

OBLIGATIONS OF DE-FACTO REGIMES

Obligaciones De Los De-Facto Regímenes

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Abstract

This paper in its first part intends to determine and critically evaluate, if, to what extent and on what basis, de-facto regimes are under an obligation to ensure human rights to individuals coming under their jurisdiction. It is important to clarify a possibility to recognize de-facto regimes as bearers of human rights obligations with the duty incumbent on third states and international organizations not to recognize these de-facto regimes because of the unlawful character of their creation, according to international law. In the second part this paper aims to determine the humanitarian law obligations which de-facto regimes are bind by. Last but not least, business cooperation with other states and international organizations is discussed as a prerequisite for the de-facto regime's capacity to ensure economic, social and cultural rights of people living on its territory.

Keywords

De-facto regimes; Human rights; Humanitarian law; Economic, social and cultural rights; State obligations.

Resumen

Este documento, en su primera parte, pretende determinar y evaluar críticamente si los regímenes de facto tienen la obligación de garantizar los derechos humanos de

las personas que se encuentran bajo su jurisdicción, en qué medida y sobre qué base. Es importante aclarar la posibilidad de reconocer a los regímenes de facto como portadores de obligaciones en materia de derechos humanos, con el deber que incumbe a los terceros Estados y a las organizaciones internacionales de no reconocer esos regímenes de facto debido al carácter ilícito de su creación, de conformidad con el derecho internacional. En la segunda parte, este documento tiene por objeto determinar las obligaciones del derecho humanitario que vinculan a los regímenes de facto. Por último, pero no por ello menos importante, la cooperación empresarial con otros Estados y organizaciones internacionales se discute como requisito previo para que el régimen de facto pueda garantizar los derechos económicos, sociales y culturales de las personas que viven en su territorio.

Palabras clave

De-facto regímenes; Derechos humanos; Derecho humanitario; Derechos económicos, sociales y culturales; Obligaciones de los Estados.

SUMMARY: I. INTRODUCTION. II. HUMAN RIGHTS STANDARDS AS AN OBLIGATION OF DFRS. III. INTERNATIONAL HUMANITARIAN LAW REQUIREMENTS IN DFR. IV. BUSINESS COOPERATION WITH OTHER STATES AND INTERNATIONAL ORGANIZATIONS IN ORDER TO ENSURE ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF PEOPLE IN DFRS. V. CONCLUSION. REFERENCES.

I. INTRODUCTION

De-facto regimes (“DFR”), also called de-facto states, constitute an interesting anomaly in the international system of sovereign states because they fail to achieve international recognition. The claims to independence are usually justified by reasons such as historical continuity, claims to a remedial right to secession based on alleged human-rights violations, and primarily, on the right to national self-determination. These DFRs are generally not internationally recognized or are merely recognized by a few United Nations (“UN”) member states, which is not enough to eliminate the status of an illegal de-facto regime. With the rest of the states and international organizations they usually do not have any official diplomatic relations.

Historically, international law and the rights and duties emanating from it applies fully only to entities possessing complete international legal personality. Besides states there are international organizations, transnational corporations as well as individual persons possessing international legal personality. All of these actors are bound to different sets of rights and obligations and therefore their legal personality differs.¹

DFRs are illegal or at least possess an extra-legal foundation based on a politically organized entity that exercises effective control over parts of a UN member state territory with the aim of becoming the official government of the “new” state.² These de-facto states are unable to achieve any degree of substantive recognition, and yet they seek to enter into relationships with other states. International law places DFRs in an indeterminate position, but it could be assumed that they possess some rights and obligations, i.e. they have some degree of international legal personality. There is a need to identify these rights and obligations and to determine their scope of applicability, in order to clarify their international legal responsibility; to guarantee their

¹ Essen, Jonte van. *De Facto Regimes in International Law*. *Merkourios* [online]. 2012, vol. 28, Issue 74, 34 p., pp. 31-49 [cit. 14. 1. 2019]. Available at: file:///C:/Users/user/Downloads/25-25-1-PB.pdf

² *Ibidem*.

inhabitants adequate level of legal certainty and living standards in relation to foreign countries; and to prevent some international legal disputes.

The existence of DFRs has an impact not only on the relation between a DFR and an UN member state, but more importantly the DFRs influence the relations between UN member states themselves. Disputes between UN member states are usually originating from their different scale of DFR's acknowledged rights and obligations.

