creation of such judicial organs that will have a neutral approach towards the status of de-facto state authorities.

Within the downwards dimension, one may consider a situation when the central government delegates power to protect human rights to the local, in this case, de-facto authorities. This option again leads to the same concerns of creeping recognition as in the abovementioned situation, however, as a political compromise for the sake of human rights improvement, this issue can also become part of the negotiation. In such setting de-facto authorities can be recognized as responsible authorities to protect and improve human rights situations, by taking into consideration international recommendations and standards. For this purpose, international human rights bodies should be more open to cooperate with de-facto authorities, regardless of their international status.

Alternatively, the sideways process of denationalization seems more viable as, within this type of governance, private and non-state actors are delegated certain political power. These specifically designated actors can be granted authority to monitor and implement human rights standards in non-recognized states. This should not require any arrangement that will be in contradiction with international legal regulations and non-recognition duties. In such a situation, an independent non-state actor, for example, the National Human Rights Institution (ombudspersons' office), the group of local NGO-s involving all parties of the conflict, or international human rights body/NGO can be granted the authority to monitor and improve human rights, issue recommendations and advocate with de-facto authorities as well as the central state. Such an arrangement might be in the interest of all parties and the purpose of human rights monitoring and implementation can be reached in a status-neutral way. This organ can be established as an independent monitoring mechanism that would fill the informational vacuum on human rights situations on the ground. In addition,

a special ad-hoc judicial organ can be established that will be staffed with the judges selected from both conflict parties and its jurisdiction will be strictly limited on the protection of human rights in the context of protracted conflict.

5.2.4. MLG concept in the context of de-facto states

The role of substate actors can be crucial in terms of interpreting or even creating local policies. Sub-state actors may even backlash against nation-level policies and norms, and observation of various sub-state actor behavior proves that norm change does not necessarily occur in a state-centric way.[655] An interplay between the different levels of governance can serve to the norm development more effectively.[656]

One may argue that the development of a non-state actor's role in the multi-level system of human rights might undermine the sovereignty of the parent state as it may grant a certain level of legitimacy to de-facto states. However, as the practice of multi-level governance within the EU or beyond reveals, nation-states within this multi-level structure remain final arbiters, and they retain sovereignty.[657] Moreover, the practice of ECtHR demonstrated that even though de-facto states authorities can be considered as domestic remedies for the convention, this does not undermine the sovereignty of the parent state, which holds its de-jure jurisdiction.

As discussed above, interpretations and developments of international law suggested by the European Court of Human Rights have extended the importance and role of de-facto regimes in the international legal area. The Court developed important case law to prevent the human rights vacuum and to create a more tolerable and protected life for the inhabitants of the non-recognized territory. ECHR was not able to impose direct human rights obligations to the TRNC due to the traditional, state-centric understanding of human rights law. However, ECtHR judgment reflected on the practical reality of a legal vacuum existing in territory de-facto controlled by non-state actors. As the Court in *Cyprus v. Turkey* highlighted: "recognizing the effectiveness of [de facto states] for the limited purpose of protecting the rights of the territory's inhabitants does not, in the Court's view and following the Advisory Opinion [on Namibia] of the International Court of Justice, legitimize the 'TRNC' in any

[655] Reidel, 332.
[656] ibid, 332.
[657] Schakel Arjan H, Hooghe Liesbet, and Marks Gary, *Multilevel Governance and the State* (The Oxford Handbook of Transformations of the State 2014) 9.

way." With this statement, the Court restrictively recognized de-facto state's effectiveness to prevent human rights vacuum. Furthermore, as was demonstrated in the above chapter, the court acknowledged de-facto state legislation and authorities as "domestic remedies" within the scope of Article 35 of the Convention. Here we may read about the influence of international human rights organs on a very sub-local level, that acknowledged the role of the non-state actor in the general system of human rights law. An increasing role of civil society actors was recognized by UN Security Council when it highlighted their role to promote bicommunal contacts and events in Cyprus.[658]

To this end, according to the ECtHR's logic, de-facto states are the middle circle between states and private individuals, as they may have human rights obligations without the internationally recognized status of the state.[659] This middle level of governing authority maintains a vertical relationship with those who they govern even though they do not hold the status of a legally constituted state.

The placement of de-facto authorities as non-state actors within the large system of human rights would be a challenging process as mentioned above, due to political considerations from both sides of the conflict. On the one hand, the parent state's legitimate concerns on the creeping recognition of de-facto authorities will be a significant barrier in this process. On the other hand, de-facto states themselves already established a solid example that they could endure isolation and maintain self-proclaimed independence without recognition by the rest of the world. Therefore, they will not accept any solution that will undermine their achievement. The advantage of the MLG system is that de-facto states can be placed within the human rights system in a status-neutral way, that will not concern political considerations and will be strictly oriented on human rights purposes. MLG suggests various alternatives that can be negotiated between the parties, either by strengthening the role of international actors in terms of independent monitoring and implementation of human rights standards, or by strengthening the lower level of governance, on the level of de-facto states, or by engaging other non-state actors, such as human rights organizations to fill the vacuum in monitoring and access to information.

