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The Practice of Engagement without Recognition under International Law: A Tool for Combatting Human Trafficking

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This article argues that, even in the absence of international recognition, international law can make a real and meaningful impact in de facto states. Such impact can come about through engagement without recognition, which should be understood, not as a shadowy practice that takes place in the fringes of international law, but as a strategy that is fully compatible with international legal standards. The article makes this argument by relying on a detailed analysis of relevant case law of the European Court of Human Rights. It further proposes that reconceptualizing engagement without recognition can have important practical consequences in the fight against human trafficking, which has received regrettably limited attention by policymakers in de facto states.

Cet article affirme que, même en l'absence de reconnaissance internationale, le droit international peut avoir d'importantes et de réelles répercussions sur les États de facto. Celles-ci peuvent découler de relations sans reconnaissance. Ce ne sont pas des pratiques obscures, qui se passent en marge du droit international, mais une stratégie qui n'est pas entièrement compatible avec les normes légales internationales. L'article fonde cette affirmation sur une analyse détaillée de la jurisprudence pertinente de la Cour européenne des droits de l'Homme. Il propose en outre qu'une reconceptualisation des relations sans reconnaissance peut s'accompagner de conséquences pratiques importantes dans la lutte contre la traite d'êtres humains, qui malheureusement n'a reçu qu'une attention limitée des législateurs des États de facto.

Este artículo sostiene que, incluso en caso de ausencia de reconocimiento internacional, el derecho internacional puede llegar a tener un impacto real y significativo en los Estados de facto. Dicho impacto puede producirse a través del involucramiento sin reconocimiento, que debe entenderse, no como una práctica en la sombra que tiene lugar en los márgenes del derecho internacional, sino como una estrategia plenamente compatible con las normas jurídicas internacionales. El artículo defiende este argumento basándose en un análisis detallado de la jurisprudencia pertinente del Tribunal Europeo de Derechos Humanos. Además, propone que la reconceptualización del involucramiento sin reconocimiento puede llegar a tener importantes consecuencias prácticas en la lucha contra la trata de seres humanos, la cual, lamentablemente, ha recibido escasa atención por parte de los responsables políticos de los Estados de facto.

Introduction

In his report "100 Grams (and Counting. . .): Notes from the Nuclear Underworld," Michael Bronner (2009) takes the reader through a cinematographic description of how undercover agents stopped a group of criminals from smuggling weapon-grade highly enriched uranium out of South Ossetia. According to the paper, smuggling of illicit substances is common in the de facto state, which is described as a "smuggler's nirvana" and a "smugglers' free-trade zone [. . ., that is] open year-round" (Bronner 2009, 6, 7). Similarly, Alexandre Kukhianidze (2009, 7) refers to de facto states as "zones with high concentration of criminals and uncontrolled weapons [. . .] an atmosphere of violence, assassinations, kidnappings, hostage takings, and other crimes." These characteristics of de facto states, he concludes, have produced a "virtually foolproof system for smuggling goods and people" from Abkhazia to Georgia (Kukhianidze 2011, 48). This position is also supported by Dov Lynch (2004, 7), who has argued that the "legal limbo" in which de facto states exist—which is itself created by the lack of international recognition—"has made them breeding grounds and transit zones for international criminal activities." Finally, Kolstø and Blakkisrud (2011, 115, 116) describe Transnistria as a "duty-free shop," "a lawless territory for criminal activities [and] human trafficking." All four papers argue or strongly imply that high criminality and human rights violations are inescapable consequences of the legal vacuum that exists in these entities, which is itself due to their lack of international recognition.

The article challenges this conclusion and submits that, even in the absence of international recognition, international law can make a real and meaningful impact in de facto states.[1] Such change is subject to conditions, which are not always in place in de facto states. However, one

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[1] A vast literature exists on the precise nature of de facto states, which has reached no consensus on what is the best name for these entities and what are their most important defining characteristics (O'Beachain, Comai, and Tsurtsumia-Zurabashvili 2016; Pegg 2017). This article adopts Toomla's (2016) definition of a de facto state, namely an entity that largely looks and behaves like a state, but has not received widespread international recognition. Alternative names, with slightly different definitions, describing these entities include "unrecognized states" (Caspersen 2011a), "contested states" (Ker-Lindsay 2015), "pseudo-states" (Kolossov and O'Loughlin 1998), "quasi-states" (Kolstø 2006), "informal states" (Isachenko 2012), and "contested states" (Geldenhuys 2009). A broader definition that includes, but is not limited to de facto states has been provided by Lemke and Crabtree (2019) when referring to "territorial contenders."

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important condition that can be shaped by the international community is to treat the strategy through which change will come about—engagement without recognition (EWR)—not as a shadowy practice that takes place on the fringes of international law, but as fully compatible with international legal standards. The article argues in favor of reconceptualizing the relationship between this strategy and international law by focusing on two legal rules developed by the European Court of Human Rights (ECtHR). First, the ECtHR has jurisdiction in and can scrutinize the decisions, policies, or laws of de facto states. Second, under certain circumstances, parent and de facto states are under a legal duty to collaborate with each other. While the first rule could be understood as EWR between the de facto state and the international community at large, the second is an example of EWR between the de facto and parent states. One area in which the reconceptualization of EWR as an instance of international law, rather than as an exception to it, can yield positive change is in efforts to combat human trafficking. Engagement with the international community can improve domestic legislation within de facto states, while engagement with parent states can enhance transnational cooperation.

In addition to making specific suggestions for the combatting of human trafficking in de facto states, the article makes two more general contributions. On the one hand, it illustrates how engaging with de facto states can improve human rights standards and combat impunity more broadly. While acknowledging that EWR can only work if certain conditions are satisfied, the article challenges the prevailing view that portrays de facto states as legal wastelands. In this sense, it also compliments the work of scholars who have argued in favor of EWR in more theoretical terms (Caspersen 2018; Ker-Lindsay and Berg 2018). On the other hand, the article responds to the criticism that the International Relations–International Law scholarship has been somewhat one-sided, with international relations being used to explain international law, rather than the other way round (Abbott and Snidal 2012, 33). It showcases that detailed knowledge of international courts' case law, rather than reliance on vague principles of law, can have a transformative effect on states' understanding of the legitimacy of their actions.

The Case for EWR

The international community has generally refused to recognize and engage with de facto states (Caspersen 2012, 40). This position has, formally at least, led to their almost complete isolation: Most de facto states cannot sign international treaties, cannot become members of international organizations, and cannot enter into commercial relations with third countries (Craven 2014).[2] While it still remains the rule, the refusal to engage has gradually been watered down due to a growing realization that some interaction between de facto states and members of the international community is both necessary and unavoidable. The result has been EWR, a compromise whereby international actors interact, to a certain extent, with de facto states, on the condition that this is not misinterpreted as acceptance of their claims to external sovereignty (Ker-Lindsay and Berg 2018). Thus, the international community has engaged to varying degrees with different de facto states (Pegg and Berg 2006), with none of the entities scrutinized by Berg and Toomla in their 2009 study, having been entirely ignored. Examples of this practice include representatives of de facto states having one-to-one meetings with officials of international organizations or third states (Pegg and Berg 2006), countries opening liaison offices (but not embassies) in these territories,[3] and official documents issued by de facto authorities (such as divorce certificates) being accepted in other jurisdictions (Emin 2002). The international community has also made funding available to civil society organizations (CSOs) in de facto states and pushed for the strengthening of democratic and rule of law institutions,[4] while parent states have offered medical assistance and advice to them during the COVID-19 pandemic (Golunov 2022).

