

Chapter 2

Puppet States: A Growing Trend of Covert Occupation

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Abstract This article deals with what it defines as *puppet states* or instances of *covert occupation*. In order to bypass the political burden and especially the legal obligations which international humanitarian law and general international law impose on the occupying power, a growing trend has come into place for states to create secessionist entities within another state. These secessionist entities, which have all outside aspects of a de facto state, are in fact effectively controlled by their sponsor state. Furthermore, the sponsor state not only establishes the puppet state through military force, but also controls its everyday life through the use of military, economic and political means, leading to a de facto annexation of the given territory. Five regions in the world are in this situation, while a sixth is under creation in Eastern Ukraine. Northern Cyprus, Nagorno-Karabakh, Transnistria, South Ossetia and Abkhazia can all be defined as puppet states. The unclear status of these regions makes them areas of impunity, regions which largely fall outside the implementation of international humanitarian law. The present paper intends to present this phenomenon and unveil the legal gaps that enable the use of puppet states for escaping the burden of international humanitarian law.

Keywords Puppet state • Covert occupation • International humanitarian law • Human rights law • Statehood • Occupation • Armed conflict • Transnistria • Independence

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2.1 Introduction

An interesting phenomenon has gained traction around the world in the last couple of decades, namely the phenomenon of puppet states.¹ While they are by no means a new occurrence, the post-war development of international law in the direction of human rights accountability, the development of the body of international humanitarian law (IHL) and, most importantly, the exclusion of occupation as a legitimate title to territory have presented the puppet state as roughly the only solution for translating military and economic might into additional territory while circumventing most legal and political hurdles. In other words, in a world where annexation by occupation is both made illegal and de-legitimised at a political level and where occupation comes with a restraining set of rules and obligations, a puppet state offers the perfect venue for occupation with impunity. In this sense, a puppet state is a form of covert occupation, offering all of the advantages of occupation while eluding the direct political costs and the obligations imposed by IHL. In a further sense, this covert occupation translates into a prolonged state of *de facto* annexation.

By far the most enduring example of a puppet state is that of Northern Cyprus. However, the fall of Yugoslavia and of the Soviet Union brought a boom to this phenomenon. While the puppet states of the former Yugoslavia have all been liquidated in one form or another, the puppet states of the former Soviet Union, including Abkhazia, South Ossetia, Transnistria and Nagorno-Karabakh, have become near permanent realities of today's world. Most disturbingly, Russia is in

¹ While being mainly used in political science literature, the term “puppet state” (or “état fantoche” in French) has been adopted by a handful of legal scholars to refer to entities which, while preserving the external appearance of a regular state, are fully dependent on and controlled by a foreign state. Among the legal scholars who used this term more than in passing are Krystyna Marek, James Crawford and Joe Verhoeven. However, none of them dwelled on the topic at length: a more extensive study on puppet states is yet to be written. Despite the use by some legal scholars, the term has never made its way into mainstream legal scholarship or practice nor has been used by any relevant source of law so far.

the process of creating yet another puppet state in Eastern Ukraine. Veiling occupation as statehood has essentially become an open road to circumventing IHL and achieving territorial expansion at the cost of another state. This road is not only available to powerful countries such as Russia, but to all sorts of states, notwithstanding their power or influence, as it has been proven by the example of Armenia's puppet Nagorno-Karabakh.

Even more alarming than the phenomenon itself or its solidity are the grave effects that accompany it, which can hardly be overstated. Not only do the sponsors of these entities escape the burden of IHL, but puppet states essentially constitute black holes in international law as far as human rights protection is concerned as well as easy venues for trafficking and illegal arms sale for the benefit of their sponsor state, making them zones of almost total impunity.