[658] UN SC/Res 1847 (2008)
[659] Tan Daron, 458.

Current practice regarding TRNC gives positive ground to believe that multi-level solutions can have progressive and encouraging influence over the daily life of local citizens and on the protection of their human rights. As analysed in the above chapters, various actors are involved in this process both on local as well as international levels. For example, the bi-communal technical committees that are functioning with the participation of Turkish and Greek Cypriot communities, as well as a representative from the UN, can be named as an interesting *ad-hoc* solution that aims to improve human rights and daily life of people living in the conflict situation. Technical committees on various issues were specifically created for this context and can be deemed as a middle-level actor in the process of prolonged non-recognition, where local and international actors aim to improve human rights and humanitarian situations even though the political situation is not resolved. This solution can be tagged as the second type of MLG that, interestingly, involved both upward and downward approaches. Furthermore, international engagement, particularly of the EU and UN, is more intensive in the Cyprus conflict, which without granting legitimacy to the illegal entity, attempts to find solutions for de-isolation. EU engagement within the three regulatory acts concerning trade, financial aid, and movement (green line regulation) has a positive impact on daily lives in the context of non-recognition and ongoing conflict. Engagement from the UN side is also noteworthy, which on the one hand, guarantees peace and non-repetition of hostilities and, on the other hand, secures improved human rights and humanitarian situation. Regular reporting and monitoring from the UN side are also vital in this process. Another example of upward engagement is the funding of local human rights actors in TRNC, which actively monitor human rights situations locally, local watchdog authorities, and impose negative and positive obligations. The cooperation of Greek and Turkish Cypriot human rights and other organizations within the Cyprus Dialogue Forum[660] is also a good example of sideway multi-level governance as these organizations cooperate to support the dialogue process and improve human rights all over the island.

Remarkably, multi-level governance solutions can be formal as well as informal, and their positive impacts should not be disregarded. The operation of bicommunal technical committees is a formal setting within the human rights MLG, but the Cyprus Dialogue Forum is an informal institutional setting with overarching similar goals to promote cooperation between the parties and improve the human rights situation. Analysis of these

[660] Cyprus Dialogue Forum: https://cydialogue.org accessed 19 February 2022

examples that are developing in Cyprus within the theoretical frames of multi-level governance demonstrates that increasing the role of local authorities as well as non-state actors can be vital for conflict resolution as well as human rights improvement. These alternatives that deviate from the traditional state-centric concepts and give a certain role to other actors without infringing state sovereignty principles are the most favorable way to navigate in a situation where status and legitimacy issues create obstacles to general humanitarian purposes.

5.3. Comparison and conclusion – which solution is more comprehensive and applicable

Examination of theoretical structures of transnational law and multi-level governance enables critically analysing the existing human rights law and policy system and applying them to the given research problem.

Several conclusions can be construed: firstly, transnational interpretation of key human rights concepts such as "jurisdiction," "attribution," and "obligation" can stretch legal frames of the human rights system in such a manner that situations like non-recognized states can be more comprehensively tailored into it. The given analysis demonstrates that state-centric human rights law can be interpreted in a way that broadens its strictly territorial understanding and expands state's jurisdiction beyond its national borders. Furthermore, such enlargement of state's jurisdiction does not diminish the well-established idea of sovereignty and statehood, nor expands the jurisdiction and responsibility of state unreasonably and without limitations. It should be also noted that, given interpretations of basic human rights concepts is relevant to define only the patron state's responsibility and adjust its frames to respond to human rights gaps in the concerned situations. These interpretations are not relevant to parent states responsibility, since its jurisdiction and consequently human rights responsibilities are still clear within the existing human rights system (as analysed above, state's de-jure jurisdiction covers its entire territory, and responsibility to protect human rights is still imposed on that state, regardless of loss of control).