EWR was first proposed as an official strategy of the West toward Abkhazia in a 2010 seminal text by Cooley and Mitchell. The authors argued that by refusing to engage with Abkhazia, the West essentially made the de facto state even more dependent on Russia. The solution was to "separat[e] the international legal dimensions of sovereignty (the question of non-recognition) from its governance aspects" (Cooley and Mitchell 2010, 60) and adopt a number of policies that would increase contacts between the United States and the EU on the one hand, and Abkhazia on the other. Among the proposed policies were allowing Abkhaz nationals to travel with Abkhaz-issued travel documents, the EU opening an information office in Sukhumi, upgrading Abkhazia's transportation links with the greater Black Sea region, and rendering international financial assistance to the de facto state. For a while, it looked that this might materialize as the EU official policy toward de facto states, but ultimately the proposal fizzled out into a more hesitantly adopted ad hoc approach.

Despite the practice not being as widely adopted as originally envisioned, EWR has gradually developed to such an extent that a distinction can now be made between a de facto state interacting with the international community as a whole and a de facto state interacting with its parent state. Nina Caspersen (2018) has persuasively argued that this distinction is valuable because actors favor each of the two types of engagement for different reasons. The remaining of this section argues that each of the actors that become involved in the two types of engagement, do so because the practice contributes to some of their strategic objectives and is, therefore, useful to them. Then, the section that follows contends that a failure to fully understand the relationship between EWR and international law, undermines the utility of the practice.

Both types of EWR can theoretically contribute to conflict resolution, which is often the stated objective of the parties to a given dispute (European Union 2016; for a critical discussion of this expectation by focusing on the Cypriot case study, see Kyris 2018). If the international community engages with the de facto state, it becomes easier for it to communicate its expectations about how the conflict should best be managed and resolved (Ker-Lindsay 2015). Further, engaging with the de facto state as a potential partner, rather than an entity not worth acknowledging, increases the likelihood that local elites will appreciate the benefits of interacting with international actors and become more amenable to negotiating and accepting what is on offer (Ker-Lindsay and Berg 2018). Finally, direct cooperation between parent and

[2] Exceptions to this are Taiwan and Kosovo, which have received "quasi-recognition" under Berg and Toomla's (2009) "normalization index."

[3] See, for example, recent Russian plans to offer consular services in the TRNC (KNews 2022).

[4] The EU provides funding to the TRNC through the Cypriot Civil Society in Action calls for proposals. For information about EU funding in Abkhazia, see European Commission (2021), and for UNDP funding in Moldova, see UNDP Moldova (2023).

de facto states can contribute to conflict resolution as increased contact puts the parties in a better position to communicate their respective demands; if the process is managed correctly, these demands can eventually come to be seen as reasonable expectations, which are more easily accommodated (Yucel and Psaltis 2019).

In addition to conflict resolution, each of the two types of engagement is also useful to the various actors for a range of different reasons. The international community has gradually appreciated that some engagement with de facto states is necessary because many of these entities are durable. Since attempts to restore the parent state's territorial integrity through negotiations are usually unsuccessful, and doing so through force can be profoundly destructive (Relitz 2019), ignoring secessionist entities is to the detriment of the international community's own objectives. Two such objectives are worth highlighting. First, by cooperating with a de facto state, international actors bring the entity closer to their sphere of influence, make it more likely to be aligned with their values, and potentially influence the practices of the de facto state (Popescu 2007; Cooley and Mitchel 2010; Caspersen 2018). This is an important consideration, particularly if the de facto state has some sort of strategic value (Owtram 2011). Second, at the heart of EWR, is the international community's objective to undermine illiberal practices and improve the living conditions of the de facto state's inhabitants (Namibia 1971, para. 125; Hoch, Kopecek, and Baar 2017; Ker-Lindsay and Berg 2018). International actors can fund or support initiatives within the de facto state directly, or can have this effect indirectly, if engagement is made conditional on the entity enacting specific changes to its laws or practices.[5] Relatedly, certain types of engagement between the international community and de facto states, such as the ones discussed this article can undermine illiberal practices and improve living conditions by focusing on the protection of human rights (Cyprus v. Turkey 2001, para. 96).

At the same time, de facto states also have reasons for interacting with the international community.[6] Engaging with international actors allows de facto states to continue their efforts for recognition. This is due to at least three expectations that are prevalent within these entities. The first is that by interacting with international actors, de facto states will eventually come to be seen as equals and, therefore, be internationally recognized themselves (Caspersen 2018). The second expectation is that states become worthy of recognition by virtue of their compliance with the international standards of democracy, good governance, and human rights (Caspersen 2011a). To the extent that EWR makes compliance with these standards more likely, it also indirectly contributes to the struggle for recognition. The final expectation is that as soon as some members of the international community deem a de facto state to be recognition-worthy, others will more likely follow suit (Ker-Lindsay 2018). In addition to these future potential gains, engaging with international actors also provides practical and immediate benefits to de facto states. Such benefits usually come in the form of resources and links to the outside world (Caspersen 2018), or sharing of expertise and advice. Because of their scarcity in de facto states, these are valuable in themselves, but also necessary for improving living conditions, which is likely to be a pressing consideration for governments of de facto states (Caspersen 2011a).[7]

EWR between parent and de facto states, which is a newer and less common phenomenon, can also be useful to both parties. What makes the implementation of EWR difficult in practice is that each side has different, even contradictory, reasons for partaking in it. The underlying expectation of the parent state is that by directly communicating with the population of the contested territory, it can work toward its reintegration (Caspersen 2018). Even if this expectation does not materialize, if the parent state, rather than another international actor, cooperates with the de facto state, it can control the process and more strictly set the parameters for interaction. This way, it can achieve its objectives, while ameliorating concerns for "creeping recognition" (Caspersen 2018, 376) or "Taiwanization" of the de facto state (Ker-Lindsay 2012, 78). Two objectives of the parent state are likely pushing toward EWR. First, engagement allows parties to address problems created by the de facto division, such as fighting criminality, responding to environmental or health emergencies, or addressing everyday problems that affect the inhabitants of both territories. While parent and de facto states can take unilateral action in these directions, often, cooperative arrangements are more effective (Golunov 2022; Hadjigeorgiou and Kapardis 2023). Second, the parent state has strong incentives to comply with international law: Since it relies on international law to support its claim to the secessionist entity, showing respect to, and enforcing its provisions, is essential (Berkes 2021). To the extent that engagement between the parent and de facto states is mandated by international human rights law, as this article argues it is, the parent state is likely to participate in the practice.

Finally, engagement with the parent state is also likely to be favored by the de facto state for at least two reasons. First and foremost, the practice is conducive to the long-term strategic objective of recognition. Directly interacting with its parent state allows the entity to counteract the image of the puppet state, normalizes the de facto separation, and improves the effectiveness of its internal organs (Caspersen 2018). Further, direct cooperation with the parent state allows the de facto state to avoid a hierarchical relationship and present itself as an equal, while also fostering bilateral links that could, over time, result in de jure recognition. As explained above, the de facto state's drive to present itself as law-abiding and democratic, and therefore deserving of recognition, is also a reason for engaging with the parent state, as per the demands of international courts. In addition to considerations relating to recognition, engagement allows common problems created by the de facto separation of the territory to be resolved. This improves the living conditions of the de facto state's inhabitants in ways that would not have been possible in the absence of cooperation. EWR is especially beneficial to the de facto state, which is facing more severe limitations in its infrastructure and resources than the parent state, and is, therefore, even more unable to respond to these challenges.

[5]Between 2008 and 2016, the EU spent about $40 million in Abkhazia (de Waal 2018, 26). Most funded projects explicitly focused on strengthening CSOs and enhancing their cooperation with local authorities (Nuta 2012, 62). Others were concerned with health, education, housing, and local infrastructure (de Waal 2018, 26).

[6]This is not a hard rule. Transnistrian local elites, for example, are resisting EWR because they are suspicious of the international community's motivations (Nuta 2012).

[7]An example of this is the financing for the modernization of the Enguri Hydropower Plant in Georgia/Abkhazia, by the EU and the European Bank for Reconstruction and Development (EU Neighbours East 2018).

