

Chapter 7

Stepping Up the EU's Engagement in the Conflicts of the Caucasus

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The territorial disputes of the Southern Caucasus, which have remained unresolved for more than two decades, are a permanent reminder that the optimism that prevailed during the period 1989–1991¹ has given way to a more sobering and rather painful assessment of the state of nation-building in this volatile region on the east European periphery. Abkhazia, South Ossetia, and Nagorno-Karabakh stand, in this context, not only for three distinct—and in some ways intertwined—territorial entities that have defied effective jurisdiction by their metropolitan states² and have managed, over time and with enormous external assistance,³ to assume *de facto* state functions,⁴ which also include more than the possession and exercise of the monopoly of power.⁵ They also represent an unprecedented humanitarian catastrophe. Well-documented evidence points to a staggering number of about two million people throughout this region who have

¹ With the adoption of the Belovezh Accords in December 1991, the Soviet Union formally ceased to exist.

² Throughout this chapter, Georgia and Azerbaijan are referred to as “metropolitan states” in the context to the(ir) disputed territories. The author of the present work rejects the terminological concept of a “mother state” or “parent state” and equally problematic denominations which fail, in his opinion, to escape the bias trap. The term “metropolitan state” resonates much better with regard to international law scholarship in the field. See Jorri C. Duursma, *Fragmentation and the International Relations of Micro-States. Self-Determination and Statehood* (Cambridge: Cambridge University Press, 1996); James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press, 1979).

³ This chapter does not analyze or assess the extent of external support for the secessionist movements in each of the three cases. It treats the *de facto* states resulting from the armed conflicts as consolidated entities that will exist for an indefinite time. Nevertheless, support by third states has always been a crucial factor in these conflicts, yet is not the only source of support.

⁴ Charles King has framed this quite convincingly: “The territorial separatists of the 1990s have become the state builders of the 2000s creating *de facto* countries whose ability to field armed forces, control their own territory, educate their children ... is about as well developed as that of the recognized state of which they are still notionally a part.” See: Charles King, “The Benefits of Ethnic War—Understanding Eurasia’s Unrecognized States,” in *World Politics* 53(4):524–552, 525.

⁵ *De facto* states do, albeit at a modest level, offer health care and other public services.

been forcibly displaced due to the ethno-political mobilization and subsequent armed conflicts that have taken place since the late 1980s.⁶

These conflicts, which have shaken the entire region since the collapse of the Soviet Union, have also been thoroughly covered by academic scholarship. They have received particular scholarly attention through methodological lenses emphasizing the geostrategic importance of the South Caucasus region. Located between the Black and the Caspian Seas and at the intersection of Christianity and Islam,⁷ the region has triggered competing desires by Great Powers and those that deem themselves such. Accordingly, those frozen conflicts of the region, which present themselves as entirely intractable in nature, have turned into a permanent bargaining factor within the geopolitics of the South Caucasus, whereby ethnic diversity becomes, if one strictly follows this logic, a liability for the stability of the region and of individual countries, and whereby peoples are pushed and pulled into different directions. In part, this picture resonates very well with national stereotypes of the local actors, be they state or *de facto* state actors. For instance, the widespread Georgian narrative designates a problematic definition of the institutional accommodation of ethnic and cultural diversity. According to this narrative, autonomous territorial formations on Georgian soil have been “mines”⁸ planted by Russia in order to considerably weaken the Georgian state. Likewise, the French co-chairmanship in the OSCE Minsk Group—which includes Turkey as a member—has always aroused suspicion in Azerbaijan, given the assumed pro-Armenian bias of the French foreign policy involvement. Therefore, the external factor in both ameliorating and exacerbating the territorial disputes has always been a primary objective of academia and academic political advocacy in this context.⁹ This is not to argue that the respective societies have shared these local narratives unanimously. However, every so often they

⁶ The first documented instances of organized violence in Azerbaijan and Nagorno-Karabakh were reported as early as 1988.

⁷ Brenda Shaffer argues convincingly that “[t]he Caucasus is an excellent laboratory for testing the influence of religious and cultural differences on the emergence of alliances and rivalries.” Brenda Shaffer, “The Geopolitics of the Caucasus,” *Brown Journal of World Affairs* XV(2):131–142, 132.

⁸ Stuart Kaufman, *Modern Hatreds: The Symbolic Politics of Ethnic War* (New York: Cornell University Press, 2001), p. 94.

⁹ Nina Caspersen, “Playing the Recognition Game: External Actors and De Facto States,” *The International Spectator* 44(4):47–60; Annie Jafalian, ed., *Reassessing Security in the South Caucasus: Regional Conflicts and Transformation* (New York: Routledge, 2011); Dov Lynch, *Engaging Eurasia's Separatist States-Unresolved Conflicts and De Facto States* (Washington, DC: United States Institute of Peace Press, 2004).

have been too easily and rather uncritically picked up by observers, shaping our way-of-sometimes insufficiently-understanding these conflicts.

This interplay between local narratives and outside observation has not always been entirely helpful. On the one hand, in light of this interplay, conflicts such as those in Georgia have come to be viewed only through the lenses of proxy wars, thereby providing rather lazy analysis. It would be inaccurate to maintain that Abkhaz separatist ideology had been instigated, much less invented, by the Kremlin. By dismissing sources of support other than those provided by patron states such as Russia, we run into the trap of buying into the preferred discourse of *all* conflict parties. Through the portrayal of these territorial issues as lying exclusively within the logic of geopolitics, conflict parties on all sides—including the leadership of *de facto* states—can easily lean back and choose not to engage in substantial talks or visions of how to ameliorate the status quo. The result of this stalemate is evident: territorial conflicts are essentially conflicts over identity and belonging, and are addressed as a binary choice between engagement at the request of the metropolitan state, or no engagement at all. Yet, by choosing not to engage in and with the *de facto* state, both the metropolitan state and the EU are condoning the stronger embrace of parent states, particularly the Russian Federation, which entities like Abkhazia and South Ossetia have to accept, even if reluctantly, due to lack of alternatives.