Despite the lack of international recognition, DFRs are obliged to fulfil some obligations based e.g. on human rights, humanitarian law and economic, social and cultural rights. The extent of these obligations has not been codified in any international treaty yet and requires more international attention and political consensus. In the following text selected obligations of DFR will be confronted with the status of non-recognition.

II. HUMAN RIGHTS STANDARDS AS AN OBLIGATION OF DE-FACTO REGIMES

De-facto regimes such as the Republic of South Ossetia – the State of Alania, the Republic of Abkhazia, the Republic of Artsakh (also called as Nagorno-Karabakh), the Turkish Republic of Northern Cyprus, the Pridnestrovian Moldavian Republic, the Luhansk People's Republic and the Donetsk People's Republic do exist factually but are not recognized as States and cannot thus ratify the treaties ensuring the protection of human rights (European Convention on human rights, for example) nor accede to regional or international organisations monitoring the respect of human rights (Council of Europe, for example). There is a question, as to what extent and on which basis, de-facto regimes are under an obligation to ensure human rights to the individuals coming under their jurisdiction given their specific status. Would it be possible to clarify the possibility to recognize de-facto regimes as bearers of human rights obligations with the duty incumbent on third States and international organizations not to recognize these regimes as States because of the unlawful character of their creation, according to international law?

On the other hand, when one state controls the territory of another, the European Court of Human Rights stated in the case *Azemi v Serbia*, that if another Convention State exceptionally exercised jurisdiction outside its territory, this State has full responsibility under the European Convention on Human Rights.³ With regard to human rights violations on the territory of the

³ Judgment of the European Court of Human Rights from 5.11.2013 on the case *Ali Azemi against Serbia*. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-139052%22%5D%7D>;

DFR, if there is adequate evidence that the DFR is part of the other state empowered to act on its behalf, or that the authorities of the “controlling State” take part directly in the illegal activities of the DFR, this other state is responsible for these violations.⁴ The other state is in fact in control of foreign territory, and if this state exercises jurisdiction over that territory, it will be under an obligation to secure and respect the range of substantive rights and freedoms guaranteed by the applicable human rights treaty.⁵

It does not mean that a state that has lost control over part of its territory is not relieved of all its human rights obligations. The scope of the territorial state’s jurisdiction, and of its human rights obligations, will be limited to “secure” or “ensure” the rights and freedoms of the population of that part of its territory (also called as “positive obligation”). Even though its authorities are no longer in control of the area, the state will continue to be under a duty to take all appropriate measures within its power to secure the rights and freedoms of individuals in whole its territory.⁶

However, if no state exercises “full” jurisdiction over the territory controlled by DFR, the territorial state could be only responsible for failure to secure human rights and to prevent human rights violations committed by DFR in the area.

Furthermore, even if a state has fulfilled its obligation to exercise due diligence to prevent violations of human rights, it may still be responsible for its failure to properly investigate, prosecute, punish and provide redress to the victims of those violations.⁷

In the case *Ilascu and others v Moldova and Russia*, the European Court of Human Rights stated that the Moldova has still some positive obligations to ensure individual rights with respect to the self-proclaimed Moldavian Republic of Transnistria (“Transnistria”). Therefore Moldova had failed to

⁴ Cullen, Anthony; Wheatley, Steven. The Human Rights of Individuals in *De Facto* Regimes under the European Convention on Human Rights. *Human Rights Law Review* [online]. 2013, 704 p., pp. 691-728 [cit. 14. 1. 2019]. Available at: <https://academic.oup.com/hrlr/article-abstract/13/4/691/638906?redirectedFrom=fulltext>

⁵ Judgment of the European Court of Human Rights from 7.7.2011 on the case *Al Skeini and others against the United Kingdom*. Available at: <file:///C:/Users/user/Downloads/Grand%20Chamber%20judgment%20Al-SKeini%20v.%20United%20Kingdom%2007.07.2011.pdf>

⁶ Eatwell, Tatyana. State Responsibility for Human Rights Violations Committed in the State’s Territory by Armed Non-State Actors. *Academy of International Humanitarian Law and Human Rights*. Geneva [online]. 2018, 16p., pp. 44 [cit. 14. 10. 2019]. Available at: <https://www.geneva-academy.ch/joomlatools-files/docman-files/Academy%20Briefing%2013.pdf>