Secondly, transnational interpretation of human rights law still maintains the state as a central actor of the system since it interprets basic human rights concepts to stretch the state's responsibility for such situations that were not taken into consideration when the existing

system was created. These interpretations serve to the progressive development of human rights law to face contemporary challenges and gaps created by the new interactions between state and non-state actors in and beyond the national borders. Therefore, transnational interpretation does not envision the possibility of seeing non-state actors as responsible agents for human rights violations. It attributes acts and omissions of non-state actors to the states under certain circumstances based on the transnational interpretation of rules on state responsibility. The critical examination of this interpretation demonstrates that it is not sufficient to cover complex legal problems created by the non-recognized states. It can be used to stretch patron states' responsibility and attribute conduct of de-facto regimes. However, certain areas are still left beyond the protection system due to the complexity of situations. Firstly, it does not respond to those situations when human rights harm is caused by de-facto authorities, and attribution rules do not work even with the suggested transnational interpretation. Secondly, the scope of the positive obligation to protect is not clearly defined. Therefore, it becomes vague how and under what circumstances the patron state has to implement its positive obligations when the conduct was done by de-facto authorities. If the "effective control over situation" test (transnational interpretation of jurisdiction) is satisfied, then such responsibility of the patron state can be raised. It can be concluded in favor of the authors of transnational interpretation that the expansion of positive obligations of a state beyond its national frontiers and for the actions of non-state actors can serve to fill the gaps.

Thirdly, transnational interpretation maintains the state as a central duty bearer and cannot answer to the above-discussed challenge of finding de-facto entities responsible for violations during the protracted existence of their non-recognized states. The authors of this interpretation consider that the human rights system cannot be shifted in such a manner that states will recognize non-state actors as equal or quasi-equal actors of international law. As such setting is impossible, authors try to accommodate within the given system and interpret concepts to cover new challenges and gaps. Therefore, with such interpretation, the patron state's responsibility for the situations it controls effectively can be stretched, and therefore, patron state's can be held responsible for violations of non-state actors. Transnationalization of human rights law cannot apply to parent states as it does not suggest a specific definition of positive obligations that could be relevant for parent states. In addition, rules on attribution and jurisdiction cannot be relevant to parent states as their jurisdictional issues are still clear in the given system of law.

Fourthly, multi-level governance as another analytical concept is broader and more flexible in suggesting not only legal but also political arrangements that would respond to the concerned gaps and challenges. The variety of solutions covered within this framework can be developed in such a manner that would break the narrow and restraining construction of human rights governance and legal theories. This concept proposes that human rights governance can be developed in various directions and dimensions, upwards, downwards, and sideways, either in formal or informal settings. This flexibility is much needed when the problem is related to the hierarchal, territorial, and status-related construction of legal and political systems. MLG can provide the theoretical background to promote modification of human rights governance and enhance the unorthodox arrangement of legal and political structures. In such a manner, non-state actors' roles can be advanced, and their responsibility can be raised without their legitimation or changing of their status under international law.

The human rights system cannot be modified and changed without the state's explicit consent and action. With such a conclusion, one question directly comes forward- why states would agree to alter human rights law to restrict their role or create new actors that play a role in the general governing system of human rights. Several answers can be found to this question. Firstly, in general, states tend to protect their international reputation and recognize the transnational effects/obligations of their national human rights regulations.[661] Furthermore, international cooperation regimes become increasingly dependent on human rights principles and norms; therefore, states have to consider the transnational effects of their actions in the human rights prism. The states realize that the stability of their cooperation and international relations in general lies on human rights ideas. Therefore, states have to be ready to modify human rights governing structures where they will distribute their authority among various actors, including non-state local actors international stakeholders. States cannot solve human rights gaps within the existing system of human rights governance (both from legal and political perspectives). Obviously, the problem of protecting human rights in non-recognized states is not purely a matter of legal interpretation and theories, and political considerations play a significant role in finding way outs of a stalemate situation. Therefore, alternative settings offered by MLG models can be closely and critically rethought by the states, enabling them to diversify their power, increase the role of various actors and involve them in human rights governance. This can be achieved

[661] Altwicker, 606; US Presidential Policy Directive 28 declares that their transnational surveillance activities should respect all persons' dignity, regardless of their nationality, or wherever they might reside.

in formal and informal settings that would safeguard their national interests and maintain their sovereignty.

Chapter 6. Concluding observations

The above-discussed conflicts that emerged out of ethnically motivated clashes, sustain themselves with the support of third states, along with the narrative on past injustices and a strong belief that their statehood and independence can be maintained.[662] As it is analysed above, de-facto states in Cyprus and Georgia have managed to develop stable and steady normality in their non-recognized entities where people and governments behave like in other internationally recognized states. Even though their democracy, independence, and effectiveness are strongly challenged, they behave like normal states, and, with international isolation, they survived.