Defining the Problem: An Unsatisfactory Stalemate

As neither isolation nor outright opposition has produced any vision of a settlement, can we deal with entities like Abkhazia, South Ossetia or Nagorno-Karabakh at all? And if yes, on what basis?

The international system is much more kinetic than mainstream international relations theories portray it.¹⁰ We are not confronted with a binary situation in which the either-or dichotomy must guide our reasoning and our policies. The classical and rather realist view, according to which a state is either sovereign or it is not a state, is—whether we choose to admit it or not—seriously challenged by the continuous existence of these *de facto* states of the South Caucasus.¹¹ This chapter aims to inject some

¹⁰ Adrian Florea, "De Facto States in International Politics (1945–2011): A New Data Set," *International Interactions* 40:788–811, 789.

¹¹ In this regard, the South Caucasus represents only a part of the broader picture, with many unrecognized entities widespread all over the world.

fresh blood into the discussion on engagement strategies, and their potential components, with the *de facto* states in the South Caucasus.

I argue that the *de facto* states, representing the most notorious outcome of the 1990s wars, do not represent an anomaly in international politics, or a blind spot that moves outside of the application of international law. The view that the rational faces the irrational may reflect our understandable desire to grasp some notion of these entities. Yet, this desire is not entirely helpful in coming closer to understand the nature of *de facto* states. These entities have become indicators of a consolidated permanent dichotomy between the clash of (external) self-determination and the territorial integrity of states, as evidenced by their ability to defy effectively the jurisdiction of Georgia and Azerbaijan.

While reintegration of Abkhazia, South Ossetia and Nagorno-Karabakh into Azerbaijan and/or Georgia appears to be highly unlikely, the other extreme—recognition—will also not ameliorate the crisis. The counter-productive decision of the Russian Federation to recognize Abkhazia and South Ossetia in 2008 probably removed the local population's last incentive to engage constructively in discussions over sovereignty and/or a future power-sharing deal under a common roof of the metropolitan state, the Republic of Georgia. In this regard, Thomas de Waal is correct when he comments that it is inaccurate to speak of the possibility of conflict resolution, and that it would be better to speak of a slow "conflict transformation."¹² Moreover, Russia's most dreadful decision has actually narrowed the independence of Abkhazia and South Ossetia rather than strengthening it. Both South Ossetia and Abkhazia are less autonomous today than they were prior to 2008. Therefore, in order to address the issue of *de facto* states, we also have to critically reflect upon our imagination, as well as doctrines on sovereignty. This constellation—a stalemate between a shaky entity and a metropolitan state—represents to some extent the outcome of this limited way of reasoning.

Yet what does this constellation of metropolitan states vis-à-vis the *de facto* states, which will soon have existed for three decades, mean? It means, on the one hand, that *de facto* states are, at least in a short and mid-term perspective, here to stay. Given the current lack of incentives to reengage in sovereignty issues and the sharing of sovereignty in all of the South Caucasus conflicts, they cannot be treated as anomalies. At the same time, and on the other hand, the metropolitan states will do what they can to

¹² See Thomas de Waal's chapter in this book.

prevent these territories from gaining international legitimacy, let alone recognition. Therefore, it must be underlined that no immediate remedy, either for the secessionist entity or for the legitimate metropolitan state, is available under international law.¹³

Paradoxical as it may seem, continuing this very unstable equilibrium of peace seems to be in the short-term interest of both the metropolitan and the *de facto* states. States such as Georgia and Azerbaijan can lean back comfortably, since they have made sure that their breakaway territories are under effective international isolation. This is something for which they have furnished legislation, making it impossible for the *de facto* authorities of Sukhum/i, Tskhinval/i and Stepanakert to enjoy the privileges of full statehood.¹⁴ Azerbaijan has also enacted legislation to isolate Nagorno-Karabakh. The most visible of these restrictions concern individuals who travel to Nagorno-Karabakh. Since travelling to this *de facto* state is considered a severe criminal offence under Azerbaijani law, these people are permanently banned from entering Azerbaijan.¹⁵ Likewise, the law on occupied territories of Azerbaijan also prohibits economic activities in Nagorno-Karabakh. This issue has even led to some temporary unease in U.S.-Azerbaijani relations.¹⁶

¹³ Marc Weller, "Addressing the Self-Determination Dispute", in Marc Weller and Barbara Metzger, eds., *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice* (Hotei Publishing, 2008), pp. 387–406, 405.

¹⁴ Georgia's Law on Occupied Territories, which was adopted in 2008 immediately after the Russian diplomatic recognition, is a valid case in point. Not only does this law ban all domestic and foreign companies from conducting *any* kind of economic activities, the law also prohibits foreign citizens from traveling to Abkhazia and South Ossetia without authorization of the Georgian authorities. The law also signifies a backpedaling on the part of Georgia. Georgia has formally recognized Abkhazia in many different agreements of the 1990s as its counterpart with which it has to find a solution, since 2008 it depicts only the Russian Federation as a military occupying force, whereby no standing whatsoever is given to Abkhazia or South Ossetia. The situation of Nagorno-Karabakh seems to be less volatile in this respect, since Armenia assumes the function of a kin state rather than a patron state, forming one common political and economic space with Nagorno-Karabakh.