⁷ Eatwell, Tatyana. State Responsibility for Human Rights Violations Committed in the State’s Territory by Armed Non-State Actors. 25 p.

fulfil its obligation to protect the human rights of persons arbitrarily detained and tortured by the Moldavian Republic of Transnistria.⁸

According to Article 1 of the European Convention on Human Rights, “*The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.*” This means that only states may grant human rights to everyone who is subject to their sovereignty. However, the UN General Assembly Resolution 3314 (Definition of Aggression) also defines “state” as entities “*without prejudice to questions of recognition or to whether a State is a member of the United Nations.*”⁹ Since fundamental human rights are applicable *erga omnes*, some authors are convinced that the renunciation of violence shall apply to DFRs, together with the liability of these entities in international law.¹⁰

However, if we assume, that de-facto regimes are bound by human rights, would this not imply that they should be able to develop fully a legal system able to guarantee those rights? Would this not mean that de-facto regimes should be able to establish their courts and tribunals, adopt the laws and ensure their enforcement? If de-facto regimes have to grant the means to ensure human rights protection, we should on the other hand take into account the duty firmly established in international law not to recognize de-facto regimes because of the unlawful character of their creation. This rule rises from the Article 41(2) of The Articles of the International Law Commission on the Responsibility of States for Internationally Wrongful Acts, which states that “*no State shall recognize as lawful a situation created by a serious breach of an obligation arising under a peremptory norm of general international law, nor render aid or assistance in maintaining that situation.*”¹¹

In addition, according to the International Law Commission, the prohibition of the use of force is identified as a peremptory norm,¹² meaning that all

⁸ Judgment of the European Court of Human Rights from 8. 7. 2004 on the Case *Ilascu and Others v. Moldova and Russia*. Available at:

⁹<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-61886%22%5D%7D>

⁹ United Nations General Assembly Resolution 3314 (XXIX) of 14 December 1974 on Definition of Aggression. Available at: <http://hrlibrary.umn.edu/instree/GAres3314.html>

¹⁰ Heintze, Hans-Joachim. *Are De Facto Regimes Bound by Human Rights? Yearbook on the Organization for Security and Co-operation in Europe (OSCE)* [online]. 2009, 269 p., pp. 267-277 [cit. 14. 10. 2019]. Available at: <https://ifsh.de/file-CORE/documents/yearbook/english/09/Heintze-en.pdf>

¹¹ Resolution adopted by the General Assembly: 56/83 Responsibility of States for internationally wrongful acts (2002). Available at : <https://www.ilsa.org/Jessup/Jessup11/basicmats/StateResponsibility.pdf>

¹² Report of the International Law Commission on the work of its fifty-third session, Official Records of the General Assembly, Fifty-sixth session, Supplement No.10,

de-facto regimes created by a breach of the UN Charter should not be recognized. The Security Council of the United Nations has sometimes explicitly formulated this duty as in the case of the Turkish Republic of Northern Cyprus.¹³ It is disputable if we can, on one hand, grant de-facto regimes powers which are indeed sovereign powers (legislative, executive and judiciary powers) for the purpose of ensuring human rights respect and on the other hand being under the duty to deny them sovereignty? It is true that international law provides that the duty of non-recognition is limited in that it should not be affecting the validity of certain acts beneficial to the individuals such as birth certificates, as the International Court of Justice clearly established in its Advisory Opinion in the Namibia case.¹⁴ There is an interest in protecting the life of inhabitants living in the territory of DFRs, which includes the protection of their courts.¹⁵ This partly explains why, in the inter-State case *Cyprus v. Turkey*, the European Court of Human Rights admitted to a certain extent the validity of the courts in the Turkish Republic on Northern Cyprus (“TRNC”), only for the purpose of protecting the rights of the people living on its territory, specifying that doing so did not legitimize in any way the TRNC.¹⁶

Vienna Convention on the law of treaties defines treaty as “*an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.*”¹⁷ It is disputable, if an inter-state treaty could bind non-state parties, because Article 34 states: “*A treaty does not create either obligations or rights for a third State without its consent.*”¹⁸ Third state could be bound by an obligation arising

(A/56/10), 2001, pp. 112-113, paragraphs 4,5. Available at : http://legal.un.org/docs/?path=../ilc/documentation/english/reports/a_56_10.pdf&lang=EXP

¹³ The Security Council Resolution 541 (1983) of 18 November 1983. Available at : <http://unscr.com/en/resolutions/541>

¹⁴ Articles 1 and 5 Extra-territorial jurisdiction, jurisdiction of territorial State prevented from exercising its authority in part of its territory, and validity of detention and criminal proceedings in de facto entities. *European Court of Human Rights, Research Division* [online]. 26 p., pp. 33 [cit. 14. 1. 2019]. Available at:

https://www.echr.coe.int/Documents/Research_report_articles_1_5_ENG.pdf

¹⁵ Ibidem.

