

**(Un)Recognized Matters in International Law? Tackling Human Rights  
Enforcement Mechanisms in Contested Territories**

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**Abstract**

In regions disputed by multiple sovereign nations, especially amidst prolonged conflicts, the erosion of individual rights often blurs the path to safeguarding human rights effectively. This dynamic presents challenges, where the exercise of civic and political rights becomes precarious, public authorities encounter limitations in fulfilling their duties, and aspiring States may find it challenging to gain international recognition. Yet, amidst these intricacies, one fundamental principle prevails: anchored in the Universal Declaration of Human Rights, the acknowledgment of every individual's unequivocal entitlement to human rights remains paramount.

In light of these circumstances, the paper endeavors to offer soft law guidelines aimed at filling the void during the timeline of unrecognized (or partially recognized) States, and territories under sovereign dispute of other States, until they are able to ratify human rights conventions and integrate into a formal legal framework for protection, or until their sovereign status is definitively resolved. The hypothesis posits that, despite potential temporary shortcomings in both domestic and international legal frameworks to address human rights violations in such scenarios, individuals residing within these territories (broadly defined) continue to possess inherent universal human rights. Consequently, while the pathway for protecting human rights in these situations may not be straightforward, diplomatic mechanisms remain available to facilitate solutions.

The paper will conclude by suggesting the international organization best suited to facilitate the implementation of the suggested soft law principles: ideally functioning under the United Nations Office of the High Commissioner for Human Rights, a system that engages in peaceful negotiation to persuade the unrecognized State, or any other States involved in a sovereign dispute over a certain territory, to abide by universal human rights, would be extremely beneficial to remedy any potential violations.

## 1. Introduction and Terminology [Working Draft]

From the outset, it is imperative to delineate the foundational principles that underpin the concept of recognition in international law. The Montevideo Convention on the Rights and Duties of States of 1933, with its qualifications of a permanent population, a defined territory, government, and capacity to enter into relations with the other States, has long served as a touchstone for determining statehood.<sup>1</sup> However, the application of these criteria in practice, particularly in cases of emerging States, contested territories, and governance transitions, reveals the inherent complexities and ambiguities of the recognition process, particularly when questions of human rights arise.

For instance, the aforementioned treaty determines in its article 11, as a rule of conduct within States, the precise obligation not to recognize territorial acquisitions or special advantages which have been obtained by force, whether this consists in the employment of arms, the threatening diplomatic representations, or any other effective coercive measure. Indeed, the clause displays that the territory of a State is inviolable and may not be the object of military occupation nor of any other measures of force imposed by another State, being these in a direct or indirect manner, or for any other motive, even if said violations are temporal.<sup>2</sup>

In line with this, the International Court of Justice has noted that the United Nations Security Council has condemned particular declarations of independence made in the context of violations of peremptory norms of general international law. In the words of the International Court of Justice, “the illegality attached to the declarations of independence thus stemmed not from the unilateral character of these declarations as such, but from the fact that they were, or would have been, connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character (*jus cogens*)”.<sup>3</sup>

[Pending information will be provided in the final manuscript]

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<sup>1</sup> Montevideo Convention in the Rights and Duties of States, opened for signature 26 December 1933, Treaty Series Vol. 165, p. 19, entered into force 26 December 1934, art. 1.

<sup>2</sup> Montevideo Convention in the Rights and Duties of States, above n. [1], art. 11.

<sup>3</sup> International Court of Justice, *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*, Advisory Opinion, 22 July 2010, para. 81.

## 2. Defining Sovereign Power [Working Draft]

In any event, the question of how sovereignty is evidenced remains critical: there should be no doubts regarding the protection of human rights in cases where the exercise of sovereign power over a given territory is undisputed. To this end, a century-old award, the Island of Palmas case, presents a solid legal rhetoric in terms of both defining and identifying scenarios where a certain territory falls under a State's title of sovereignty.