¹⁵ The list of people declared *personae non gratae* has been growing over the years and includes some prominent names such as Kaupo Känd, legal senior advisor to the High Commissioner on National Minorities of the OSCE; Otto Luchterhandt, one of the most outstanding German professors of international law; EU special representative in the South Caucasus Peter Semneby had been on this list between 2012 and 2015; Spanish opera star Montserrat Caballe, and recently the Israeli-Russian blogger Alexander Lapshin.

¹⁶ There was an exchange of notes between the U.S. and Azerbaijani delegations to the OSCE on the subject of U.S. companies providing commercial services in Nagorno-Karabakh. After the U.S. was criticized for not intervening against these U.S. firms, U.S. Ambassador to the OSCE Daniel Baer responded that "Our embassy in Baku has emphasized to the government in Azerbaijan that it is not against U.S. law for American companies to operate in the territories." See: <http://www.osce.org/pc/271256?download=true>.

For the time being, this shaky equilibrium will remain. At the same time, this situation enables the metropolitan states to avoid engaging in a possibly painful discussion about a future legal status of these territories within their respective constitutional configuration.¹⁷ Such a discussion, which would need to extend far beyond the mere guarantees of human rights in a democratic system¹⁸ to the inhabitants of these three entities, would automatically touch upon the root causes for these conflicts, and thus raise issues related to the responsibility and accountability of respective political elites who are partly still in power. In addition, the appetite for complex power-sharing arrangements within the state structures in the post-Soviet space is rather marginal, as the empirical record of conflict resolution throughout in this volatile region shows.¹⁹

Hence, we arrive at a most unsatisfactory result: both the lack of progress in overcoming territorial divisions between all relevant stakeholders (including state- and non-state actors) and the lack of political solutions on the ground mirror the lack of available tools on how to deal with those entities—at least in a short and medium term. The situation has hardened to a point where the *de facto* states have so successfully defied reintegration into their metropolitan states that reintegration through peaceful means is unlikely, if not entirely impossible. They are here to stay for a while, having defied those who predicted that they would be forcibly incorporated into their metropolitan states, and those who forecasted that they would quietly acquiesce to the metropolitan states' rule. This unsatisfactory situation compels us to open a new critical space for discussion on the *de facto* states and the manner in which they ought to be dealt with by the EU as the key force of positive transformation in the region.

¹⁷ As of this writing there is not one comprehensive settlement proposal on the table. Georgia has been even backpedaling, going way behind the 1990s agreements with the Ossetians and the Abkhaz.

¹⁸ Which, particularly, Azerbaijan is currently unable to provide.

¹⁹ One can quote the simple but accurate one-liner of the British legal scholar Ivor Jennings, who already discovered in 1953 while focusing on India: "Nobody would have a federal constitution if he could possibly avoid it." Ivor Jennings, *Some Aspects of the Indian Constitution* (Oxford: Oxford University Press, 1953), p. 55. This seems to be even more true for the post-Soviet record of conflict resolution efforts in the South Caucasus: metropolitan states and their contesting separatist regions have only been able to agree on very rudimentary principles for conflict resolution.

***De facto* States Amidst Reputation and Double Standards?**

Proposing a policy of engagement for the *de facto* states of the South Caucasus means walking in a political and scholarly minefield. This is in particular due to problematic outside perceptions of these *de facto* states.

The contemporary *de facto* states that grew out of separatist ideologies and wars in the 1990s suffer from a serious image problem.²⁰ They are often characterized as “black holes”²¹ and as source of insecurity for the whole region in which they are located, posing threats to both their neighbors and their metropolitan states. In addition, media as well as governments depict them as utterly corrupt and impoverished entities, creating an image that these statelets are safe havens for criminals.²² In addition, the way in which they have emerged often not only involved warfare, but also ethnic cleansing. The case of Abkhazia and the displacement of nearly the entire Georgian population do not stand alone. One may even add the short-lived temporary *de facto* state of the Serbian Republic of Krajina to this equation. According to the prosecutors of the ICTY, the leadership of this unrecognized republic was largely responsible for crimes connected to the “forcible removal of a majority of the Croat, Muslim and other non-Serb population.”²³ Moreover, the governments of the metropolitan states often simply do not accept the term “*de facto* state” or the label “unrecognized state.” Their point of view, which they also translate into vast bulk of legislation,²⁴ clearly depicts these territories as being under military occupation by a third state, be it Armenia, Turkey (as in the case of the

²⁰ The deliberations in this subchapter are also strongly based on Nina Caspersen's most important thoughts on the image problem with which these anarchical badlands seem to struggle. See Nina Caspersen, *Unrecognized States* (Cambridge: Polity Press, 2012), pp. 20–24.

²¹ These categorizations even appear in scholarly literature. “Black hole” is the attribute used by Janusz Bugajski in his monograph *Cold Peace: Russia's New Imperialism* (Washington: CSIS, 2004), p. 107.

²² See “Abkhazia's Beauty of Sight,” Civil.ge, <http://www.civil.ge/eng/article.php?id=4807>. In addition, the Georgian government made even allegations concerning the smuggling of nuclear materials through Abkhazia and South Ossetia. See <http://www.nti.org/analysis/articles/georgia-draws-attention-nuclear-smuggling-abkhazia-and-south-ossetia/>.

²³ See the indictment against Milan Martić, *The Prosecutor of the Tribunal against Milan Martić*, Case No. IT-95-11, July 14, 2003.

²⁴ See, for instance, Georgia's law on occupied territories, which severely restricts access to and economic exchange with Abkhazia and South Ossetia. Likewise, one can consider Ukrainian Law No. 254-19-VIII of March 17, 2015, “On recognition of certain regions, cities, towns and villages in Donetsk and Luhansk regions as temporarily occupied territories,” which offers similar propositions.

Turkish Republic of Northern Cyprus) or Russia. Therefore, they disregard any analysis which does not prioritize the role of the relevant patron or kin state.