As will be described, this impunity comes largely from a regulation gap in international law. With the exception of two isolated instances of case law which will be discussed below, there is, at this point, no source of law defining these entities or dealing with them directly. Unfortunately, this gap in law has not been satisfactorily filled by academic work either. While there is some scarce scientific debate in the field of political science on this subject, the legal research on the issue has been almost nonexistent. Only a handful of legal scholars, such as James Crawford² or Joe Verhoeven,³ briefly discuss puppet states but unfortunately dedicate just a few paragraphs at most to them. However, the great majority of legal scholars that do discuss these entities force them, for the sake of consistency, into models that do not suit them, and thus cannot explain them. In most cases, the puppet states are forced under the large and vague umbrella of unrecognised states or *de facto* states, with important qualifications being sidelined in the process of fitting them within this category. Unfortunately, wrongly categorising these entities is misleading. Exactly what separates puppet states from *de facto* states makes them cases of covert occupation. By using the wrong terminology of *de facto* or unrecognised states, these authors perpetuate the confusion that allows the perpetrators to bypass international law regulations.

The standpoint from which the current research starts is that until these entities are not correctly defined in their own right, they will continue to satisfy their role as a veil for occupation, sheltering their sponsor from the outreach of IHL. The current paper attempts to explain the way in which puppet states function as tools for circumventing IHL. In doing so, it starts from three hypotheses: (1) puppet states constitute a separate category of territorial entities which should be understood in their own right, (2) puppet states are a form of covert occupation and (3) the regime of covert occupation shields the sponsor state from responsibility under IHL.

² Crawford 2006, pp. 63, 75, 78–83, 87 and 156–157.

³ Referring to puppet states in French as “*états fantoche*”. See Verhoeven 2000, pp. 57 and 70; and Verhoeven 1975, pp. 54 and 64.

2.2 Defining the Concept of Puppet States

An encompassing debate over statehood in general falls beyond the limited scope of the present paper. However, in order to be able to place puppet states within their context, some brief background should be given. Due to the lack of any codification of what a state is, the criteria laid down in the 1933 Montevideo Convention on the Rights and Duties of States has become the point of reference in defining statehood. The four Montevideo criteria are as follows: (1) a permanent population, (2) a defined territory, (3) government and (4) capacity to enter into relations with the other states. While the first two requirements and the last requirement are of a more straightforward nature, in discussing the third a certain nuance needs to be highlighted. It has been established in international law that the requirement is one for an effective and independent government and not just any form of government. Effectiveness refers predominantly to the existence of a coherent structure of authority, taking whatever form, and which is able to administer and regulate the territory that it controls.⁴ In addition, most international law scholars agree on the point that an effective government is one that is independent of any other authority.⁵ This criterion of non-dependence as a basis for an effective government can be found in opinions of international legal bodies and in the *opinio juris* and practice of states; as such, it can be considered to have become a principle of customary international law.⁶

The debate over whether recognition should be one of the criteria for statehood, coupled with the fact that without a certain degree of recognition, the ability of a state to effectively act within the world community is fundamentally impaired, gave birth to the separate category of *de facto* states. These are entities that satisfy the Montevideo criteria but are not yet widely accepted by the other states. What sets the puppet states apart from the *de facto* states is exactly their lack of independence as defined above. Their existence is fundamentally dependent upon the support of another state (termed *sponsor state* in this paper).

Some international legal scholars propose a further category of states: nascent states or states in *statu nascendi*, meaning states in the process of formation. These entities share with the puppet state their usual dependence on foreign assistance. Nonetheless, three factors separate them from the puppet states. First and foremost, there is, in the case of nascent states, a wide agreement within the international community on the opportunity of creating a new state. The claim to statehood of such an entity has gained wide enough acceptance at the international level, but the state still has to develop itself into a full-fledged state with an efficient and independent administration.

Secondly, despite the factual dependency on the assistance it receives, a nascent state acts largely independently from its sponsors and not as an appendix of

⁴ Wallace-Bruce 1994, p. 66.

⁵ Wallace 2005, p. 63.

⁶ Ibid.

their interests, as is the case for puppet states. The best example in this sense is the one of Kosovo. The extensive role of foreign troops in maintaining both the internal and the external security of Kosovo still keep it in the ranks of nascent states. However, while maintaining diplomatic links with 94 states that recognise it, a number of NATO member states that maintain troops in Kosovo and thus sustain its existence, such as Romania or Spain, do not recognise Kosovo as a state. Moreover, they were very vocal in their opposition to Kosovo's statehood, submitting opinions in this sense to the International Court of Justice (ICJ) in the wake of its *Advisory Opinion on Kosovo*. Thus, support for a nascent state does not automatically translate to political synchronisation, not to speak of a top-down type of political command as it is the case for most puppet states.