¹⁶ Judgment of the European Court of Human Rights from 10. 5. 2001 on the Case *Cyprus v. Turkey*. Available at:

<http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/CYPRUS%20v.%20TURKEY%20%282001%29.pdf>

¹⁷ Article 2 para. 1 letter a) of the Vienna Convention on the law of treaties from 23.5.1969. Available at: <https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>

¹⁸ Article 34 of the Vienna Convention on the law of treaties from 23.5.1969.

from a provision of a treaty only if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing form.¹⁹

The treaty-based human rights law does not create horizontal obligation between non-state actors. The wording of the treaty obliges states to “respect”, “ensure”, “take steps toward achieving,” and “undertake” human rights obligations. That is not to say that human rights treaties do not affect relations in the non-state sphere. They actually create diagonal obligations since the treaty obligations themselves are only owed by states.²⁰ In Article 13 of the European Convention on Human Rights is prescribed that “*Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.*”²¹ This wording can be interpreted as implying that not only persons acting in an official capacity, but also non-state actors can violate human rights.²²

In a contrast there are opinions, that the traditional international law cannot hold the usurping non-state actors accountable (unless they had been recognized as belligerents), the non-functional chaotic state, in which they operate, is held responsible. This is based on the meaning of Article 4 of the Draft articles on Responsibility of States for Internationally Wrongful Acts, which states: “*The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.*” It can be understood as a special case of due diligence, because the state is held responsible for allowing private individuals to usurp its powers. That means the insurrectional or secessionist movement is legally not bound by human rights law, because the same principle applies as the law governing the protection of foreign nationals when the state is responsible not because of the complicity in the non-state conduct, but because of the failure of a state to protect against it.²³

¹⁹ Article 35 of the Vienna Convention on the law of treaties from 23.5.1969.

²⁰ Hessbruegge, Arno Jan. Human Rights violations arising from conduct of Non-State Actors. In. *Buffalo Human Rights Law Review*. [online]. 2005, Vol. 11, 4p., pp. 54. Available at: <https://digitalcommons.law.buffalo.edu/cgi/viewcontent.cgi?article=1113&context=bhrlr>

²¹ Article 13 to The European Convention on Human Rights Of 4.11.1950 [online]. Available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf

²² Hessbruegge, Arno Jan. Human Rights violations arising from conduct of Non-State Actors. 4p.

²³ Hessbruegge, Arno Jan. Human Rights violations arising from conduct of Non-State Actors. 20 p.

III. INTERNATIONAL HUMANITARIAN LAW REQUIREMENTS IN DE-FACTO REGIMES

The Protocol II On The Protection Of Victims Of Non-International Armed Conflicts to the Geneva Conventions of 8 June 1977 defines the non international armed conflict as one “*which takes place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.*”²⁴ However, situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of similar nature are not assumed as being armed conflicts.²⁵

Each party in non-international armed conflict is bound to apply, as a minimum, the fundamental humanitarian provisions of international law contained in the Common Article 3 to the Geneva Convention that states “*during armed conflict, distinction should be made between those who take an active part in hostilities and those who do not.*” This Article is considered as a “general principle of humanitarian law” and even *jus cogens*.²⁶ Together with the Geneva Protocol II of 1977, both provisions apply with equal force to all parties to an armed conflict, government and rebels alike.

Moreover, government and rebel forces must apply some other specific treaty rules relating to internal conflict, e.g. The Ottawa landmines treaty of 1997; Protocol II to the Conventional Weapons Convention, on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996. In addition, the basic principles of the law of armed conflict, namely proportionality, military necessity, limitation, good faith and humane treatment, apply as well.²⁷

Armed forces of DFR are therefore obliged to behave in accordance with the minimum requirements of the law of armed conflict applicable to international armed conflicts, even if they are not a party of the Geneva Convention or Additional Protocol II.