This reputational dilemma is, however, not only a reputational issue *per se*. It poses additional problems for three distinct yet intertwined reasons: First, it not only strengthens the case for a strict non-recognition policy²⁵ by the international community, it deems engagement with these entities and their political elites as something that is potentially unethical or dangerous.

Second, these categorizations may even narrow the analytical lenses through which we are able to explain and understand the nature of these entities. By focusing only on the displacements and the humanitarian circumstances through which the entity has emerged, an observer may fail to grasp how successfully political institutions have been built in these statelets in the past decades. Similarly, the dimension of state legitimacy, both internal and external, and the corresponding pivotal aspect of the *de facto* state's relation to its society, is dismissed as irrelevant. Alternatively, as Caspersen aptly argues, by concentrating too strongly, for instance, on the economic interests and drivers of political elites, one may become trapped into paying inordinate attention to the greed thesis in conflicts.²⁶ The overemphasis on the negative attributes may potentially prevent us from grasping the notion and meaning of internal sovereignty within these statelets. The same is true for viewing these states only in terms of the support provided by patron states and/or kin states.

Third, accepting these images and attributes will also involve and lead to some degree of bias in these utterly politicized conflicts. Indeed, total neutrality in these matters is a myth since it seems to require that an opinion on a given subject has not yet been formed. Yet, the downside of being overly partial is disastrous: accepting or endorsing the terminology of "occupied territories," which some governments and parliaments have done in relation to the conflicts over Abkhazia and South Ossetia,²⁷ can and will reduce the incentive of the population of these entities to seriously

²⁵ Caspersen, *op. cit.*, p. 21.

²⁶ *Ibid.*, p. 22.

²⁷ For instance, in July 2011, the U.S. Senate unanimously approved a resolution calling upon the Russian Federation to withdraw its "occupying forces" from Abkhazia and South Ossetia. See <https://www.shaheen.senate.gov/news/press/us-senate-unanimously-passes-shaheen-graham-resolution-affirming-us-support-for-georgian-sovereignty>.

engage in conflict resolution talks or to attempt to elevate the dispute to the level of power-sharing.

This situation is additionally compounded by the difficulties in accessing those territories and the relative scarcity of reliable and comprehensive information about these entities. As Galina Yemelianova aptly puts it, the unpreparedness of Western scholarship to grasp the conflicts of the South Caucasus has allowed East European and Eurasian studies, which were long unaware of conflicts and political processes in non-Russian regions, to conceptualize these conflicts around a Russia-centered paradigm.²⁸ Needless to say, this has led to downsides not only in scholarship but, consequently, in the way how these entities are dealt with from a policy-relevant point of view.

This problematic dimension revolving around the *de facto* states has been one of the most serious stumbling blocks in the past efforts to devise policies that could have helped to draw the *de facto* states, particularly Abkhazia and South Ossetia, slightly more out of the Russian orbit. Yet this dilemma becomes somewhat relativized when focusing on entities that count as fully recognized states, but with no empirical capabilities whatsoever to govern their respective territories. Indeed, the “essentially normative”²⁹ shift in international law after 1945 has provided for state-building of former colonies without, in countless cases, satisfying the classical criteria of statehood for these colonies. This in turn has often led to the creation of *quasi-states* which have a seat in the General Assembly of the UN, participate in intergovernmental organizations and whose diplomats are accredited to other nations, yet, whose governments have very little capability to run a state effectively or control its territory. Yet, the *quasi-state*, as it appears, is treated as highly respected member of the international community, despite the fact that those entities are often run by warlords and the only form of governance is unorganized or organized violence. Indeed, those warlords do not necessarily challenge the territorial integrity, let alone on an ethnic basis, of the respective state but are often in control of the country or of some parts of it.³⁰ The *de facto* state, on the

²⁸ Galina Yemelianova, “Western Academic Discourse on the Post-Soviet *de facto* State Phenomenon,” *Caucasus Survey* 3(3):225–226, 219–238.

²⁹ Robert Jackson, *Quasi-States: Sovereignty, International Relations and the Third World* (Cambridge: Cambridge University Press, 1993), p. 15.

³⁰ The argument of double standards does have some legitimacy if one, for example, provides the case of Liberia and Charles Taylor. Even before he became elected President, French companies imported tropical timber from enterprises under his control. Not only did this

other hand, despite a documented high degree of excellent governmental capabilities in many cases—one should only think of the astounding economic performance of Taiwan—is treated with ignorance, caution, rejection or sometimes even as a pariah.³¹

In other words, the reputational dilemma of *de facto* states has often been a brake in the formulation of clearly defined policy proposals. However, it should not be a brake to the extent to which dealing with those entities becomes *ipso facto* undesirable. Unfortunately, the guiding policy of both the metropolitan state and the international community has been to pretend that these polities do not exist.

The Europeanization of Georgia as a Case in Point: Sukhum/i and Tskhinval/i Out of Reach for Brussel's Positive Transformation

Yet, the crux of the matter is that choosing *not* to have a consistent policy framework with regard to these entities will not help either, and has not produced any tangible result. This can be, paradoxically, demonstrated by the EU's enhanced engagement with Georgia since the initiation of the Eastern Partnership program.

The conflicts over the disputed territories have not been a logjam either in progress in domestic political affairs or in rapprochement with the EU. Even if seemingly at odds with common political sense—if one recalls for instance the staggering number of internally displaced persons in Georgia—the territorial dismemberment of Georgia has, over the long run, facilitated the consolidation of the country's political stability. It has thus increased its domestic institutional capacity, leaving a lot of free space for a straightforward integration with the EU through various the instruments provided by Brussels.³² The humanitarian implications of the armed con-

trade fuel the ongoing civil war, it provided enormous financial resources for Taylor's war chest. See Tim Boekhout van Solinge, "Eco-Crime: The Tropical Timber Trade," in Dina Siegel and Hans Nelen, eds., *Organized Crime: Culture, Markets and Policies* (New York: Springer, 2008), pp. 97–112, 100–101.