Lastly, being in *statu nascendi* is, as the name itself denotes, a transitory phase and not one which is intended as permanent. A nascent state's birth is being sponsored by the international community as long as it is in the process of attaining the institutions and administrative controls needed for its functioning. The objective of this project was to bring the nascent state to self-sustainability. Once this process reaches its goal, the new state is left in an independent position. Many former colonies, protectorates or trust territories went through a period of being nascent states before being able to fulfil factual statehood criteria. One of the newer examples is East Timor, whose path to statehood was recognised in 1999 by UN Security Council Resolution 1272,⁷ and it was subsequently aided by the other states and the organisation in attaining this goal. Now East Timor is a full-fledged state.

Therefore, it can be summarised that there are four criteria that define a puppet state, or rather sets one apart from either de facto states or nascent states. First, puppet states are not self-sustainable. The existence of all of them is insured by the sponsor state, either economically, militarily, politically or in all these respects. Puppet institutions dramatically rely economically or militarily, or in both regards, on the assistance of another state.

Secondly, this reliance is also translated at the political level. The sponsor controls, fully or in part, the politics of its puppet. Moreover, political decisions are mostly passed down to the puppet by its sponsor. In a better case scenario, the sponsor and the puppet act in concert in their political decision-making. In other words, the puppet acts as an appendix of its sponsor, as if it would be just a part of the sponsor's state or, at most, an autonomous region. This does not mean that the puppet does not retain some degree of autonomy or that it does not exert its own type of influence on the sponsor, but never to the degree to which it could be able to undermine the sponsor's control.

Thirdly, the community of states do not acknowledge its existence. Puppet states are (1) totally unrecognised, as in the case of Transnistria or Nagorno-Karabakh; (2) only recognised by their respective sponsor states, like Northern Cyprus; or (3) recognised by their sponsor state and other countries with strong political links with the sponsor state, as in the cases of South Ossetia and

⁷ UN Security Council (1999) Resolution 1272 (1999), UN Doc. S/RES/1272.

Abkhazia. Thus, they never command the support of enough states to enable them to function in the international arena by joining international organisations or signing up to multilateral treaties. It goes without saying that such a state of affairs only consolidates the dependency of the puppet on its sponsor.

Fourth and lastly, the existence of a puppet state is devised to be quasi-permanent. Differently put, in contrast with *de facto* states or nascent states, the objective of a puppet state is not its independence, but rather its integration with the sponsor state. While that cannot be achieved, maintaining the status-quo is the main objective as it represents a form of *de facto* annexation. This having been said, it does not mean that changing political context cannot bring the end of a puppet state, as happened in the cases of Republika Srpska or Herceg-Bosna in today's Bosnia and Herzegovina. What matters is that the objective of its creation remains that of bringing its territory under the control of its sponsor, and not its eventual independence.

From the four criteria described above, it can be concluded that in effective terms, a puppet state is nothing else than a form of occupation, what the present paper terms a *covert occupation*. For the sake of better understanding the mechanics of a covert occupation, the example of Transnistria (Pridnestrovian Moldavian Republic or PMR) will be discussed below.

2.3 Transnistria: A Puppet State Case Study

For over two decades, Transnistria has been the puppet state of the Russian Federation on the territory of the Republic of Moldova. The decision to choose Transnistria rather than the latest puppet state, the Confederation of Novorossiia in Eastern Ukraine, as a case study for this paper is based on three considerations. Firstly, an already formed puppet state with a longer history can be better used to illustrate how such an entity is formed and maintained. Secondly, access to accurate information on Novorossiia is hard to obtain at this moment, taking into account the fact that the entity is currently in the process of formation. Thirdly, Transnistria and Novorossiia share not only the same sponsor, Russia, but also the tools used by it to support and exert influence upon these regions.