The Gap between International Law and EWR

The way EWR has developed—through practical necessity, rather than principled argumentation—has meant that its relationship with international law has never been fully addressed. Most authors often begin their discussion of non-recognition and the legal obligations that derive from this by referring to the Montevideo Convention on the Rights and Duties of States 1933. Although common, this is a peculiar starting point. If de facto states are "entities that fulfil the Montevideo criteria for statehood but lack international recognition" (Toomla 2016, 331), attention should be paid, not on the first part of the definition (which is almost inevitably satisfied), but on the legal implications of the second part. Such a discussion, however, is often either absent or deficient. Legal scholars, like James Crawford (2007), and relevant case law, like the International Court of Justice's (ICJ) Advisory Opinion on Kosovo's unilateral declaration of independence (2010), are often cited in passing, but these have not produced greater clarity about how the law treats de facto states. Consequently, there is uncertainty as to whether lack of recognition should also mean lack of engagement, what types of engagement are prohibited, and whether this prohibition is absolute or subject to any exceptions.

Lack of clarity about whether EWR is lawful undermines the legitimacy of the practice because it gives rise to the proposition that the legal duty not to recognize de facto states implies a corollary duty not to interact with them. If international actors engage with de facto states, the argument goes, this is recognition in all but name and, therefore, contrary to the spirit of the non-recognition rule (Ker-Lindsay 2012). Although critics of the practice rarely refer to specific international law rules, their arguments are based on general international law principles, which are virtually universally accepted. For instance, the ICJ has explicitly held that states have a legal duty not to recognize an illegal situation and "not to render aid or assistance in maintaining [such a] situation" (Legal Consequences of the Construction of aWall 2004, para. 159). The Court has further advised that states should not enter into bilateral or multilateral treaties with illegal entities (Namibia 1971, para. 122), should abstain from sending diplomatic missions or consular agents, and should withdraw any agents already there (Namibia1971, para. 123). Finally, the International Law Commission (2001, Article 41(2)) has suggested that no state should recognize as lawful a situation created by a serious breach of a peremptory norm and offered the prohibition of aggression, through which most de facto states have been created, as an example of such a norm (2001, Article 26(5)). This obligation of non-recognition, the International Law Commission clarified, "not only refers to the formal recognition of these situations, but also prohibits acts which would imply such recognition" (2001, Article 41(5)).

Proponents of EWR usually gloss over such critiques by insisting that there cannot be such a thing as an "accidental recognition" (Ker-Lindsay 2015, 16). They argue that it is, in principle, possible for international actors to engage with de facto states, even fairly extensively, as long as they do not expressly recognize them (Lauterpacht 1947, 371). This is precisely what EWR is all about. However, by not concretely rebutting principled criticisms of the practice, those who engage with de facto states are left vulnerable to critiques that their actions, if not their words, violate international law (Ker-Lindsay and Berg 2018, 340–1). Consequently, states might refuse to engage without recognition, or might do so inconspicuously, even when such interactions are fruitful, in order to avoid these critiques (Ker-Lindsay and Berg 2018, 337). This, arguably, is one explanation why the practice of EWR never became the EU policy toward de facto states and has only been adopted on an ad hoc basis. Thus, a failure to fully grapple with legal arguments risks undermining the effectiveness and utility of the practice. The following section argues that the solution to this problem is to confront critics directly. When doing so, it becomes clear that EWR is not only allowed, but is, in fact, sometimes mandated, by international human rights law.

Filling the Gap: The Contribution of International Human Rights Law

The Jurisprudence of the ECtHR

This section outlines two developments in international human rights law and, specifically, the jurisprudence of the ECtHR, which are relevant to the practice and legitimacy of EWR. Both developments build on a relatively obscure statement that the ICJ made in 1970 in an Advisory Opinion that, at first glance, has little to do with either de facto states or human rights. The *Namibia* Advisory Opinion arose following the termination of South Africa's Mandate of Namibia in 1966, which stopped it from lawfully administering the territory in question. When asked to determine what were the legal consequences of South Africa's continued presence in Namibia, the ICJ found that South Africa was under an obligation to end the illegal situation and withdraw its administration immediately (Namibia1971, para. 118). Further, UN Member States had a legal duty to not recognize South Africa's actions in and on behalf of Namibia, refrain from any acts implying recognition of the legality of the administration, and refuse to lend support to it (Namibia1971, para. 119). Couched in this reasoning was what appeared to be a rather narrow exception: South Africa's actions in Namibia were "illegal and invalid," but "this invalidity [could not] be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory" (Namibia1971, para. 125).

The *Namibia* exception remained largely dormant for more than two decades until the ECtHR revived, expanded, and used it when dealing with de facto states (Cullen and Wheatley 2013). The first development that made use of it stemmed from a series of ECtHR cases in which applicants alleged that human rights violations were taking place in the north of Cyprus (Loizidou (Preliminary Objections) 1995; Loizidou (Merits) 1996). The need to respond to these allegations created a double legal conundrum for the Court. On the one hand, while technically the north of the island was within the jurisdiction of the Republic of Cyprus, the Republic did not exercise any control and could, therefore, not be legally responsible for what was happening there. On the other hand, the entity that was exercising control in the north of Cyprus—the Turkish Republic of Northern Cyprus (TRNC)—was neither an internationally recognized state nor a signatory to the European Convention on Human Rights. In order to avoid the "regrettable vacuum in the system of human rights protection" (Cyprus v. Turkey 2001, para. 78), the Court held that actions of the TRNC could be attributed to its patron state, Turkey, which was a signatory to the Convention (Loizidou (Preliminary Objections) 1995, 64).

The Court's two-step rationale in these cases closely resembles the justifications that would later be developed in support of EWR. The first step reiterated in the strongest

terms that the de facto state could not be recognized: "the international community does not regard the 'TRNC' as a State under international law and [. . .] the Republic of Cyprus has remained the sole legitimate government of Cyprus" (Loizidou (Merits) 1996, para. 44). The second step clarified that the non-recognition of the de facto state did not also imply a total disregard and lack of accountability of the actions of the regime: "international law recognises the legitimacy of certain legal arrangements and transactions in [de facto states]" (Loizidou (Merits) 1996, para. 45). Thus, for the Court, the duty of non-recognition and a decision to engage with de facto states are legally compatible with each other: Long before IR scholars had thought to call it EWR, the ECtHR had given the practice its blessing.[8]

The ECtHR has made clear, since the 1990s, that the legal status of an entity cannot wholly shape the lawfulness of its decisions and accountability of its actions. This was reiterated in Cyprus v. Turkey (2001, para. 86), when the Court noted that "the fact that the 'TRNC' regime de facto existed and exercised de facto authority under the overall control of Turkey was not without consequences." The ECtHR's rationale in reaching this conclusion is worth quoting in full:

> the obligation to disregard acts of de facto entities is far from absolute. Life goes on in the territory concerned for its inhabitants. That life must be made tolerable and be protected by the de facto authorities, including their courts; and, in the very interest of the inhabitants, the acts of these authorities related thereto cannot be simply ignored by third States or by international institutions, especially courts, including this one. To hold otherwise would amount to stripping the inhabitants of the territory of all their rights whenever they are discussed in an international context, which would amount to depriving them even of the minimum standard of rights to which they are entitled. (Cyprus v. Turkey 2001, para. 96)

While the Court's reasoning originally only referred to engaging with a very narrow range of "legal arrangements and transactions" (Loizidou (Merits) 1996, para. 45), such as the registration of births, deaths, and marriages, it was quickly expanded to cover all actions and decisions of de facto states. Thus, the ECtHR has decided cases concerning, among others, educational policies in de facto states (Catan 2012), the failure of de facto authorities to respect freedom of expression (Foka 2008), and the ill-treatment of individuals in custody (Ilaşcu 2004). Further, the ECtHR's jurisprudence has expanded beyond the TRNC, finding Russia responsible for violations in Transnistria (Ilaşcu 2004; Mozer 2016), Donbas (Ukraine v. Russia (Re Crimea) 2020), Abkhazia, and South Ossetia (Georgia v. Russia (II) 2021); and Armenia responsible for violations in Nagorno-Karabakah (Chiragov 2015). This legal doctrine, also known as the doctrine of effective control, remains good law even though its practical effect is likely to have been diminished following Russia's withdrawal from the European Convention on Human Rights in 2022. This development notwithstanding, the Court has decided that it is competent to continue dealing with cases concerning Russian actions as long as these took place before 2022. This will allow the ECtHR to decide eight pending inter-State cases against Russia, which it has described as "a top priority for the Court" (Council of Europe 2023). In any case, Russia remains a party to other international organizations that could adopt a similar reasoning and find it responsible for the actions of the de facto states it effectively controls.