³¹ Treating a *de facto* state as a pariah does not only involve legislation on the illegality of border crossing or business dealings, but also includes active opposition, which regularly takes the form of embargos. This has been the case in Northern Cyprus with the ban on direct international flights or import bans imposed by the EU.

³² One can think of the TACIS, ENPI, the PCA, the Action Plan or the recent Association Agreement, which will require Georgia to adopt a full program of legal approximation with EU law.

flicts in the 1990s, possibly with some exception in the case of Azerbaijan,³³ have gradually been overcome and absorbed by Georgia. Therefore, one could critically pose the following question: why would the Georgian government want to radically amend the status-quo in relation to Abkhazia and South Ossetia? Why would Tbilisi change its rhetoric and abandon the misconception, according to which the governments of the *de facto* states are Kremlin puppets, entirely lacking any independence whatsoever?

Part of the answer lies in the rapprochement with the EU. EU integration and rapprochement with the West has always been a primary objective of Georgia, Moldova, and Ukraine,³⁴ which in 2014 joined the club of states with a territorial issue.³⁵ However, the issue of breakaway states has not been very high on the agenda with regard to the negotiations with the EU on the conclusion of the Association Agreement (AA) of states such as Georgia. Correspondingly, the AA is only inapplicable to Abkhazia and South Ossetia pursuant to the Protocol to the AA, which recognizes that the central government of the Republic of Georgia/Moldova fails to establish jurisdiction over these disputed territories.³⁶ Only a decision by the Association Council could, in theory, include these territories within the scope of application of the agreement.³⁷ Hence, these territories have never substantially been a stumbling block in the way of the countries' bid for European integration.

³³ The IDP community in Azerbaijan, however, still remains an important political vehicle for the legitimacy of the totalitarian regime under President Ilham Aliyev.

³⁴ Azerbaijan chose not to engage into negotiations on an Association Agreement with the EU, yet Baku remained strongly interested in maintaining strong ties to the West.

³⁵ The negotiated text of the EU-Ukraine Association Agreement did not contain any specific provision with regard to its scope of application in Crimea or the Donetsk and Luhansk oblasts. These territories became annexed or broke away from Ukraine only after initialing of the Association Agreement. Therefore, products originating from Crimea would, theoretically, still fall into the scope of the DCFTA. Yet, the Council of the EU imposed an import ban on goods from Crimea and a full ban on investment with a prohibition to supply tourism services on the Crimean peninsula. See <http://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/>.

³⁶ See Protocol I of the Georgia-EU Association Agreement (a similar provision on Transnistria can be found in the Protocol II of the Moldova-EU Association Agreement). Nevertheless, the text of the DCFTA could, one day, theoretically also apply to these breakaway states. Pursuant to the Georgian and the Moldovan AA, the Association Council adopts a decision, when the full implementation and enforcement of the norms of the DCFTA is guaranteed (See in both cases Article 462 (2)).

³⁷ In the case of Moldova, following an informal agreement between the authorities of Chisinau and Tiraspol, the DCFTA was extended to the territory of Transnistria. See Benedikt Harzl, "Keeping the Transnistrian conflict on the radar of the EU" (Vienna: ÖGfE Policy Brief 24, 2016)

The potentially problematic fallout of this situation can hardly be overlooked. While the separatists, as Caspersen so elegantly puts it, may “have won the first round”³⁸ in securing military victories on the ground, the metropolitan state seems to have more pull in the long run, particularly by preventing the *de facto* state from effectively making use of its war-won independence and, thus, having very little incentive to engage in comprehensive discussions with their counterparts about a future power-sharing deal. In this constellation it is highly unlikely that the government of the metropolitan state agrees to anything beyond some modest form of territorial-cultural autonomy, thus, further narrowing down the avenues for sincere dialogue or even negotiations.³⁹ Hence, after more than two decades after the wars, one may ask to what extent the governments of the metropolitan states are sincerely committed to the idea of territorial unification, what they are willing to do to become more attractive, and, finally, what they are willing to sacrifice to this end.

In the meantime, the *de facto* states still fail to obtain loans from international credit institutions⁴⁰ or to secure foreign direct investments due to political unpredictability as well as the lack of rule of law, and their citizens face enormous problems when attempting to travel abroad, since their passports are not considered to be valid travel documents.⁴¹ Therefore, the immediate question to be raised in this context is one of potential costs as a consequence of this non-engagement policy.

Some problematic implications are already unfolding. In the case of the Georgian breakaway states, Russia has signed treaties on alliance and

³⁸ Caspersen, *op. cit.*, p. 47.

³⁹ For instance, in 2014 Georgia's Prime Minister Irakli Garibashvili offered the people living in Abkhaz and South Ossetia “broad autonomy” within the “united, sovereign and independent Georgia.” See <http://agenda.ge/news/23430>. In other words, there seems to be little critical reflection in Georgia on decentralization or on the already existing façade autonomy of Adjara. Similarly, Azerbaijan's President Ilham Aliyev only proposes “local autonomy” to Nagorno-Karabakh. See <http://www.tert.am/en/news/2016/10/18/baku/2166243>.

⁴⁰ Caspersen, *op. cit.*, p. 42; this would be particularly needed for the reconstruction of war-destroyed infrastructure in these territories. The patron or kin state will not be able to carry this burden alone.