It is correctly argued by Thomas De Vaal, that these states are not born out of simple geopolitical conflicts with the assistance of other states. These conflicts had deep ethnic/religious roots, they emerged from strong feelings of internal injustices and undemocratic developments. Therefore, even if existing geopolitical and security issues are settled and the presence of international troops and support disappear, it is highly unlikely that these territories will happily join their parent states.[663] For Abkhazia, South Ossetia, and Northern Cyprus, their parent states are still aggressors which violated their rights and self-determination, oppressed them with expressing majority domination. De-facto states have proved to themselves and others that they can endure for decades and survive, without recognition, international engagement. Therefore, patron states' support is decisive for survival and endurance, which itself uses this opportunity for its geopolitical purposes and interests. On the other hand, for parent states, these de-facto entities are separatist regimes under the occupation of a foreign state. These perceptions have not changed for decades, and in some cases, they further strengthen. With such radically opposed sensitivities, it is highly unlikely that these conflicts will be settled in the nearest future with any possible solution (reintegration with the parent state, recognition of independence, or something in between).

[662] De Vaal Thomas, 6.
[663] Ibid.

In search of a political resolution of the conflict, de-facto states created a precedent that traditional logic and understanding of international human rights law do not apply to them and respective legal settings need certain accommodations. Apart from the legal side of the problem, since the conflict situation and protection of human rights are strongly politicized, political engagement is also critical to eradicating the isolation and vacuum that exists in terms of human rights protection in these regions. The thesis was dedicated to both sides of the problem and it analysed both, legal and political solutions.

The two-fold nature of the problem is derived from the dualistic content of the non-recognition phenomenon. It emerged from the political approach not to recognize the legitimacy of any situation that was born out of the wrongful international act. But this policy soon gained legalistic features and developed as an *erga omnes* legal obligation. As it was analysed in Chapter 2, international political engagement with these regions was strongly determined by the international community's unwavering attachment to the non-recognition policy and loyalty towards the principles of state sovereignty and territorial integrity.

In numerous cases, engagement initiatives met restraints and objections due to the fears of creeping recognition that come either from parent states or the international community. The engagements were not free from these restraints even when they concerned human rights and humanitarian purposes. In the case of Georgia, these objections were more vibrant and deterring while the international community is more involved in the Cyprus situation. This was determined by the geopolitical factors and willingness of international actors like the UN and EU to settle the situation and prevent isolation and vacuum in northern Cyprus as well as by the policy of local de-facto authorities to open their doors to the international community. In Abkhazia and South Ossetia situation is more radical in that regard, where the parent state is more furious to protect its sovereignty and territorial borders, to prevent any engagement that omits "green light" from Tbilisi even if this engagement concerns human rights and humanitarian intentions. On the other hand, de-facto authorities of Abkhazia and South Ossetia themselves chose the self-isolation policy and strong attachment to the patron state - Russia, because they saw unwavering fidelity of Georgia's integrity by international actors like the UN and EU. Therefore, for them, international actors were not trustworthy and reliable. These actors themselves strongly restrained from engaging due to the fears of creeping recognition and dependability on Georgia's decisions.

Furthermore, the aggressive war of 2008 further flamed the situation and nurtured international isolation of de-facto regions.

The above-summarized patterns of international engagement have symmetrically reflected the human rights situation in all three non-recognized territories. Chapter 3 suggests detailed analyses of what implications non-recognition policies had on the human rights situation in Georgia and Cyprus. Bolder and courageous international engagement in Cyprus left more positive traces on human rights and the humanitarian situation in the North. Firstly, more independent information is accessible on local institutions and their approaches towards human rights. This is determined by the fact that international monitoring mechanisms are accepted there, the UN permanent mission observes a situation for decades, EU authorities are involved in the monitoring process and local institutions themselves feel accountable towards them as they receive financial support and assistance from western partners, apart from Turkey. *Ad-hoc* monitoring mechanisms, such as special rapporteurs from the UN are also actively applied. Such engagement on the one hand, prevents informational vacuum on human rights at TRNC and on the other hand increase the sense of accountability and respect towards international institutions and human rights standards.

Secondly, local civil society in northern Cyprus is active to increase their "government's accountability by permanently reporting to international human rights bodies, filling applications at human rights courts, and monitoring and publicly reporting severe violations. Such situation is shaped by the direct funding from the international community that is not restrained neither by local de-facto authorities nor patron or parent states.

Thirdly, as a result of the abovementioned two findings, severe and systemic human rights violations that are administered by the local de-facto authorities are not noticeable and alarming as in Abkhazia and South Ossetia.

Fourthly, international human rights bodies, both judicial and political organs, have actively developed their practice and imposed certain obligations and recommendations to the de-facto regime, even though it does not have a direct legal personality under international law. Taking into account the abovementioned findings, it can be concluded that the human rights situation is monitored, controlled, and positively developing in northern Cyprus by virtue of international engagement, political will, and motivation of de-facto authorities and less troubling obstacles and restrains from patron and parent states. It is noteworthy that the

permanent existence of international missions and monitoring mechanisms have become a guarantor of peace, security, and stability that positively affects the human rights situation.