Arguably, the Court's doctrine of effective control is an example of EWR between the de facto state and the international community as a whole. The international community engaging with, but refusing to recognize the de facto state is primarily represented by the ECtHR itself. However, it also includes third states and CSOs that choose to intervene in these cases and other organs of the Council of Europe.[9] While officially the respondent in such cases is the patron state, the laws, policies, and practices under scrutiny by the international court are those of the de facto state. Similarly, any efforts to address the ECtHR's findings are likely to be made by the authorities of the de facto, rather than those of the patron, state.

The second development in the ECtHR's jurisprudence, which also builds on *Namibia* and the doctrine of effective control, provides that cooperation between parent and de facto states is not only allowed, but can, in fact, be mandated by international law. This was established in *Güzelyurtlu v. Cyprus and Turkey* (2019), a case concerning a Turkish Cypriot family who had been murdered in the areas under the effective control of the Republic of Cyprus. The triple homicide was investigated separately by the authorities of the Republic of Cyprus and the TRNC, both of which settled on the same list of suspects. With the suspects being based in the TRNC and the scene of the crime in the Republic of Cyprus, cooperation between the authorities became necessary. The two sides tried, but failed to cooperate with each other, which resulted in the non-prosecution of the suspected murderers in both jurisdictions. The victims' relatives argued before the ECtHR that the authorities' inability and/or unwillingness to cooperate constituted a violation of the right to life, which includes a procedural obligation to investigate and prosecute suspicious deaths.

The ECtHR agreed with the applicants, finding that the obligation to cooperate during police investigations was not limited to just internationally recognized states. The Republic's arguments that this was tantamount to being forced by an international court to recognize a de facto state were summarily dismissed.[10] The Court reasoned that it was necessary to assess "whether the states concerned used all means reasonably available to them to request and afford the cooperation needed for the effectiveness of the investigation" (Güzelyurtlu 2019, para. 238). In determining whether this had happened, and in light of the fact that one party was not internationally recognized, the ECtHR could "examine the informal or ad hoc channels of cooperation used by the States concerned outside the cooperation mechanisms provided for by the relevant international treaties" (Güzelyurtlu 2019, para. 238). Therefore, *Güzelyurtlu* dismisses allegations that EWR is somehow not in line with international law. In fact, it is the failure to cooperate in order to investigate and prosecute life-threatening situations that does not meet international legal standards. *Güzelyurtlu* does not merely confirm the doctrine of effective control, but also takes it further. While previous case law *allowed* EWR (in the sense that a de facto state's actions could be scrutinized by the ECtHR),

[8]Although examples of EWR exist at least since *Namibia*, the concept started being discussed in Western policy and academic circles much later. Peter Semneby, EU Special Representative for South Caucasus in 2006–2011, began encouraging the practice in 2008. In 2009, the Political and Security Committee of the European Council endorsed a policy based on "non-recognition" and "engagement" toward Abkhazia and South Ossetia (Fischer 2010, 3).

[9]For example, Romania intervened in Ilascu (2004), Azerbaijan intervened in Chiragov (2015), and the Human Rights Centre of the University of Essex intervened in Georgia v. Russia (II) (2021).

[10]The arguments of the Republic of Cyprus are summarized in the Partly Dissenting Judgment of the (Greek) Cypriot Judge, Judge Serghides in Güzelyurtlu (2017).

under *Güzelyurtlu*, the practice became *mandatory* (in that cooperation between parent and de facto states is now, in certain cases, compulsory and not just permitted).

Compliance with the ECtHR

On the level of principle, the ECtHR developments are significant because they provide evidence that both types of engagement (with the international community and with parent states) are within the remit of international law. The stamp of legitimacy is key because it empowers international actors to neutralize criticisms that their interactions with de facto states are tainted by illegality. This is perhaps the reason why post-*Güzelyurtlu*, a mechanism for facilitating information exchange between the Cypriot de jure and de facto police forces has been established, which has resulted in their cooperation in more than 1,000 cases to date (UN Secretary-General 2023).

At the same time, this case law is practically significant because, if complied with, it can act as a vehicle through which real change can take place in de facto states. Admittedly, pressure to comply with international law is lower in de facto than in recognized states (Serban and Goynuklu 2016). For example, while the ECtHR has held that the right to education requires the proper functioning of Latin script schools in Transnistria, the judgment remains unenforced more than a decade after it was delivered (Committee of Ministers 2020). Yet, there are also instances where human rights judgments have been implemented by de facto states. There are four possible reasons for this.

First, the de facto states' paramount objective for recognition makes them especially susceptible to international pressure (Pegg 2017). Directly engaging with the international community, even just by receiving and responding to advice, allows de facto states to counter their image as puppet regimes and present themselves as democratic and rights-respecting entities that deserve recognition (Caspersen 2011a; 2018, 375). This was the argument made by the Foreign Minister of Abkhazia when comparing the democratization processes in Abkhazia and Kosovo and concluding that his country was also recognition-worthy (Anjaparidze 2006). A similar sentiment was expressed by the President of Nagorno-Karabakh in 2007, who noted that "People who have a very . . . democratic constitution . . . [who] strive for European standards, have more chances of being recognised by the International Community than others" (quoted in Caspersen 2011b, 344). As the following section illustrates, these considerations were also directly relevant to the TRNC's decision to take more concrete action to comply with international anti-trafficking rules.

Second, compliance with international law is often expected by the international community before providing the de facto state with much needed financial support. When, for example, a network of electric wires relating to telecommunications needed replacing in the TRNC, the EU agreed to foot the bill, as long as Turkish Cypriots complied with European standards in relation to the frequencies they would be using for their TV stations. In turn, an agreement, which freed up frequencies for the operation of 5 G in the Republic of Cyprus as per the EU's regulations, was struck. Thus, often, de facto states comply with international law because this is the literal price they have to pay for the funding of infrastructure projects they would not otherwise be able to afford.

Third, a de facto state is likely to comply with an international court's judgment if CSOs within it mobilize and push for this (Simmons 2009). Assuming that the de facto state has a functioning civil society, its government is likely to pay attention to pressures for greater human rights protection in an effort to enhance its popular legitimacy (Nuta 2012).[11] This is a particularly compelling incentive in de facto states, which generally make demands of their citizens that are costly in terms of their legitimacy (e.g., demands that the public accepts the existence of a militarized society, or that it does not criticize the government in matters of national security) (Caspersen 2011a). CSOs can mobilize and push for change, even in de facto states with deficient democratic structures. This was the case in Abkhazia, when in 2009 and 2010, CSOs demonstrated against their government's increasing dependency on Russia (Nuta 2012, 29). Illustrative of the impact of civil society is the example of a Turkish Cypriot gay man, who in 2012, brought a case before the ECtHR arguing that the criminalization of homosexuality under Sections 171, 172, and 173 of the TRNC Criminal Code constituted a violation of his right to private life (Human Dignity Trust 2014). In 2014, the TRNC Legislative Assembly amended the Criminal Code and decriminalized homosexuality. This was due to pressure from the pending ECtHR judgment, but also increasing demands in this direction from civil society. CSOs, in turn, had been emboldened in making their demands by the visit of Michael Cashman, who visited the TRNC's self-professed rights-respecting institutions as an openly gay Member of the European Parliament (Human Dignity Trust 2014).