⁴¹ This even applies sometimes when the residents of these statelets are citizens of their internationally recognized patron or kin state. In this regard, it seems that the Armenians of Nagorno-Karabakh are better off than the Ossetians or Abkhaz. In the latter case, the citizens of these *de facto* states fail to travel to Europe on their Russian passports since the EU governments bar the issuance of Schengen visas to passport holders whose Russian passports were issued in these territories. As a matter of fact, these passports are often issued by the Russian embassy to Abkhazia or South Ossetia.

strategic partnership with Sukhum/i and Tskhinval/i that even extend to the military dimension, whereby local militia are to be gradually integrated under Russian command. This seems to indicate that both *de facto* states are being driven into Russia's arms, not least due to the complete lack of an alternative development scenario. From this perspective, it appears that the mantra of "illegal military occupation" is in a way a self-fulfilling prophecy, being the direct result of non-engagement. Apart from this, Caspersen notes another important direct implication of inaction:

The parent states often hope that time is on their side: They hope that the unrecognized state becomes gradually weaker due to international isolation, while they themselves have the time to build up a stronger army.⁴²

This is a precise description of the conflict dynamics over Nagorno-Karabakh, which again escalated into serious armed conflict along the so-called "line of contact" as recently as April 2016. Hence, inaction of the metropolitan states when it comes to the push for dialogue and some form of ties with the *de facto* states can only be overcome meaningfully by a more robust and proactive role of the EU in reaching out to both the metropolitan states and these disputed entities. Even if all three South Caucasus states have very different expectations and interests, which accordingly have to be addressed in a differentiated manner,⁴³ the European perspective and rapprochement with the West overall is still a top priority and a foreign policy objective, given the lack of other attractive cooperation as well as development scenarios. Hence, it will be up to the EU to seek engagement in order to keep the vision of conflict resolution alive, even as a very distant possibility.

Engagement without Recognition: Not an Entirely New Idea

How can a vision for conflict resolution be kept on the agenda without involving, to some degree, the *de facto* states, which have already grown into consolidated political entities? Discussing and reflecting on potential engagement with secessionist entities in the Caucasus is not an entirely

⁴² Nina Caspersen, *Unrecognized States* (Cambridge: Polity Press, 2012), p. 47.

⁴³ Daniel S. Hamilton and Stefan Meister, "What the West Must Do," in Daniel S. Hamilton and Stefan Meister, eds., *The Eastern Question: Russia, the West and Europe's Grey Zone* (Washington, DC: Center for Transatlantic Relations, 2016), pp. 39–89, 57.

new phenomenon. In 2009, the Council of the EU, after relentless efforts by Pete Semneby, at the time the Special Representative for the South Caucasus, unveiled a policy of non-recognition and engagement with the separatist entities of the Caucasus. It reflected a modest shift in the level of analysis of these conflicts. Interaction, rather than restriction and isolation, was now the EU's primary objective when it came to addressing these entities.

In addition, a number of outstanding scholars have begun to problematize the issue of engaging with *de facto* states in the Caucasus. In a very thought-provoking piece for the *Washington Quarterly* in 2010, Alexander Cooley and Lincoln Mitchell not only yielded the first scholarly impulse for those debates, they also outlined some interesting ideas on how to engage Abkhazia without recognizing it. For instance, both authors mentioned the possibility to allow a limited number of Abkhaz individuals to travel to the EU or the United States with their Abkhazian passports, as this could be seen as a benign and positive political signal to the secessionist entity.⁴⁴ Likewise, people-to-people contacts, inter-societal dialogue as well as academic mobility for Abkhazian students were part of their set of recommendations in which they also emphasized the need for economic diversification of Abkhazia and the possible means to reach that goal. Only some months later, the need for de-isolation and transformation was equally recognized by Sabine Fischer in another policy paper, in which she proposed entering into a "structured dialogue" with the authorities of the *de facto* states.⁴⁵ Similarly, the famous scholar and political observer of Caucasus-related issues, Thomas de Waal, has recently focused on education as an integral ingredient of an enhanced EU profile in the secessionist entities of the South Caucasus.⁴⁶

What these approaches have in common is that they start from the assumption that maintaining isolationist policies vis-à-vis these entities is counter-productive. They also repudiate the notion that the authorities

⁴⁴ Alexander Cooley and Lincoln Mitchell, "Engagement without Recognition: A New Strategy toward Abkhazia and Eurasia's Unrecognized States," *Washington Quarterly* 33(4):59–73, 67.

⁴⁵ Sabine Fischer, "The EU's Non-Recognition and Engagement Policy towards Abkhazia and South Ossetia," *ISS Seminar Reports* (2010), p. 6.

⁴⁶ See <http://carnegieeurope.eu/2017/01/17/enhancing-eu-s-engagement-with-separatist-territories-pub-67694>. Many others who cannot be named here for reasons of space constraints have also meaningfully contributed to these discussions. It is also important to note that Georgia has come up with its own engagement strategy. The problem, however, is that the engagement strategy devised by the Georgian government is seriously hampered by the law on occupied territories.

of the *de facto* states are Kremlin-directed puppets who are unable or incapable of formulating autonomous decisions. Moreover, they all agree on the need to stimulate inter-societal dialogue, people-to-people contacts as well as academic mobility. To follow these normative goals, thus the argument, a limited exchange with the *de facto* state is the only way to keep the vision of conflict transformation alive, notwithstanding the risk of creeping recognition and bolstering the confidence of the authorities of *de facto* states.

Yet, given the fact that windows of opportunity close very fast—the South Ossetians recently voted in a referendum to rename their republic and endorsed a very pro-Russian political stance—it is high time for the EU to move beyond fragmented policy papers to develop a better structured framework with its underlying components to reinvigorate the discussions and debates necessary to keep these conflicts on the agenda. In light of the limited time horizon, the following points will attempt to contribute to this necessary debate in a more systematized way.

A first avenue is to explore what engagement should *not* be about.