To start with, Transnistria's economic survival is almost entirely dependent on Russia. The most crucial means of economic support come through Russia's delivery of free gas to Transnistria.⁸ These free gas deliveries currently amount to a sum exceeding one billion Euros.⁹ The PMR authorities gather money from the population for this gas that they receive for free, thus collecting important budgetary revenues.¹⁰ This type of economic support from the sponsor is doubled by

⁸ Stăvilă 2010, interview with author.

⁹ Popescu 2006, p. 12.

¹⁰ Stăvilă 2010, interview with author.

large subsidies from Moscow that keep the Transnistrian industry alive.¹¹ Furthermore, Russia's control over Transnistrian industrial assets is not only done by capitalisation and subsidising but also by direct ownership. Russian capital close to the governing circles of the Kremlin owns all relevant industry in Transnistria,¹² including the Rabnita steel plant and most importantly the vast electric plant of Cuciurgeni, which functions on free Russian gas and is the main source of revenue in the PMR.¹³ Moreover, by any standards, the Transnistrian market is almost fully incorporated in the Russian one at all levels,¹⁴ most importantly in the banking and financial sectors.

Additionally, in the social sphere, Russia took over most of PMR's social responsibility role by paying benefits to the people in the region. Among others, it officially pays all retired people living in Transnistria an important bonus to their pension, notwithstanding the passport they hold, be it Moldavian, Transnistrian, Ukrainian, Russian, Romanian or still Soviet.¹⁵ Moreover, Russia directly pays to Transnistrian mothers the sum of 5000 US Dollars upon giving birth to a child.¹⁶ This policy of the Russian state only covers the territory of the Russian state and Transnistria. Such sums are not being paid to ethnic Russian mothers or even Russian citizen mothers living abroad, either in Moldova proper, in other states, or in any other breakaway republic in the former USSR, showing in a straightforward manner that Russia deals with the territory and population of Transnistria as *de facto* its own. By all standards, in the terms used by Nicu Popescu,¹⁷ Transnistria outsourced its statehood to Russia.

Last but not least, the economic support lent by Russia to Transnistria is coupled with economic pressure on Moldova.¹⁸ Russia has consistently raised gas prices to Moldova and has repeatedly imposed restrictions on meat, vegetables or wine imports from Moldova. It is relevant to note that these restrictions were always imposed whenever Moldova tried to take bolder steps in the Transnistrian issue or distance itself from the Muscovite standpoints. Subsequently, as Moldova's economic balance largely depends on its exports to Russia, these trading restrictions applied at the right moments often managed to bring Moldova into compliance with Russian positions and interests.

Yet the outsourcing of statehood does not limit itself to the economic sphere—it is also translated into the government, administration and defence spheres.

¹¹ Popescu 2006, p. 12.

¹² What is also pertinent to note at this point is the quite massive armament producing plants in Transnistria which are also controlled by Russia. Such plants like Electromash Tiraspol export arms to states in conflict and other secessionist entities—Deleau 2005, Document 2 of the annexes.

¹³ Stăvilă 2010, interview with author.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Popescu 2006.

¹⁸ Ibid., p. 12.

Russia has been crucial in the administration of the PMR. The security institutions and even key ministries in Transnistria are traditionally headed by Russian citizens and officials directly delegated by state institutions of the Russian state¹⁹ with eloquent examples being the secret services, the Defense Ministry and the Transnistrian Central Bank.²⁰ Going one step further, few of the PMR officials are born in Transnistria or have any link with the region. The former long-standing PMR President himself, Igor Smirnoff, moved to Transnistria from the Soviet Far East in 1987, just two years before the conflict started.