Finally, a de facto state will most likely comply with international law if it has the blessing, or at least tacit acceptance, of its patron state (Caspersen 2012, 143–4). This is not to say that de facto states blindly follow orders from their patron states. While there is undoubtedly dependence on the patron state, and, therefore, certain compliance with its wishes, this dependence

> is frequently conflictual and not as straightforward as the popular image of "puppets" would have us believe. Continued dependence is, as a consequence, often combined with an instance of separateness and this is not merely meant for international consumption. (Caspersen 2011a, 83)

Thus, it is possible that a de facto state will push for compliance with international law, even if the patron state is not overly in favor of this. While decriminalizing homosexuality was not a priority for Turkey, it was also not something that it opposed. The criminalization of LGBT identities in the TRNC was a relic of Cyprus' British colonial past, rather than Turkish influence.[12] As a result, even though Turkey would never have pushed for legislative amendments in favor of LGBT rights, its non-opposition to this change, allowed the international community and CSOs to successfully lobby for this.

Another example illustrating the impact of the patron state in complying with international law concerns the number of Greek Cypriot displaced persons who successfully argued before the ECtHR that their continuing prevention from accessing their homes in the TRNC violated the right to property. This led to the passing of (TRNC) Law 67/2005 and the establishment of the Immovable Property Commission, which was tasked with remedying these per-

[11]For example, in Transnistria, CSOs are severely restricted. In 2006, their foreign funding was briefly banned, with the law being subsequently amended to only cover politically orientated CSOs. Further, the existence of "social organizations," which are established by and receive funding from the de facto authorities, creates the illusion of a civil society that does not exist (Nuta 2012).

[12]LGBTI Equal Rights Association for Western Balkans and Turkey, available at https://lgbti-era.org/countries/turkey/.

sons (Demopoulos 2010). This is a decision-making body in a de facto state that has been created (Xenides-Arestis 2005), subsequently improved (Demopoulos 2010), and remains under the continuous scrutiny of an international court (Joannou 2017; for more information on the IPC, see Hadjigeorgiou 2018). The Commission is staffed by five Turkish Cypriots and two international experts, is based in (north) Nicosia and interprets TRNC Law (Hadjigeorgiou 2016). Nevertheless, its establishment and operation would have been impossible had it not been for Turkey's support. It is not a coincidence that the Commission was first established after years of non-compliance, in 2003, a period when Turkey was actively trying to improve its human rights record and join the EU. This factor offers one explanation why the TRNC established a remedying institution for displaced persons, but Nagorno-Karabakh did not, despite the Court's ruling that it should (Chiragov 2015; Sargsyan 2015). While Turkey had strong political incentives to comply with the ECtHR's judgment, Armenia and Azerbaijan, like Russia in relation to Transnistria, Abkhazia, and South Ossetia, do not.

This analysis—that de facto states are likely to comply with international law in order to promote their recognition aspirations, benefit from internationally funded projects, and appease their civil society, as long as such action is not opposed by their patron state—raises questions as to whether entities other than the TRNC are likely to comply with international standards in the same way. While a better human rights record is likely to benefit the international standing and recognition aspirations of all Eurasian de facto states, most of them—with the exception of Abkhazia—do not have a strong civil society that will push for compliance with international law (Nuta 2012). Moreover, international funding in these de facto states is welcome, but it is dwarfed by Russia's contributions to the de facto states' budgets. Even in Abkhazia, which has benefited the most from EU funding, Russia provides roughly two-thirds of the budget and most of the tourist revenue (de Waal 2018, 19). Finally, and especially after the war in Ukraine, it is especially unlikely that Russia will favor adopting legislative amendments for greater human rights compliance. This is to say that while EWR can yield positive results, both in the field of anti-trafficking and other areas, in the current political climate, adopting this strategy is likely to benefit some de facto states more than others. Nevertheless, the lessons drawn remain valuable either in case Russian and Western interests are aligned on a given subject matter, or if there is a significant political change in their relationship in the future.

Combatting Human Trafficking through EWR

The article has, so far, argued that not only does international law not prohibit EWR, but, in fact, expressly allows and, even, mandates the practice. The rest of the article examines the implications of this argument in the fight against human trafficking. The argument develops along three axes. First, the reasons why anti-trafficking initiatives must be prioritized in post-conflict contexts apply equally persuasively to de facto states. Second, despite the gravity of the situation, international actors have generally not taken a strong interest in combatting human trafficking in these settings. This is regrettable because the evidence that does exist, suggests that EWR from the international community has been effective in improving domestic legislation in de facto states. Third, bilateral cooperation with de facto states in the fight against human trafficking is urgently needed, yet has not been implemented to date. Such potentially fruitful initiatives could be encouraged, if they were understood as examples of lawful EWR between parent and de facto states.

The Need to Combat Human Trafficking in De Facto States

While numbers of human trafficking victims are difficult to verify, especially in de facto states, the definition of the crime is, on paper at least, quite clear (Di Nicola 2007; Zhang 2009; Choo, Oh Jang, and Choi 2010). Article 3(a) of the Palermo Protocol defines human trafficking as consisting of three elements.[13] These are as follows: (1) the act ("the recruitment, transportation, transfer, harboring, or receipt of persons"); (2) the means (broadly, this covers the threat/use of coercion, deception, the abuse of power, or a position of vulnerability); and (3) the purpose ("exploitation," which includes "the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery [. . .] or the removal of organs"). Thus, any person who recruits (in the country of origin), receives (in the country of destination), or transfers (in either of the two countries or anywhere in between) another person with the means and purpose described in the Palermo Protocol is committing the crime of human trafficking. De facto states are often countries of origin and transfer (e.g., Transnistria), countries of destination (e.g., the TRNC), or all three at the same time (e.g., Somaliland).

The crime of human trafficking is a global phenomenon, with Hodge and Lietz (2007, 163) arguing that "no nation is exempt," but it is especially prevalent in conflict and post-conflict contexts. The UN General Assembly first called upon "governments, the international community and all other organizations and entities that deal with conflict and post-conflict [. . .] situations to address the heightened vulnerability of women and girls to trafficking and exploitation" (United Nations General Assembly Resolution 2008, para. 4). In 2016, the UN Security Council (United Nations Security Council Resolution 2016) recognized the multiple linkages between conflict and human trafficking, and the EU's Strategy toward the Eradication of Trafficking in Human Beings (2012–2016) listed "conflict and post-conflict situations" as one of the several key causes of human trafficking (EU Commission 2011). These findings were further confirmed by the UN Security Council (United Nations Security Council Resolution 2017) in 2017 and the UN Secretary-General in 2018 (UN Secretary-General 2018). Despite increasing attention being paid to conflict and post-conflict contexts, however, there have been very few discussions of how and why human trafficking is perpetrated in de facto states (for an exception, see de Wildt 2019).

Four main reasons have been identified for why human trafficking is prevalent in conflict and post-conflict contexts. All four apply in de facto states as well and are discussed here in turn. First, wars and post-conflict reconstruction are expensive, with money being spent initially on the military and, subsequently, on peacebuilding initiatives (Collier et al. 2003). At the same time, money shortages are compounded in conflict and post-conflict settings by reduced tax revenues and decreased investment opportunities (International Organization for Migration 2015). The combined effect of these factors means that neither the training of the police and prosecutors nor the provision of victim support services can be adequately funded (Blanton, Blanton, and Peksen 2020). Similar economic

[13]The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, of the UN Convention Against Transnational Organized Crime.

restrictions exist in de facto states. Policymakers are well aware of the fact that violence might reescalate again (Pegg 2017), which makes it necessary to maintain high military budgets (Caspersen 2011a; Adamides 2018; Rosler et al. 2021). This decision comes at the cost of improved welfare services, including in the combatting of human trafficking (Kolstø 2006).