²⁴ Article 1 para. 1 of the Protocol Additional To The Geneva Conventions Of 12 August 1949, And Relating To The Protection Of Victims Of Non-International Armed Conflicts (Protocol II), Of 8 June 1977 [online]. Available at: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.35_AP-II-EN.pdf

²⁵ Article 1 para. 2 of the Protocol Additional To The Geneva Conventions (Protocol II).

²⁶ Essen, Jonte van. *De Facto Regimes in International Law*. 34 p.

²⁷ The Law of Armed Conflict – Non-international Armed Conflict. *International Committee of the Red Cross Unit for Relations with Armed and Security Forces* [online]. 2002, 4p., pp. 25 [cit. 14. 10. 2019]. Available at: https://www.icrc.org/en/doc/assets/files/other/law10_final.pdf

In contrast with the international armed conflict, in a non-international armed conflict, combatant status does not exist, captured persons and children are sometimes treated according to other rules.²⁸ However, there is a basic rule according to the Protocol II., that in all circumstances all persons who do not take a direct part or who have ceased to take part in hostilities shall be treated humanely, without any adverse distinction.²⁹

A Special obligation for DFR is required for child soldiers in Article 4 of the Optional Protocol to the Convention on The Rights of the Child on the Involvement of Children in Armed Conflict, which states: “*Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.*” Moreover, every member state “*shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.*”³⁰ This means, that all states are entitled to protect child soldiers fighting under supervision of any kind of non-state actors with due diligence, notwithstanding if these states are participating in this concrete non-international armed conflict or not.

IV. BUSINESS COOPERATION WITH OTHER STATES AND INTERNATIONAL ORGANIZATIONS IN ORDER TO ENSURE ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF PEOPLE IN DE-FACTO REGIMES

The Universal Declaration on Human Rights recognizes a number of economic, social and cultural rights and the International Covenant on Economic, Social and Cultural Rights is the primary international legal source of these rights. Special additional requirements (e.g. States Parties shall ensure to the maximum extent possible the survival and development of the child³¹) are set for higher protection of children in the Convention on the Rights of the Child. Right to food has been recognized as a basic human right and granted by constitution in many countries in the world. However, to ensure all persons on the territory of DFR some basic social standards, it is necessary to have enough financial sources for this purpose. The sufficient

²⁸ The Law of Armed Conflict – Non-international Armed Conflict.8 p.

²⁹ Article 4 para. 1 of the Additional Protocol II. to The Geneva Conventions

³⁰ Art. 4 para. 2 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict of 25 May 2000.

³¹ Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx>

³¹ Art. 6 para. 2 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

financial reserve cannot be created without international business cooperation and access to international market.

However, in any international treaty is regulated, which relation of third states is allowed towards the DFR and from which actions they should refrain. Recognition of a state is a diplomatic formal act but the factual recognition without any formal act does not have any regulated form. Besides cooperating with the “patron state” (i.e. state which supports DFR politically, economically and militarily such Russia in the case of Abkhazia or Armenia in the case of the Republic of Artsakh) as well as mutual cooperation between DFRs, the de-facto regimes strive for new international partners for business in order to reach better life standard for people living on their territories. For instance, in 2016 (for the Ukraine in 2017) The Deep and Comprehensive Free Trade Areas entered into force and established three free trade areas between the European Union (“EU”) on one side and Georgia, Moldova and Ukraine on the other. From this agreement, Transnistria gained many benefits, as their companies could export to the EU after they register on the territory of Moldova. In total Transnistria exports almost 45% of its production to the EU, nearly two-thirds of the iron and steel products were sold to the EU.³²

Another example how the DFRs are allowed to cooperate with states through international organizations is Commonwealth of Independent States, which is a regional intergovernmental organization of 10 post-Soviet republics. In October 2018 the Russian President Vladimir Putin signed a decree on the creation of the Presidential Directorate for Cross-Border Cooperation between the Commonwealth of Independent States Member Countries (“CISMC”), the Republic of Abkhazia and the Republic of South Ossetia. This should improve the efficiency of the social and economic cooperation between contracting parties, which means in fact also cooperation between these two de-facto regimes and every single CISMC.³³

Due to acceptance and active participation of UN member states and international organizations in business and political cooperation with DFRs, should this be understood as a tacit recognition of the right of DFRs to perform independently (i.e. without any influence of external political power) in specific business activities?