In the military sphere, the support of the Russian 14th Army in creating and maintaining the PMR cannot be overstated. Not only did it ensure the creation of the PMR by defeating the Moldavian Army, but Russian peacekeepers have been *de facto* protecting the borders of the Transnistrian secessionist entity. A massive number of officers and even simple soldiers of the Russian 14th Army moved to the Transnistrian military forces. As it stands now, the Transnistrian military forces are mainly composed of Russian soldiers and officers formerly or still part of the Russian 14th Army stationed in the region.²¹ To give only the most relevant example, in December 1991, the Russian 14th Army's highest commander left his post and became head of the newly formed military forces of the PMR. He was followed by his Chief of Staff who became PMR's Defense Minister.²² It is hard to imagine that such an act would happen without the acknowledgement and control of the Russian forces and that the line of command with Moscow would have been broken. This process sealed the creation of the so-called Dniester Guards of the PMR, which is nothing more than an appendage to the Russian troops. Furthermore, as already shown, the commanders of the Russian forces in Transnistria not only gathered a lot of indirect political power, but held official positions in the PMR hierarchy.²³ Most importantly, the Russian troops were primordial in the creation of the PMR, and this was indirectly acknowledged by the fact that the 1992 ceasefire 'bilateral agreement' was signed by Russia and Moldova as combating parties, without including the PMR in any way.

Furthermore, there is ample evidence of the premeditated intervention of the Russian 14th Army in the conflict and of the arm and ammunition transfers from Russian to Transnistrian forces not only before and during the 1992 war,²⁴ but also after the ceasefire agreement had been signed.²⁵ On 20 March 1998, Russia even signed an official agreement with the PMR by which it transferred "weapons, ammunition and surplus military property" as well as "immovable [military]

¹⁹ *Ibid.*, p. 11.

²⁰ King 2001, p. 539.

²¹ Vahl and Emerson 2004, p. 8.

²² King 2001, p. 539.

²³ *Ibid.*

²⁴ King 2000, pp. 194–196.

²⁵ Akgün, p. 54.

property” to the Transnistrian forces and equally shared the benefits of selling the rest of the armament.²⁶

The European Court of Human Rights (ECtHR) recognised this situation in its decision in the *Ilaşcu* case:

the authorities of the Russian Federation contributed both militarily and politically to the creation of a separatist regime in the region of Transdniestria, which is part of the territory of the Republic of Moldova [...] and even after the ceasefire agreement of 21 July 1992 the Russian Federation continued to provide military, political and economic support to the separatist regime [...], thus enabling it to survive by strengthening itself and by acquiring a certain amount of autonomy vis-à-vis Moldova.²⁷

Similar states of affairs are present in all the other puppet states. The modes of operation might take different forms, but the effect is the same: a state of covert occupation. The hypothesis of the present research, that a puppet state is nothing but an appendix of its sponsor and a case of covert occupation, is supported by the two instances of case law which directly dealt with this question. The first time international law was confronted in a plenary manner with the phenomenon of puppet states was during the early 1930s in the Manchurian crisis. The so-called Lytton Commission was requested to present a report to the League of Nations on the Empire of Japan’s seizure of Manchuria. The Lytton Commission Report unequivocally concluded that Manchukuo, the quasi-stately entity established by Japan in Manchuria, was not “a genuine and spontaneous independence movement”²⁸ due to its lack of an independent government. The second example comes in the context of the disbanding of Yugoslavia. The International Criminal Tribunal for the Former Yugoslavia (ICTY) concluded in the *Prosecutor v Rajić* case that Croatia exercised such control over Herceg-Bosna that the latter was not in fact a state, but an extension of the former.²⁹

2.4 Puppet States as Areas of Impunity

After proving that puppet states are a category in themselves and should not be confused with either de facto states or nascent states, and that in fact they are instances of covert occupation, the present research moves to show how such a state of covert occupation benefits the sponsor state. As hypothesised, compared to

²⁶ Agreement on Questions Relating to Military Property (Russian Federation and the Moldavian Republic of Transdniestria), signed on 20 March 1998 in Odessa, Ukraine, Articles 1 and 5.

²⁷ ECtHR, *Case of Ilaşcu and others v Moldova and Russia*, Grand Chamber Judgment, 8 July 2004, Appl. No. 48787/99 (*Ilaşcu*), para 382.

²⁸ The League of Nations 1932.

²⁹ ICTY, *Prosecutor v Ivica Rajić*, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, 13 September 1996, Case No. IT-95-12-R61, para 26.

a regular form of occupation, this form of covert occupation not only has a lower reputational cost on the sponsor state, but it enables it to act outside the limits imposed by IHL.