Second, wars erode the governance structure of every society. Rule of law principles and institutions come under attack (Cho and Vadlamannati 2012; Fenton et al. 2021), and corruption is likely to be on the rise (Bales 2007; Zhang and Pineda 2008; Lindberg and Orjuela 2011). Neither consequence is conducive to successfully combatting human trafficking (Cho, Dreher, and Neumayer 2014). Similar challenges exist in de facto states, even when they have been experiencing negative peace for decades. These entities, which are subject to constant existential threats to their survival and have limited access to the international community, are "militarized in both fact and ideology" (de Waal 2018, 82) and are, therefore, likely to face difficulties in developing a culture and structures that promote democratic governance and the rule of law (Caspersen 2011a; O'Beachain, Comai, and Tsurtsumia-Zurabashvili 2016, 446).

Third, conflict and post-conflict contexts provide excellent conditions for the creation of new human trafficking victims (Healy 2016; Ulasoglu Imamoglu 2023). Violence and mass displacement give rise to poverty and reduced employment opportunities, a willingness to migrate, and a weakening of family support structures that typically protect potential victims from being trafficked. Although in frozen conflict contexts, the violence and mass displacement are typically in the past, their impact in terms of victim vulnerability is likely to be long-lasting. For instance, despite relatively generous handouts from the government of Azerbaijan to displaced persons from Nagorno-Karabakh, almost 30 years after the war, they remained significantly worse off than the rest of the population (World Bank 2011, 9). Thus, more than four in ten displaced persons lived in one-room accommodation compared to only 9 percent of the general population, with displaced families having, on average, less than half of the living space of non-displaced families (World Bank 2011, 9). This is closely correlated to employment statistics in the two populations, with work inactivity among the displaced being 66 percent higher compared to the non-displaced (World Bank 2011, 9).

Fourth, increased numbers of peacekeepers drive up demand for sex workers. This demand has been met, in some post-conflict contexts, through sex trafficking of women and girls (Smith and Miller-de la Cuesta 2011). Peacekeepers are likely to remain stationed in and around de facto states long after the end of the hostilities. By way of illustration, the United Nations Force in Cyprus (UNFICYP) was established in 1964 and continues operating today. Although there are no empirical surveys that link the presence of peacekeepers in and around de facto states to an increase in human trafficking, like there are in post-conflict settings, it is not inconceivable that the same actors are having a similar effect in both contexts. In fact, there is anecdotal evidence from de facto states that peacekeepers have not only increased the demand for human trafficking victims, but also contributed to their supply. In one case, a victim testified that she had been transported by a member of the United Nations Mission in Kosovo from one part of Kosovo to another for trafficking purposes (Podvorica 2015). Similarly, Russian peacekeepers in Abkhazia and South Ossetia, who control the entry and exit points of the two de facto states, have been accused of taking bribes and allowing smugglers to pass through checkpoints without any problems (Bronner 2009, 7; Nuta 2012). According to the Ministry of State Security of the Government of Abkhazia in exile, Russian soldiers recruited to the peacekeeping forces are sometimes not paid when they finish their military contracts (Kukhinidze, Kupatadze, and Gotsiridze 2004). Consequently, some of them engage in illegal activities, such as smuggling and trafficking, to provide themselves with a more certain source of income.

Engagement with the International Community to Improve Domestic Legislation

While international pressure to comply with human rights standards and improve anti-trafficking legislation is a tool that has traditionally been used in recognized states (Gauci and Magugliani 2022), it is not a strategy that has attracted much attention in de facto ones. In fact, among the basic assumptions in the field is that the lack of international recognition turns de facto states into legal and informational black holes, with their "outlaw" status creating incentives for illegality (King 2001; Kolstø 2006; O'Loughlin, Kolossov, and Toal 2014; de Waal 2018, 11). This idea was perhaps most starkly put by de Waal, when he argued that Nagorno-Karabakh's non-recognition, which limited the impact of international law and the access of foreign diplomats to the entity, "was virtually an invitation to become a rogue state" (quoted in Kolstø and Blakkisrud 2011, 110). To a certain extent, this is true: The fact that de facto states are not full members of the international community shapes the degree to which they respect and comply with international legal standards in relation to all kinds of policies, including anti-trafficking obligations. This was one of the key findings, for example, in a recent report, which concluded that the non-recognition of the TRNC is one of the most important reasons for its significantly worse human trafficking record when compared to that of the Republic of Cyprus (Hadjigeorgiou et al. 2022). The argument has also been made by Turkish Cypriots, with Serban and Goynuklu (2016, 8) for instance, noting that the TRNC's unwillingness to fight human trafficking is partly explained by

> the lack of international recognition resulting in the northern part of Cyprus lying outside the jurisdiction of international law and its mechanisms. Consequently, the local responsible bodies are not exposed to any international pressure with no responsibility towards the international arena.

The argument has also been impliedly endorsed by policymakers, who have made limited efforts to understand the phenomenon of human trafficking in de facto states and the ways in which these entities could be pressured to respond to it. For instance, the 2023 Trafficking in Persons report, published annually by the US Department of State, noted that the Georgian government and CSOs consider internally displaced persons from Abkhazia and South Ossetia to be "particularly vulnerable to trafficking" and offered brief anecdotal evidence of forced labor of migrants, but shared no other information about human trafficking in either de facto state. Contrary to its usual practice, the US Department of State did not make any recommendations on how domestic legislation in Abkhazia and South Ossetia could be improved or how the international community could help with these efforts. Similarly, the 2022 report ominously concluded that "[t]he breakaway region of Transnistria remains a predominant source for sex trafficking victims," but offered no specific information about how the crime is

perpetrated or what measures should be taken by/in the de facto state to address this (US Department of State 2022).[14] These statements in relation to Abkhazia, South Ossetia, and Transnistria are repeated almost verbatim since 2007, the year the US Department of State first started referring to the three de facto states. In the last 15 years, there has been no improvement in the attention these entities have received, and only limited international pressure has been exerted to improve their domestic legislation. This is in stark contrast to the US Department of State's response to the TRNC, the only de facto state that has attracted consistent and detailed criticisms in the Trafficking in Persons yearly reports. The effects of this differentiated treatment are discussed in more detail below.

The idea that pressure to comply with international law cannot have an impact in de facto states is factually incorrect. To date, no international court has found a de facto state responsible for human trafficking within the territory it controls. Nevertheless, one ECtHR case against a parent state—*Rantsev v. Cyprus and Russia* (2010)—is likely to have had an indirect effect in this respect.[15] The facts of *Rantsev* concern a Russian woman who was lured from her home country under false pretenses, trafficked, and ultimately killed in Cyprus. As a result, the ECtHR found the Republic of Cyprus responsible for, among others, violating the prohibition of slavery and forced labor under Article 4 of the European Convention on Human Rights. Specifically, the Court held that the "cabaret-artiste" visa regime that operated at the time had encouraged large numbers of young foreign women, including Ms Ratseva, to fly to the Republic of Cyprus, where they were at serious risk of being trafficked (*Rantsev* 2010, para. 291). In fact, so prevalent was the abuse of the specific visa regime that, in Cyprus, the word "artiste" had become synonymous with the word "prostitute" (Rantsev 2010, para. 85).