The *status quo* is radically alarming in Georgian separatist territories. Firstly, there are no international independent monitoring mechanisms accessible in these regions, on neither a permanent nor *ad-hoc* basis. This creates an informational vacuum what is the human rights situation on the ground, whether there are systemic violations administered by the local de-facto authorities and whether effective legal remedies are accessible for people living in isolation.

Secondly, local de-facto actors do not feel accountable towards any international human rights body as they feel totally ignored by them, creating an absolute stalemate situation. Consequently, severe human rights violations occur in these territories, which are often committed by local authorities on a systematic basis. The administrative practice of human rights violations involves the right to education, freedom of movement, prohibition of torture and inhuman treatment, right to property, right to vote, freedom of expression and assembly, and many other fundamental rights. Thirdly, civil society is more oppressed and restricted, as they cannot get international funding and cannot operate freely, therefore they are not able to control local authorities and improve the human rights situation in this way.

Fourthly, the absence of international actors negatively effects on peace and security situation, which itself harms human rights, particularly due to the process of so-called "creeping occupation" and "borderization". Apparently, the lack of international engagement and absence of accountability towards international human rights bodies creates more severe human rights situation.

Furthermore, a set of human rights issues are strongly politicized and stuck in the stalemated negotiation process; therefore, neither legal nor political solution is found for decades and the situation is deteriorating continuously. Due to the lack of international engagement and self-isolation policies of de-facto states, not only human rights are severely harmed, humanitarian crises often leave local population without access to quality healthcare and basic human needs.

Apart from the implications that isolation and non-recognition policies have on human rights in these regions, the legalist side of the problem is also considerable. Chapter 4 focuses on legal and theoretical challenges that are created by persistent non-recognition policies. This

chapter finds that non-recognition as a legal concept has drawbacks in the above-discussed contexts. It raises various questions including when the duty not to recognize arises, does it need judicial assessment or it is a self-executing legal obligation, whether it is open-ended or it can last for centuries until the wrongful situation that caused non-recognition ends, does it contradict duty to cooperate, what is its real substance and what actions are state required to do or refrain from doing in order not to recognize. Furthermore, the political nature of this legal obligation contains risks of its unreasonable expansion as it is demonstrated in the fears of so-called "creeping recognition." It is analysed that such expansion may end up with isolation of local population that continues to live in the situation of non-recognition for decades. These consequences may lead to severe gaps in human rights application and even in humanitarian crises.

Chapter 4 also explores international human rights jurisprudence, in particular ECHR case law, as it is relevant for the discussed situations. The European Court tried to find certain legal solutions where the traditional logic of international human rights law and responsibility issues were not applicable. It has developed the jurisprudence on imposing human rights obligations extraterritorially when the state party's wrongful acts violate human rights beyond its officially recognized borders. As demonstrated in its diverse case law, the major reason for such developments was to prevent the human rights vacuum. The human rights responsibility issue has developed in two directions. Firstly, the court imposes a responsibility to the parent state as it maintains its *de-jure* jurisdiction and therefore still bears both, negative and positive obligations to protect human rights even though it does not exercise control over a certain area of its territory. However, the standard set by the court, in this case, is rather lower due to objective reasons. The court imposes a responsibility to take all necessary political, economic and diplomatic measures to protect human rights, however, in the context of loss of control, the parent state is often excused from its positive obligations. Furthermore, when such a situation lasts for decades, parent states are mostly deprived of the tools to apply their national legislation and mechanisms to fulfill their conventional obligations.

The second solution that the Court chose to fill the human rights gap is to impose human rights responsibilities to the state that effectively controls particular areas beyond its national borders. It is found in Chapter 4 that the court's jurisprudence is not consistent and straightforward in this subject matter. Apart from this, it lacks a stance in terms of

determining the extent of the extraterritorial state's positive and negative obligations. Determination of this has vital importance for the people living in the context of non-recognized states to know under what standards they are protected and what they can request from either parent or patron state. The court chose rather a broad approach and once it finds the fact of effective control, it imposes the responsibility to protect a whole range of conventional rights. This approach may have various theoretical and practical gaps in the given context as the situation of non-recognition is protracted and de-facto governing authorities have attained a certain level of independence on a local level. They act as state-like entities. The fact that they survive because of the financial, military, and political support of other states does not preclude the fact that they decide day-to-day affairs that may have consequences on the human rights situation locally. Therefore, this approach cannot safeguard the human rights gap that arises in this context.