What Engagement Does *Not* and Must *Not* Mean

To lay out the contours of a comprehensive engagement strategy, the concerns of the metropolitan state have to be seriously addressed. It must be made clear to both the metropolitan state and the *de facto* state that this policy is not about recognition and under no circumstances whatsoever will it end with the formal recognition of those entities. Diplomatic recognition is still an affirmative act by governments and it is fully within the discretionary competence of states whether to recognize diplomatically other entities or not. Even hypothetically keeping the possibility of recognition on the table would not only undermine the EU's credibility, it could send a dreadful signal to other would-be secessionist groups, since contrary to the orthodox declaratory doctrine, recognition is an act of state-building, as it *bolsters* statehood. Having the metropolitan state on board is absolutely critical for the success of a policy of engagement. Hence, the individual provisions have to be designed in a way that would make them beneficial also to the metropolitan state, serving the mutual interests of the actors on both sides of the administrative boundaries.

Apart from this, the *de facto* states, too, deserve to be treated with honesty: EU engagement policy must not nourish unrealistic hopes, even if

the governments of the *de facto* states believe these hopes to legitimate after years of isolation and rejection.

Second, policy makers and the conflict parties should be aware that an engagement policy is not supposed to bring about quick solutions or expected to serve as a panacea. The very idea of engagement ought to be embedded within the concept of gradual conflict transformation rather than the overly ambitious goal of conflict resolution. This means accepting that, for the time being, the conflicts over Abkhazia and South Ossetia are totally intractable and will require much more than just a reiteration of already-known positions. Rather, this policy has to look inside the societies on both sides of the administrative boundaries and focus on people *within* the conflict parties and *within* the societies and regions affected, and should deal with their main concerns. This suggests adoption of a comprehensive and wide-ranging approach that will need to provide support for groups within the society in conflict rather than for the political mediation of outsiders.⁴⁷ In this context, one must also be prepared for possible setbacks, since no guarantee can be given that this policy framework will eventually help stitch the divided societies together.

Finally, with the option of diplomatic recognition off the table, an engagement policy does not and must not assess the juridical standing of those entities. For instance, Abkhazia appears to have fulfilled the objective criteria of statehood pursuant to main landmarks of the Montevideo Convention of 1933. Diplomatic recognition by Russia, which is still a great power, has strengthened some of the elements described in the Convention. Indeed, its consolidated statehood, albeit still a *de facto* state, entitles Abkhazia theoretically to invoke certain rights against third states, such as the prohibition of force in accordance with Article 2 (4) of the UN Charter.⁴⁸ Yet, at the same time, Abkhazia has failed to build an operating state actively participating within the international community on the basis of

⁴⁷ This is strongly based on John Paul Lederach's concept on conflict transformation. See John Paul Lederach, *Conflict Transformation Across Cultures* (Syracuse: Syracuse University Press, 1995).

⁴⁸ It goes without saying that this is hotly disputed, since it would enable invocation of Article 51 of the UN Charter, which could be made use of by any other state. Indeed, governments usually repudiate the applicability of Article 2 (4) of the Charter, as they also are uneasy with the applicability of the Common Article 3 of the Geneva Conventions of 1949, since this would mean admitting to being no longer in control of a given territory. I maintain, however, that the prohibition of force is applicable, as both Georgia and Abkhazia have concluded various agreements over the 1990s in which both have, as conflict parties, vowed not to use force as means of conflict resolution.

this achievement. Therefore, the discussion should cease to revolve around the current legal status of the *de facto* states, and should equally abandon feckless discussions about sovereignty. Rather, it should focus on governance issues within these entities. Indeed, governance always takes place, both in unrecognized and recognized states, even if we refuse to admit this. Therefore, it would be helpful to abandon the vociferous and omnipresent rhetoric on territorial integrity and/or military occupation, as this has rendered these terms more or less meaningless.

What Engagement *Should* be About

Until now, it seems that the primary purposes of engagement strategies and ideas as outlined above remain largely ambiguous. Should an engagement policy represent an end in itself or is it about mitigating the isolation of those territories, together with the desire to drag those entities ever so slightly out of their strong Russian embrace? Discussing the purpose of this policy is crucial in identifying instruments that could and should be applied within this framework. I offer a set of interconnected dimensions that specify both the purpose and the identity of this policy framework.

First, engagement without recognition is about reestablishing destroyed lines of inter-societal communication. The collapse of communication after the South Ossetian war in 2008⁴⁹ has been one of the key features influencing the political process in Georgia, whereby not only people on both sides of the administrative boundary were deprived of opportunities to interact, but it has become increasingly difficult for intergovernmental organizations as well as NGOs to generate knowledge and insights from the affected region. An engagement policy should thus be guided by the belief in the agency of civil society and the equally important belief in societal change.

The need for communication and the belief in societal change suggest some policy instruments. For instance, the EU could expand to citizens of the *de facto* states its academic mobility programs both for early stage researchers as well as for more advanced academics. Such a step, stimulating academic mobility, may not only help the younger generation to escape

⁴⁹ The situation in Abkhazia is still much better, as people are allowed to cross the administrative boundary over the Enguri river. Mobility along the South Ossetian boundary, on the other hand, has come to a total halt.

the siege mentality and environment of their statelets; it would open up new encounters of mutually stimulating exchange possibilities. The same applies to politicians of these statelets, who should be given the possibility to be invited to public workshops and round tables in Brussels or Washington. This all can further advance the goal of spreading EU values and making them better understandable on the ground.⁵⁰

It goes without saying that this will require some degree of flexibility, primarily with regard to diplomas issued by institutions of higher education in those entities and the thorny issue of university affiliations of those students and academics. However, this is not an insurmountable obstacle. Even Serbia, which still continues to regard Kosovo as part of its territory, had managed to reach an agreement with Kosovo on mutual recognition of university diplomas in 2011. Indeed, accepting diplomas or involving, for instance, the Abkhazian State University into the Erasmus program does not prejudice any position about the juridical nature of the contemporary *de facto* state of Abkhazia. The same holds true for passports and for the admittedly controversial and delicate question of whether or not to allow a number of Abkhazians and South Ossetians to travel with these travel documents to EU countries. It has to be kept in mind that passports are, after all, not more or less than evidence of identity, and accepting a passport as valid travel document does not constitute necessarily the recognition of a separate citizenship.⁵¹ Alternatively, the EU may encourage the international community to devise status-neutral travel documents like the UNMIK documents which were handed to the Kosovars prior to Kosovo's recognition by the United States and most EU states in 2008.