While *Rantsev*'s facts did not relate to the TRNC in any way, the de facto state's authorities are likely to have paid close attention to the case for three reasons. First, the "cabaret-artiste" visa that was strongly criticized in *Rantsev* is identical in its provisions and effect to the "consomatris" visa that existed at the time and is in place in the TRNC today (Hadjigeorgiou 2022). A finding that the "cabaret-artiste" Republic of Cyprus visa was not compliant with human rights law provides strong indications that the same also applies to the "consomatris" TRNC visa. Second, when holding that Cyprus was in violation of the prohibition of slavery, the ECtHR partly relied on the US Department of State's 2008 Trafficking in Persons report (Rantsev 2010, para. 105, 107, and 291). In light of the fact that every year the TRNC fares much worse than the Republic of Cyprus in these rankings, this is likely to have worried the de facto authorities.[16] Third, by 2010, when *Rantsev* had been decided, it had long been held by the ECtHR that the TRNC's laws and policies were not beyond the Court's scrutiny simply by virtue of the de facto state's lack of international recognition. *Rantsev*, therefore, sent a clear message to the TRNC that it should strengthen its anti-trafficking efforts, lest, it too, was found to be acting in violation of the European Convention.

It took a while, but the message was ultimately received. In 2018, the TRNC Ministry of Interior organized a workshop to discuss the working conditions in the entity's nightclubs, which are the sole employers of women on "consomatris" visas and where sex trafficking is a common phenomenon (Hadjigeorgiou et al. 2022, 9). The workshop was well attended by officials from the TRNC Ministries of Health, Social Welfare, Labor and Social Security, Interior, and Finance, political parties, the police, local authorities, the Tax Department, universities, and hospitals. When launching the workshop, the Minister of Interior publicly admitted for the first time that human trafficking was taking place in nightclubs and offered insights into the rationale for organizing the event: Every year, the working conditions in nightclubs were criticized in the Trafficking in Persons report, something that the TRNC government was determined to change. Since the organizing of the workshop, a number of swift and decisive developments have taken place. In 2018, the TRNC Legislative Assembly unilaterally adopted the Palermo Protocol, and in 2020, it legislated to create (for the first time) a human trafficking offense, punishable by 10 years imprisonment (Hadjigeorgiou et al. 2022).[17] 2022 marked the first time that a TRNC court convicted individuals (a pair of Nigerian nationals) of human trafficking (Hadjigeorgiou 2022). The contribution of international law throughout this process has been undeniable: During the legislative debate for the criminalization of human trafficking, many Assembly Deputies made reference to international law and the need to comply with it (TRNC Parliament 2020, 105–20). Some of the Deputies mentioned international law in broad terms, others discussed provisions of the Palermo Protocol, and a third group of legislators specifically highlighted the need to achieve a higher ranking in the Trafficking in Persons annual reports. Similarly, when deciding the first human trafficking case, the TRNC Court referred to the Trafficking in Persons reports and noted that countries are assessed based on the legal action they take against perpetrators of human trafficking (KKTC Başsavcısı 2022). This assessment, the Court candidly continued, was important because it has an impact in terms of a country's reputation on the international scene.

The experience of the TRNC in terms of anti-trafficking suggests that when the conditions identified in the previous section are in place, EWR from the international community can result in positive changes in the de facto state. First, the TRNC amended its legislation and even had its first convictions because it deemed these to be important steps for its international reputation. Second, changes became possible because international financial assistance became conditional on them. Such a reciprocal financial arrangement was proposed during discussions between the TRNC and the international community on how best to combat human trafficking. On the one hand, the international community insisted that the TRNC should be providing safe shelter to victims of human trafficking. When the authorities of the de facto state argued that they could not afford this, the EU suggested that it would be willing to fund a safe house, as long as the TRNC took more holistic steps to safeguard the rights of victims. This was an attractive deal for the TRNC as

[14]The lack of reliable data on human trafficking in Transnistria is also highlighted as a "major problem" by Kolstø and Blakkisrud (2011, 117). The wording in relation to Transnistria changed in the 2023 Trafficking in Persons report as a result of the war in Ukraine. The 2023 report notes that "Due in part to the presence of Russian peacekeepers in Transnistria, Ukraine closed the Transnistria segment of the Ukraine-Moldova border. As a result, Moldovan authorities and observers do not believe significant volumes of traffic are flowing undetected between the Transnistria region and Ukraine."

[15]Russia was also a respondent state in this case because the victim had originally been trafficked there. This created an obligation for Cyprus and Russia to cooperate and investigate the victim's ultimate death. The Court held that Cyprus failed to meet this obligation, but Russia, whose offer to help had been rejected by the Cypriot authorities, had discharged it.

[16]For a comparison of the Republic's and TRNC's rankings from 2008 to 2021, see Hadjigeorgiou et al. (2022, 9).

[17]Human trafficking is criminalized under Article 254B of the TRNC Criminal Code.

the creation of a new safe house for trafficking victims would free up existing accommodation for Turkish Cypriot victims of domestic violence, whom they were sharing a safe house with. Third, legislative amendments were pushed by CSOs, whose anti-trafficking projects were funded by international actors. Finally, while anti-trafficking initiatives in the de facto state are clearly not a priority for Turkey, they are also not something that the patron state is actively opposing.[18] Since the TRNC could take action that was perceived positively by the international community, while resulting in practical benefits as well, Turkey had no reason to prevent this.

There is, therefore, sufficient evidence that the international community can and should engage with de facto states, by clarifying their legal obligations and exerting pressure that they comply with these obligations. Such engagement is both lawful and, as the TRNC experience suggests, likely to be effective in raising standards of protection. While it is not a panacea, especially when the patron state is unwilling to allow change, it can go some way toward improving anti-trafficking standards in the de facto state. The international community's experience with the TRNC could act as a blueprint for other de facto states. Greater engagement with Abkhazia and South Ossetia could shed more light on the ways in which victims are trafficked in these entities and what legal changes must take place in order to address the phenomenon.[19] At the same time, reports from Transnistria suggest that while an anti-trafficking legal framework is in place, much must still be done in terms of its implementation (Hammaberg 2013, 29). Greater engagement with Transnistria from the international community, through the Trafficking in Persons report or by potential funders, such as the EU and UN, could result in significant improvements in this respect. Such engagement could, for example, be focusing on the better training of officials and informing the public of the specifics of the crime.

Engagement with the Parent State to Improve Transnational Cooperation

In addition to improving the letter and implementation of domestic legislation, effectively combatting human trafficking also necessitates that de facto authorities engage in transnational cooperation with their neighbors, which often include the parent state. This is due to two reasons. The first concerns the porous borders of many de facto states, which allow human traffickers to operate without any, or with very few, restrictions. Such porous borders may be the result of already relatively good cooperation between parent and de facto state authorities. This is, for example, the case in Cyprus where there are currently nine checkpoints, policed by the Republic of Cyprus and TRNC law enforcement, through which cars and pedestrians cross from one side of the island to the other (UN Secretary-General 2021). Porous borders also exist between Moldova and Transnistria, at least since the creation of joint customs posts in 1996 and 1997 (King 2001, 546). Conversely, the failure of parent and de facto states to cooperate with each other might also create increased instances of unregulated traffic between them. Thus, smuggling between Abkhazia/South Ossetia and Georgia is made possible by Georgian insistence that establishing customs posts between it and the two de facto states will be tantamount to their recognition. Although this rationale has caused relatively few problems for Abkhazia, whose geography makes de facto borders difficult to cross in practice (Traughber 2007), it has produced ideal conditions for smuggling and trafficking in South Ossetia (Kukhianidze 2007, 2009). Thus, cooperation between parent and de facto states is necessary, as criminals are likely to smuggle and traffic goods and persons, irrespective of whether crossing in and out of the de facto state is legally allowed or not.