The subject of the dispute in the Island of Palmas case concerned, thus, the sovereignty over said territory between Netherlands and the United States. The origin of the dispute traced back to an American General's visit to the island in January 1906, which was considered the first official contact by American authorities with the area. The visit was followed by disagreements over whether the Island of Palmas, included in the archipelago known as the Philippine Islands according to the Treaty of Paris between the United States and Spain in 1898, belonged to the United States or was part of the Netherlands' possessions in the East Indies.<sup>4</sup>

The dispute was centered on, essentially, the question of whether Spain originally held sovereignty over the island and could, thus, cede it in virtue of the Treaty of Paris of 1898 to the United States or if, on the contrary, Netherlands was the lawful sovereign over the territory. In light of this issue, both parties claimed that "the island in question [could] belong only to one or the other of them" and that the rights of third powers could only come into consideration in so far as their own rights derived from these third parties.<sup>5</sup>

Interestingly, the sole arbitrator of the case, Max Huber, who was also the president of the Permanent Court of International Justice at the time of the commencement of the proceedings, would analyze the position of the parties following foundational and well-known general principles of law. His rationale would shed light on substantive issues, as is the criterium to determine the innerworkings of territorial sovereignty. He would consider that although municipal law "is able to recognize abstract rights of property as existing apart from any material display of them" it still limits, nevertheless, the effect of these rights by the principles of prescription and the protection of possession.<sup>6</sup>

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<sup>4</sup> Permanent Court of Arbitration, *Island of Palmas (The Netherlands / The United States of America)*, Award, 4 April 1928, Case Number 1925-01, p. 5-6.

<sup>5</sup> *Island of Palmas (The Netherlands / The United States of America)*, above n. [3], p. 6.

<sup>6</sup> *Island of Palmas (The Netherlands / The United States of America)*, above n. [3], p. 9.

Most importantly, he would determine that international law, as a structure not based on any super-State organization, could not be presumed to reduce a right such as territorial sovereignty, upon which almost all international relations are bound up, to the category of an abstract right with no concrete manifestations. The notion that property rights, even without physical evidence of ownership, are still faced with legal qualifiers through other principles which somehow call for concrete expressions or demonstrations of control over property in municipal law is, in Max Huber's words, a "constituent element of territorial sovereignty [in International Law, as it] is not only based on the conditions of the formation of independent States and their boundaries, as well as on international jurisprudence and doctrine widely accepted; this principle has further been recognized in more than one federal State" where jurisdictions apply, as needed, rules of international law between inter-State relations.<sup>7</sup>

It is worth noting that the United States had based its claim on discovery, recognition by treaty, and contiguity, but had not proven effective display of sovereignty. In contrast, Netherlands had claimed sovereignty through peaceful and continuous display of State authority. It was by reflecting on these claims that the arbitrator favored a notion of property rights that is ingrained in most domestic legislations. When he assessed that property rights are, in principle, faced with legal qualifiers which essentially demand manifestations of control over said property, he was referring to no other than the *animus possidendi* and the *corpus possessionis*; rules of law which date back to ancient Roman legal doctrine: to be possessor, one must intend to possess, and must also be in control of what is intended to be possessed.<sup>8</sup>

Translated to the international law sphere, this meant that the mere acquisition of sovereignty without demonstrated State authority could not satisfy the "corporeal" requisite necessary for sovereignty to be evidenced.

[Pending information will be provided in the final manuscript]

### **3. Key International Conflicts: Cases of Contested Territories [Working Draft]**

Within the realm of international law and human rights, the status of territories facing disputes over sovereignty or lacking international recognition presents, as anticipated,

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<sup>7</sup> *Island of Palmas (The Netherlands / The United States of America)*, above n. [3], p. 9.

<sup>8</sup> Smith 1896, p. 281.

complex legal and ethical challenges. This section will delve into key cases that offer critical legal insights into the state of human rights within contested territories. These scenarios encompass regions embroiled in sovereignty disputes between multiple States, as well as territories seeking recognition on the international stage. Accordingly, examining these cases provides valuable perspectives on the intersection of territorial disputes and human rights protections.

One notable example is the case of Western Sahara, a territory disputed between Morocco and the Polisario Front. The people of Western Sahara have long sought self-determination, yet the territory remains under Moroccan control, leading to ongoing human rights concerns. The United Nations Mission for the Referendum in Western Sahara (MINURSO) has documented instances of human rights abuses, including restrictions on freedom of expression, assembly, and association, as well as allegations of arbitrary detention and torture.

Similarly, the situation in Crimea following Russia's annexation in 2014 has raised significant human rights concerns. Despite Russia's assertion of control, Ukraine and many other States continue to regard Crimea as Ukrainian territory. Reports from international human rights organizations highlight violations such as restrictions on freedom of speech, assembly, and religion, as well as persecution of ethnic and religious minorities.