For the sake of clarifying this issue, it is suggested to develop a "concurrent and tailored approach", under which the court should impose responsibility to either state in accordance with the degree of control it has over certain violations. This approach aims to fill the human rights gap more comprehensively and share positive and negative obligations between parent and patron states according to their ability to implement such obligations. The court has recently started to develop this approach. *Guzelyurtlu v. Turkey and Cyprus* is the case where the court shared responsibility to investigate the violation of the right to life between Cyprus and Turkey, as both were obliged to cooperate within the scope of a criminal investigation. Interestingly, the duty to cooperate has emerged as an important concept to contradict non-recognition obstacles and more specifically, to overcome it negative consequences.

Another solution to fill the gaps in applying human rights law to the concerned context is transnational interpretation of human rights norms and concepts. This suggestion allows to expand major human rights concepts, such as "obligation", "attribution", "jurisdiction" in a way to expand state's responsibility for its cross-border activities, comprising both negative and positive obligations. The suggested interpretations attempt to cover those shortcomings that is revealed in current human rights jurisprudence.

As approved in Chapter 4, there still exists the space where de-facto states responsibilities should be discussed. This necessity derives from the specific nature of the given situation, where de-facto authorities have gained some degree of independence and control and it lasts for several decades. Rethinking of the state-centric approach of human rights law has already

started in international jurisprudence, legal literature, and non-legally binding documents prepared by the authoritative international human rights actors. In the context of the protracted existence of non-recognized states, the role of de-facto authorities in human rights protection should not be disregarded. This issue was raised by ECHR several times in various contexts. For example, in the abovenamed *Guzelyurtlu case,* the court asserted that the states should cooperate with TRNC de-facto authorities in the process of criminal investigation even though this entity is not recognized. Furthermore, the court largely acknowledges the organs of de-facto authorities as "local remedies" and discussed their compatibility with the convention's standards. This was justified by the court to prevent the human rights gap and make itself available for those people who continue to live in the context of non-recognition. The court even obliged states to create a "local remedy" for property right claims within the TRNC and in numerous cases acknowledged the effectiveness of the Immovable Property Commission. With this background, it can be claimed that for human rights purposes, the international human rights court accepts de facto states' limited legal personality.

Apart from this, Chapter 4 analysed the documents issued by UN human rights bodies, which impose human rights obligations to the de-facto entities. Therefore, it can be concluded that international law stops being strictly state-centric and it acknowledges the role of other non-state actors particularly in the human rights context. This development is in line with the general approach held by international judicial organs, arguing that "the development of international law has been influenced by the requirements of international life."[664]

The necessity to expand international legal space over various actors apart from state organs is interestingly analysed within the multi-level governance concept. MLG's conceptual approach acknowledges the dispersion of central state authority vertically to other territorial organs and on an international level, and horizontally to other non-state actors. It is analysed in Chapter 5 that the MLG concept can be a valuable tool to overweight strict recognition policies established in the international legal and political doctrines and scatter governance of human rights on various actors at international and local levels and involve non-state actors in this process. Chapter 5 explores various types of MLG and examines their compatibility to the discussed contexts. It finds that the second type of MLG is more flexible as it scatters responsibilities and functions to various actors to solve specific policy

[664] Reparations Advisory Opinion, the International Court of Justice (ICJ), 1949, Advisory Opinon, 8.

problems. The first type of MLG is not appropriate in the given situation as it concerns the separation of central state power and authority to various territorial organs. The classic example of the first type of MLG is the federalist governance of states. Since the major issue of the analysed conflicts is the constitutional and territorial establishment of the states, choosing the first type of MLG to settle human rights issues would further entangle the situation and lead back to the roots of conflicts. Therefore, the second type of MLG is considered to be more appropriate since it concentrates on a specific policy issue, as human rights protection in non-recognized states, and suggests solutions and alternatives to decision-makers on how this issue can be governed.

All three subsections of second type MLG offer valuable solutions to the given problem. Firstly, within the framework of upward management of the issue an international or supranational ad-hoc judicial or semi-judicial setting can be created, where human rights obligations of non-state actors will be adjudicated. The standards of human rights protection can be the same as in any other international human rights court; however, the parties of this judicial setting will be non-recognized entities. Such solution can be favorable for de-facto states to join the international community and demonstrate that they protect human rights. This solution can be also favorable for parent states as in this way the severe human rights issues can be solved in non-recognized areas.