The second reason for transnational cooperation relates to the objective of better protecting human trafficking victims. This is illustrated by the state of affairs in Cyprus where a large number of women are trafficked for sexual exploitation purposes in the TRNC, but (due to the lack of a comprehensive protection framework in the de facto state) they are forced to claim victim status in the Republic of Cyprus.[20] At that point in time, the Republic of Cyprus authorities have to make a determination of whether the presumed victim has indeed been trafficked, based exclusively on her testimony, in the absence of any real evidence from the scene of the crime and without being able to secure testimonies from alleged perpetrators (since both are located in the TRNC). While some victims are able to convince the parent state authorities during their psychological evaluation that they have indeed been trafficked, many fall through the cracks. This problem is compounded by the fact that law enforcement officers in the Republic of Cyprus often do not have accurate information on the ways in which human trafficking is taking place in the TRNC. There is, for example, limited understanding among Greek Cypriot case workers that women in the TRNC are sexually exploited in different venues and by different criminal groups (Hadjigeorgiou 2022). This creates a distorted view of the number and profile of the victims on the island, with one group of women being more likely to receive protection under the law. In practice, European women on a "consomatris" visa, who are exploited in nightclubs, are more readily recognized as victims than African women on student visas, who are trafficked in private apartments, simply because officials of the Republic of Cyprus do not know as much about the latter category of victims. In this sense, collaboration between parent and de facto states is essential in encouraging the sharing of information and achieving greater protection of the victims in practice.

Despite the real need for de facto states to cooperate with their neighbors in combatting human trafficking, there are almost no examples of such cooperation on the ground. Some evidence of such collaboration is found in the 2013 Trafficking in Persons report, which briefly notes that Transnistrian victims of human trafficking received full support and assistance from Moldovan shelters (US Department of State 2013, 266). However, the report does not explain the mechanism through which these victims were identified and how/whether their stories were corroborated by those offering the support. Additionally, during the same year, the Transnistrian police sent human trafficking victims to the Moldovan authorities to testify (US Department of State 2013, 266). Yet, it is unclear to what extent these testimonies were utilized in practice, in light of the fact that they were inadmissible in Moldovan courts. Finally, no similar instances of cooperation have been documented in subsequent Trafficking in Persons reports, raising questions as to whether these practices have stopped or

[18] Turkey itself has a Tier 2 status in the Trafficking in Persons report of 2023.

[19] For a recent missed opportunity to discuss Abkhazia and South Ossetia in a US Government-funded report on trafficking in Georgia, see Tomashvili, Goletiani, and Burjaliani (2022).

[20] Although human trafficking was criminalized in 2020, this has not been accompanied by any provision of social services, housing, or legal aid to the presumed victims, which makes it practically impossible for a victim to report their trafficker to the police (Hadjigeorgiou 2022).

are simply unreported. It is regrettable that such cooperation remains geographically rare and at an embryonic stage, especially in light of the duty created by the ECtHR to cooperate when victims' lives are at risk, which is often the case in instances of human trafficking. It is also surprising that cooperation between the two has not been more fruitful in light of Moldova's request that the Council of Europe, the OSCE, and the EU engage with Transnistria in order to promote its democratization and improve its human rights record (Nuta 2012, 58).

Perhaps the most promising initiative, but one that has not been extended to the field of human trafficking,[21] is the Joint Communications Room (JCR) in Cyprus. The JCR, which operates under the auspices of UNFICYP, consists of equal numbers of serving or retired Greek and Turkish Cypriot police officers (Hadjigeorgiou and Kapardis 2023). Its members are appointed by their respective community leaders and have access to the highest ranks of the Republic of Cyprus and TRNC law enforcement agencies. The objective of the JCR is to facilitate and speed up exchange of information between the two police forces, in order to more effectively respond to crimes that take place over the buffer zone. The bicommunal initiative has been quite active, with a recorded 1,021 instances of cooperation between its establishment in 2009 and the end of 2018 (Hadjigeorgiou and Kapardis 2023). This cooperation usually involves the sharing of information, locating, and returning persons or property who went missing on the other side of the buffer zone, and, in certain rare cases, the arrest and transfer of suspects or defendants to face trial or deportation (Hadjigeorgiou and Kapardis 2023).

The JCR could support anti-trafficking efforts by providing the medium through which the authorities of the Republic of Cyprus obtain information on whether a particular person applying for victim status had indeed been trafficked in the TRNC. Further, information from recognized victims, who had been trafficked in the TRNC, but are currently receiving protection in the Republic, which would be useful in a criminal trial of perpetrators found in the de facto state, could also be communicated through the JCR. Finally, if a trafficking ring moves victims from a third country into the TRNC and then the Republic of Cyprus, the authorities of the destination country could benefit from the findings of police investigations in the origin and transit countries, so that they could acquire a more complete picture of how the transnational criminal operation works. While such information could be shared through EUPOL or INTERPOL in the case of recognized states, mechanisms like the JCR could fill the gap between parent and de facto states.

Although they have not been described as such, both the Moldovan/Transnistrian cooperation discussed above and the JCR are instances of EWR between parent and de facto states. Conceptualizing them in this way and showing that they are compatible with international human rights standards is important because it legitimizes such arrangements and makes them more likely to achieve their objectives. Further, if the public is aware of such cooperative initiatives and their compatibility with international law, it is more likely to push for their more effective implementation. This is not what is currently happening in Cyprus, where concerns that the JCR will be criticized as legally problematic have shaped its members' decision to keep their work as inconspicuous as possible (Hadjigeorgiou and Kapardis 2023).

Conclusion

This article has argued that there is value in clarifying the relationship between EWR and international law. Rather than treating international law as a reason why de facto states should remain isolated, more attention should be paid to the ways in which the law has developed to counter the isolation of these entities. ECtHR case law has allowed de facto states to enter into a dialogue with international institutions about the improvement of their domestic legislation. More consistently treating EWR with the international community as a lawful practice could have similar effects in de facto states that do not fall within the *espace juridique* of the European Convention on Human Rights. At the same time, the ECtHR's jurisprudence has noted that de facto states are free, and in certain cases even obligated, to engage and cooperate with their parent states. Conceptualizing EWR with parent states as a human rights obligation is likely to legitimize and encourage much needed transnational cooperation in a range of areas, including when combatting human trafficking. Thus, this paper has offered both theoretical and practical arguments for why the international community—in the form of the parent state, international bodies, and interested third parties—should encourage EWR, rather than shy away from it.

The argument made here is not that the international community or the parent state will always, or even often, engage with de facto states on condition of non-recognition. Whether EWR takes place depends on how a de facto state is perceived by the international community and the specific matter for which engagement might be sought. So, some de facto states are likely to benefit more from the practice than others, by virtue of their geostrategic location, relationships with neighbors and allies of powerful actors, or their willingness to cooperate with states like the United States or China in areas that are of particular interest to them (e.g., counter-terrorism). The availability of EWR is also a question of timing. Even if parent states, the international community, or specific powerful actors are reluctant to engage with a de facto state today, they could re-evaluate their position if their strategic interests suddenly change following, for example, the eruption of violence, as in Ukraine in 2022 and Israel/Palestine in 2023. Irrespective of ephemeral considerations, however, conceptualizing the practice as compatible with international law is crucial. As a matter of principle, this is a more accurate representation of EWR. As a matter of practice, it removes the unfair stigma attached to EWR and ensures that if states are interested in engaging, they will not be discouraged to do so by concerns that they are acting unlawfully.

In addition to clarifying their relationship with international law, the article has shed more light on the possible interaction between the two types of EWR. The differences between them have meant that they are often analyzed independently from each other, but this analysis suggests that combining the two strategies can yield the best results. Specifically, while engagement with the international community can improve de facto states' domestic legislation, interaction with parent states provides more practical tools for apprehending perpetrators and protecting the victims of human trafficking. Cooperation between the parent and de facto states is of limited value if there is no legal framework within the de facto state on which the authori-

[21] Despite regular urgings of the UN Secretary-General to do so, the JCR has not made any contributions in the fight against human trafficking. See UN Secretary-General (2005, para. 23), UN Secretary-General (2006, para. 24), UN Secretary-General (2017, para. 15), and UN Secretary-General (2020, para. 9).

ties will rely. At the same time, even a well-drafted law in the de facto state is unlikely to produce positive results in combatting transnational crimes, in the absence of cooperation with one's neighbors. Taking action that equally responds to the two considerations is both a lawful strategy and likely to be the most effective one.

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