Similarly, if the economic diversification of these entities is in the vital interest of both the *de facto* state⁵² as well as the international community, one could think about the perspective of offering trade relations. This is not unusual and not contingent on diplomatic recognition. Even during the Japanese occupation, the Chinese maintained trade relations with the puppet state of Manchukuo, and so did Croatia with the Republika Krajina

⁵⁰ At the same time, this policy must also provide for citizens of the metropolitan state to participate within these encounters and, possibly in joint summer courses, meet their counterparts from the unrecognized entities in neutral settings in the EU.

⁵¹ Citizens of Northern Cyprus are already allowed to travel with their passports to the United States and a number of EU states.

⁵² The Abkhazian diaspora and business community of the Black Sea in Turkey have sought for many years to make use of the trade turnover between Abkhazia and Turkey to counter the overly dominant position of the Russian Federation. See Eric Reissler, "Can Turkey De-Isolate Abkhazia," in *Turkish Policy Quarterly* 12(3):125–135, 132.

during its occupation. Also today, well-documented state practice seems to confirm a trend allowing enterprises to participate in international trade and commerce regardless of whether they are based in recognized states or not.⁵³ Since this opening up is predominantly in the interest of the *de facto* states, it should not come without conditions. This could not only help the EU to regain some leverage in a seemingly intractable stalemate along the false dichotomy of territorial integrity vs. self-determination, it could essentially provide some real influence on critical governance issues in those entities which would otherwise remain absolutely unaddressed.⁵⁴

Finally, the idea of establishing a status-neutral field presence of the OSCE on the ground in Abkhazia and South Ossetia is attractive as well. The OSCE still is the most inclusive European security organization and could be preferable to others in this context.⁵⁵ Yet, there is no reason why such an office cannot be institutionalized by the EU. In order to navigate the delicate issue of strict status neutrality, the EU could find an appropriate role model for this in the American Institute in Taiwan, which is an excellent example how diplomatic and consular ties can be privatized. Being officially a non-profit NGO, yet, receiving its money through appropriations to the U.S. State Department, and with many of its personnel seconded by the State Department, it serves as *de facto* representation of the United States in Taipei.⁵⁶ In addition, this is not an end in itself: it can be used to send signals and generate knowledge of the situation on the ground.

Conclusion

What this engagement policy ought to be about is focusing on the *de facto* states' involvement and inclusion into international society while not

⁵³ To exemplify, the foreign corporations acts of Australia and the UK provide for companies from unrecognized territories to sue and be sued before their domestic courts. This also seems to be fully in line with WTO logic, which does not require members to be recognized states, but rather, "states or separate customs territory possessing full autonomy in the conduct of its external commercial relations" (See Article XII WTO).

⁵⁴ This could open up ways to address human rights abuses and the still widespread discrimination on ethnic grounds, which are still prevalent issues in those entities.

⁵⁵ Daniel S. Hamilton and Stefan Meister, "What the West Must Do", in Daniel S. Hamilton and Stefan Meister (eds.) *The Eastern Question: Russia, the West and Europe's Grey Zone* (Washington, DC: Center for Transatlantic Relations, 2016), pp. 39–89, 65.

⁵⁶ Scott Pegg, "De Facto States in the International System," in *Institute of International Relations/The University of British Columbia* (Working Paper No. 21, 1998), p. 10. Additionally: Section 7 of the Taiwan Relations Act authorizes the employees of the American Institute in Taiwan to fulfill the functions and services of U.S. consular officials.

antagonizing the metropolitan state. Accordingly, it is about recognizing that such a policy is fully in line with international law and not about finding loopholes within the law. The terminology of an “acceptable breach,” which is sometimes used in the context of humanitarian interventions,⁵⁷ would in this particular context be entirely inaccurate. Just to the contrary: the *de facto* state does have, as Pegg aptly puts it, a “juridically cognizable existence.”⁵⁸ And there is no serious reason why it cannot be incorporated into international society in some way. International law provides a vast array of instruments to deal with entities that have gradual forms of sovereignty. Thus, it is capable of accommodating for the existence of such entities.

Indeed, there are some understandable reasons for metropolitan states to oppose these policies as their fear of creeping recognition is not fully imagined: every form of interaction in, or with, *de facto* states can enhance those entities' confidence and could contribute to a further alienation between *de facto* and metropolitan state. However, the question has to be raised what alternatives are available, given the closing time window to keep the vision of conflict resolution alive. Hence, ample effort must be invested to convince the metropolitan state that, at least in the long run, this policy is beneficial to its interests as well. And it will be up to the EU, which is still the only actor in the South Caucasus providing a positive transformation scenario and not viewing the region in terms of geostrategic competition, to step up its engagement and start devising a comprehensive policy.

⁵⁷ This term, which actually represents an oxymoron, has been thoroughly problematized by David Wippman, “Kosovo and the Limits of International Law,” in *Fordham International Law Journal* 25(1):129–150, 135.

⁵⁸ Pegg, *op. cit.*, p. 16.