In the context of unrecognized territories, the case of Northern Cyprus provides insights into human rights challenges in such areas. Following the Turkish invasion in 1974, Northern Cyprus declared independence, but it is recognized only by Turkey. The international community regards Northern Cyprus as part of the Republic of Cyprus. Human rights organizations have documented issues such as restrictions on freedom of expression, discrimination against Greek Cypriots and Maronite minorities, and the displacement of Greek Cypriot residents.

These key cases illustrate the complexities and challenges surrounding human rights in territories where sovereignty is contested or unrecognized. They underscore the importance of addressing human rights violations in such contexts and finding peaceful, just, and sustainable solutions to territorial disputes.

[Pending information will be provided in the final manuscript]

#### **4. Dynamics on State Recognition [Working Draft]**

The recognition of States stands as a cornerstone of international law, serving as a linchpin for diplomatic relations, legal obligations, and political legitimacy in the global arena. Across the spectrum of international interactions, the act of recognition signifies acknowledgment, acceptance, and engagement with entities seeking to assert their sovereignty and authority on the world stage. As such, the dynamics of state recognition hold profound implications for the maintenance of international order, the protection of human rights, and the resolution of conflicts.

In addition to the Montevideo Convention on the Rights and Duties of States of 1933 criteria, customary international law and evolving standards of recognition play a significant role in shaping the criteria for statehood and government recognition. Customary practices, diplomatic protocols, and regional agreements often influence the recognition decisions of States and international organizations, contributing to the evolution of recognition norms over time.

[Pending information will be provided in the final manuscript]

#### **5. (Un)Recognized Issues in International Decisions? [Working Draft]**

At the heart of the discourse on human rights lies the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948. The UDHR enshrines a comprehensive set of rights and freedoms, including civil, political, economic, social, and cultural rights, which are deemed universal, indivisible, and interdependent. These rights serve as a touchstone for assessing the legitimacy and accountability of states and governments, irrespective of their recognition status.

In line with this soft-law piece of international law, the European Convention on Human Rights stands out as the ultimate authority in terms of hard-law sources of international law that aim to protect human rights in the European region. Indeed, article 1 of this instrument determines that the contracting States shall secure to everyone within their jurisdiction the rights and freedoms set forth in the treaty.<sup>9</sup>

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<sup>9</sup> European Convention on Human Rights, opened for signature 26 December 1950, Treaty Series Vol. 165, p. 19, entered into force 26 December 1953, art. 1.

This section will analyze the Ukraine v. Russia (Re Crimea) case, from December 2020. A salient section is:

*138. Another exception to the principle that jurisdiction under Article 1 is limited to a State's own territory occurs when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration (see Loizidou (preliminary objections), cited above, § 62; Cyprus v. Turkey, cited above, § 76; Banković and Others, cited above, § 70; Ilaşcu and Others, cited above, §§ 314-16; and Loizidou (merits), cited above, § 52). Where the fact of such domination over the territory is established, it is not necessary to determine whether the Contracting State exercises detailed control over the policies and actions of the subordinate local administration. The fact that the local administration survives as a result of the Contracting State's military and other support entails that State's responsibility for its policies and actions. The controlling State has the responsibility under Article 1 to secure, within the area under its control, the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified. It will be liable for any violations of those rights (see Cyprus v. Turkey, §§ 76-77).*

[Pending information will be provided in the final manuscript]

## **6. Issues of Attribution in State Responsibility [Working Draft]**

[Pending information will be provided in the final manuscript]

## **7. Towards a Pathway to Recognize Human Rights in Unrecognized States [Working Draft]**

[A set of soft-law suggestions will be provided in the final manuscript]

## **8. Final Remarks [Working Draft]**

This paper concludes that the disputed nature of the territory within the Nagorno-Karabaj conflict runs in a different layer from State responsibility for human rights violations: building on the ECHR judgment and the longstanding State practice, a State

exercising what Max Huber identified as continuous display of authority has the obligation to ensure the enjoyment of human rights in the territory in dispute.

This responsibility can not be tied to the disputed nature of the territory as such, as this could deprive individuals from the enjoyment of the most basic human rights until the territorial dispute is resolved.

Further conclusions will be drawn considering:

- The political aspect of the dispute (these may bare no consequences in the respect for the human rights of the population in Nagorno-Karabaj);
- The consideration that the territorial dispute naturally creates obligations for the State exercising control over the territory; and
- The assertion that, in case of disputed control, the disputing States must both adhere to human rights obligations to the extent possible of their own authority.

[More final conclusions to be included in the final manuscript]