Within the downward governance of human rights, the central government should delegate/coordinate human rights protection issues with the de-facto states. In this setting, human rights body can be created on the local level where independent international judges can be appointed and both de-facto authorities and central government should be accountable. As for the sideway setting, the role of private and non-state actors is increased and they are delegated certain political power to implement human rights. Among such actors can be named public defenders or the coalition of human rights activists and organizations from both sides of the conflict or other private actors. They can have important input in terms of holding de-facto government as well as central government accountable, also providing independent information on human rights challenges and reporting to international human rights bodies. All of these solutions can have numerous alternatives and they shall be subject to negotiations between the conflict parties. The key principle is that the power and authority to protect human rights should be delegated and separated among various actors, including private, non-state actors, and de-facto authorities. In the

context of the absence of effective control, the central government of the parent state is not in the position to monitor and implement human rights. Therefore, it should be ready to negotiate and delegate its authority to various actors and involve in the process of international and local bodies.

It is discussed in Chapter 5 that increasing the role of non-state actors in the human rights governance system may meet various challenges, particularly from the parent state. This may indicate that certain legitimacy and legal personality is granted to the de-facto states. However, the advantage of human rights multi-level governance is that it is free from granting political statuses and can be concentrated on governing specific issues. The bi-communal technical committees can be taken as a good example of how non-state and international actors along with parent states can work together to solve various sets of issues that concern the daily lives of TRNC residents and their communication with the rest of Cyprus. Multi-level governance principles can be established in judicial settings as well. The establishment of the Immovable Property Commission can be presented as a model, which was created according to the decision of the international human rights body and represents a local solution to the extremely politicized issue of property rights. Bringing these examples does not mean that they operate flawlessly. These examples serves as models what arrangements can be achieved for the sake of mitigating negative consequences of protracted conflicts and isolation.

To summarize, human rights multi-level governance considers active coordination between international actors and with governments in parent states, also with de-facto authorities. Within this concept, it is available to adopt a toolkit to protect human rights within a framework of non-recognition. Within the MLG concept, various troubling issues can be managed, such as education and healthcare, where parent states, de-facto authorities, and international actors can jointly coordinate in a status-neutral way. It is obvious that cooperation with de-facto authorities is inevitable if all the actors aim to prevent vacuums of protection. Therefore, new rules of engagement should be developed both from political and legal viewpoints. Residents need accessible legal remedies if their rights are violated. Furthermore, local and international political actors need to have a space of cooperation for joint humanitarian and human rights purposes, without considering political issues. Stronger

political and legal engagement and assistance would increase commitments from the de-facto authorities to cooperate and implement human rights standards locally. [665]

The above analysis leads to conclude that when international engagement is strictly state-centric in the context of non-recognized de-facto states, it fails to reach its goal to improve human rights and the humanitarian situation. Therefore, international actors should always take into consideration the importance of other actors as in given situations cooperation only with states can cause isolation and further deterioration of human rights situation. The establishment of substate/non-state institutions and actors on the local level of governance or issue-specific governance is a way to avoid official recognition and find a solution to support human rights. Furthermore, engagement of international actors where de-facto authorities are totally disregarded may have a negative influence on human rights. Their engagement is vital in order to feel accountable and part of the community. International legal doctrine has attempted to recognize their limited legal personality as human rights protection goals prevail. The legal and political sides of this issue should cooperate closely to eradicate isolation and vacuum.

[665] De Vaal Thomas, Uncertain Ground, 4.

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ANNEX: List of Interviews and Questionnaire

List of the people interviewed in Cyprus

1. **Achilleas Demetriades**

Partner at Lellos Demetriades Law firm. He is the President of the Human Rights Committee in the Cyprus Bar Association as at 2015 todate, and a founding member of the NGO TRUTH NOW in Cyprus.

Education and expertise: – International law, Human rights.

Achilleas is frequently asked to speak on human rights matters, particularly with regard to the property issues arising from the Cyprus Problem.

2. **Andreas Photiou**

Representative of the Ministry of Foreign Affairs of Cyprus. He is in charge of negotiation formats with the northern Cyprus.

3. **Emine Colak**

She is the representative of Turkish Cypriot Human Rights Foundation. Former minister of foreign affairs of "TRNC". She actively works on human rights protection issues in northern part of Cyprus, participates in respective international formats and reports on human rights challenges.

4. **Fezile Osum**

Human Rights lawyer in "TRNC". She works on the human trafficking issues in norther cyprus within the EU funded COMMIT (Coordinated Measures and Mechanisms for Anti-trafficking) Project.

5. **Öncel Polili**

Human Rights lawyer, works at Ledra Law Office on human rights issues. He was involved in litigation of various cases at ECHR in relation to the conflict issue.

Questionnaire:

Engagement:

1. What formats of negotiations exists since the emergence of Cypriot Conflict?
2. What formats are pending now? How Civil Society is involved in the dialogue process?
3. What will you name as top 5 achievements human rights achievements in dialogue process;
4. What improvement does this process need? what are the challenges? (changes in leadership could be a problem?)
5. What was the government's policy for increasing engagement? which initiatives the government-supported?
6. How international engagement was perceived from the non-recognition policy viewpoint?