³² EU now top destination for Transnistria’s fast-growing exports. *Intellinews.com* [online]. Published on 17. 4. 2018 [cit. 15. 1. 2019]. Available at: <http://www.intellinews.com/eu-now-top-destination-for-transnistria-s-fast-growing-exports-140111/>

³³ Putin signs decree establishing Presidential directorate for cross-border cooperation. *TASS* [online]. Published on 02. 10. 2018 [cit. 15. 1. 2019]. Available at: <http://tass.com/politics/1024025>

In this context it is important to mention the political decision from April 2019, when the European Commission rejected the European citizenship initiative demanding prohibition of products from Israeli settlements. Earlier that same year, Ireland had passed a bill to ban the sale of goods from Israel's illegal settlements in the occupied West Bank.³⁴ Similar request was raised by the Special UN Rapporteur to the General Assembly in October 2019, but again, without any significant reaction.³⁵ Some similarity could be found between DFR and illegal settlements in occupied territories, because strictly speaking, the products from both regions (DFR and illegal settlements) are manufactured under supervision of illegal authorities not recognized by the majority of UN member states. This shows some basic course in the business behaviour between states and DFRs, in the sense that a non-recognition of state does not automatically have any fundamental direct impact on business relations with DFRs. In many cases, products from non-recognized regions are just exported under the label of the "patron state" and the receiving country is usually not interested in the real origin of imported products. Therefore, it is not a surprise that e.g. Serbia was with 12.3% the second biggest importer in Kosovo in 2017 and in the same year 10.6% of all exported Kosovo goods and services were distributed to Serbia.³⁶

Not only economic and political interests of the UN member states, but also a need to fill a legal gap could be a reason for legalizing wealth and business of DFR. For example, in 1952, the Republic of China gained ownership of a house called "Kokaryó" in Kyóto (Japan) which was intended to be used by students from Taiwan. Twenty years later, following the establishment of diplomatic relations between Japan and the People's Republic of China ("PRC"), the Japanese government acknowledged Taiwan as being an integral part of the PRC. When the Osaka High Court in 1987 decided that the house "Kokaryó" was not a property of the PRC, but that it belonged to Taiwan, the PRC was incensed, and it became an issue of high tension between the PRC and Japan. The Japanese government was then accused of breaching its commitments against the PRC and pursuing a "Two Chinas" policy.³⁷

³⁴ Nielsen, Nikolaj. EU rejects public call to ban Israeli settler products. *Euobserver.com* [online]. Published on 30. 04. 2019 [cit. 15. 10. 2019]. Available at: <https://euobserver.com/foreign/144767>

³⁵ Cieslik, Natalia. Decisive international action needed to end Israeli occupation: UN rights expert. *un.org* [online]. Published on 23. 10. 2019 [cit. 28. 10. 2019]. Available at: <https://news.un.org/en/story/2019/10/1049811>

³⁶ The World Factbook - Kosovo. *Central Intelligence Agency* [online]. Published on 21. 10. 2019 [cit. 28. 10. 2019]. Available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/kv.html>

³⁷ Heuser, Robert. Zur Rechtsstellung des de facto-Regimes im Völkerrecht – Die Kokaryó-Entscheidung des Olg Osaka. *Max-Planck-Institut für ausländisches öffentlich-*

The question, whether this Osaka High Court decision could establish the conditions, under which the DFRs can legally acquire ownership rights abroad, should be discussed in relation to other similar cases, state practice etc. However, clarification of this question could bring more certainty into DFR's relations and this could be favourable for both "parties" – UN member states and DFRs.

V. CONCLUSION

Creation of a DFR is an internationally illegal act and, as such, a duty not to recognize it is clearly stated in Article 41(2) of the Draft articles on Responsibility of States for Internationally Wrongful Acts. However, even states which have recognized DFR as an independent state based on the right to self-determination, do not possess any efficient legal instruments, how to enforce these DFRs to comply with human rights law and their humanitarian obligations. The breaching de-facto authority is often exempt from any proceeding because there is no relevant jurisdiction. The non-recognition is mostly not affecting mutual business cooperation between DFRs and particular UN member states. Because of the financial resources, the DFRs are able to administrate a functional state apparatus with formal elements of democracy including written constitution or system of courts. However, there is no international treaty governing obligations of de-facto authorities towards persons living on their territory. Given the increasing number of DFRs in the world it is expected, that the need of solving this problem will grow.

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OBLIGATIONS OF DE-FACTO REGIMES

Obligaciones De Los De-Facto Regímenes

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