Human rights:

7. How did EU / UN engagement in Cyprus conflict effect on human rights situation in Norther Cyprus?
8. So far, what initiatives the EU had in that direction?
9. Which initiative was most successful? what were the reasons for failure, if it was so?
10. Does EU/UN initiatives need "blessing" from central government for engagement?
11. what are the basic principles and directions of EU /UN work on Cyprus conflict issues?
12. What are the most crucial human rights challenges in norther Cyprus?
13. How bicommunal committees work and how they can improve human rights situation in the region?
14. Freedom of movement – How TRNC citizens can gain travel documents from RoC, Can they freely travel to Europe? what is the level of isolation in that regards? How TRNC citizens gain visas from other countries, (there are several representations at TRNC – USA, British, German, Italian).
15. Does travel document from RoC mean that they are citizens of RoC?
16. International human rights monitoring mechanisms in Norther Cyprus? – Does International NGOs have representation there? Is it necessary to gain RoC authorization? US issues annual report on TRNC human rights, Can US State department visit north for those purposes?
17. Are TRNC elections observed by international missions (EU, OSCE, USA?)
18. How often TRNC nationals address ECHR for human rights violations, against Turkey, against Cyprus?

List of the people interviewed in Georgia

1. Paata Zakareishvili
Former State Minister on Reconciliation and Civic Integration. He has decades of experience working on conflict issues in Georgia, participated in direct negotiation formats with Abkhaz and Ossetian counterparts, managed state policy of conflict resolution process. He is currently involved as a civil activist and human rights defender in the same topic and maintains direct communication with the relevant counterparts in Abkhazia and South Ossetia.

2. Ucha Nanuashvili
Former Ombudsperson of Georgia in 2012-2017, founder of NGO – Democratic Research Institute. Working on conflict resolution/prevention and human rights issues in the conflict area.

3. Giorgi Kanashvili
Researcher on Peace and Conflict transformation issues, works on peacebuilding, conflict prevention and transformation.

4. Tamar Mearakishvili
Civil activist in Akhalgori, South Ossetia/Tskhinvali Region

5. Representative of Ministry of Foreign Affairs of Georgia, in charge with preparing peace negotiations and cooperation with international actors on peace and conflict related issues.

Questionnaire:

International engagement and Negotiation formats:

1. What formats of negotiations have existed since the last two decades?

2. How do you assess effectiveness of Geneva International Discussions after 12 years of its existence from human rights perspective?
3. What will you name as top 5 achievements in this dialogue process; more emphasis on human rights improvement achievements;
4. What improvement does this process need? what are the challenges?
5. Which international actors were/are most engaged and what were the measures of their engagement with de-facto regions;
6. How the EU is/was engaged in de-facto regions of Georgia?
7. How EU engagement could be modified/updated for the improvement of the human rights situation in conflict regions;
8. So far, what initiatives the EU had in that direction?
9. Which initiative was most successful? what were the reasons for failure, if it was so?
10. What was the government's policy for increasing engagement? which initiatives the government-supported?
11. How international engagement was perceived from the non-recognition policy viewpoint?
12. It is a widely accepted view that parent states are afraid of large international engagement as it might result in the implied recognition of de-facto regions. Therefore, the states, including Georgia, are often doing everything that if any international engagement is planned, that should happen through national authorities. The law on occupation is a clear example of such fairs and attitudes. On the other hand, international engagement is an important tool for human rights improvement in these regions. Several international legal scholars also claim that no such doctrine of implied recognition exists, cause recognition of states should be very explicit and direct. Do you consider that international engagement might undermine non-recognition policy? what was the policy of your government in that regard?
13. Should every engagement by international actors be agreed with Georgian central government authorities?
14. Does the government of Georgia support EU engagement policy in Abkhazia and South Ossetia/Tskhinvali Region?

Human Rights challenges:

1. Which human rights issue is/was most emerging in conflict areas? human rights issues in the regions were ethnic Georgians live should be separately discussed in this question.
2. What are the opportunities Georgian government have to protect human rights there?
3. International legal instruments – including EHCR, how this instrument can be more effectively applied to improve human rights situation? how it is applied now?
4. Do you have any direct dialogue format on human rights issues (apart from Geneva talks) with local authorities;
5. Which unsolved political issues undermine human rights situation from time to time?
6. Do you have dialogue and communication with local CSOs in Abkhazia and South Ossetia? what obstacles does this CSO-s meet while working on the ground?
7. How the new initiative "step for better future" respond to the ongoing human rights challenges?