2.4.1 Obligations of the Sponsor State Under IHL

2.4.1.1 Responsibility Under Common Article 2(1) of the Geneva Conventions

To start with, the sponsor state holds total responsibility under IHL over the acts of its own organs during the armed conflict.³⁰ According to Common Article 2(1), the Geneva Conventions apply even if the state of war is not recognised by one of the belligerents.³¹

The situation becomes much more complicated in respect of the sponsor state's responsibility over the humanitarian law violations of its puppet. The ICJ decided in the 1986 *Nicaragua* case that in order for the USA to be responsible for humanitarian law and human rights violations of the Nicaraguan Contras, "effective control over the military or paramilitary operations in the course of which the violations occurred" needs to be proven.³² The threshold of effective control imposed by the Court was an exceptionally high one. In the eyes of the ICJ, the "decisive" financing, organising, training and supplying of a military force do not transfer responsibility of its humanitarian law violations to the sponsor.³³ Not even when the sponsor plans the military operations of the given force and has an overall control over it, is it responsible under the law of war. The Court offers in fact its test for "effective control": violations of international humanitarian law are attributed to the sponsor state when it plans, directs and supports the military operation directly, with only the execution, or part of it, being outsourced to the military group it controls.³⁴ In other words, the test is not one of dependence (not even

³⁰ If it is clear when the application of Common Article 2(1) commences [see Article 6(1)], it is more challenging to identify the end moment of its application. The reading of Article 6 of the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, opened for signature on 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) (GC IV), Article 2 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, opened for signature 8 June 1977, 1125 UNTS 609 (entered into force 7 December 1978), and the ruling at para 70 in ICTY, *Prosecutor v Duško Tadić*, Judgement, 15 July 1999, Case No. IT-94-I-A (*Tadić*) leads to the conclusion that a conflict does not come to conclusion simply when a peace or ceasefire agreement is signed, but when the intensity of fighting on the ground subsides below the intensity of an armed conflict.

³¹ GC IV, above n 30.

³² ICJ, *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Judgment, 27 June 1986, [1986] ICJ Rep 14, para 115.

³³ *Ibid.*

³⁴ *Ibid.*, para 86.

one of complete dependence), but one of a high degree of effective control, including the command over each military operation in which violations occurred.

The ICTY's 1999 *Tadić* case has been cited as proof that the threshold for the attribution of conduct on the basis of direction or control has been lowered from "effective control" to "overall control".³⁵ However, regardless of the ICTY's convincing arguments, the ICJ firmly dismissed the move towards a test of "overall control" in its *Bosnia Genocide* judgement, pointing out the fact that the ICTY was adjudicating on a completely different matter and in a completely different context.³⁶

As it stands now, the test put forward by the ICJ effectively thickens the smoke-screen that shelters sponsor states from responsibility under the law of war. The main reason for such a statement is that the ICJ's test paradoxically requires a higher level of proof in order for violations of humanitarian law by the puppet state to be attributable to the sponsor than that required for the attribution of acts of its own organs. Consequently, the use of puppet states becomes especially advantageous in this context. On the one hand, under Article 7 of the International Law Commission Draft Articles on State Responsibility, a state is responsible for the acts of its organs or of a person empowered to exercise elements of governmental authority even when they exceed their authority or contravene instructions that they were given, whenever they act in their official capacity.³⁷ The commentaries to this article make plain that even *ultra vires* or unauthorised acts are attributable to the state and entail the state's responsibility.³⁸ On the other hand, the state can take refuge behind the very same excuses if it chooses to create and use a puppet state instead of its own organs. If, for example, a soldier of the sponsor state breaches IHL provisions following no official instructions, he nonetheless triggers his state's responsibility for the act. If the same soldier is transferred to the military forces of the puppet state, which are under the overall control and direction of the sponsor, and he commits the same humanitarian law violations, still without following any official instructions, his act is not attributable to the sponsor state. Just a change of uniform, with no alteration of circumstances or level of control protects the sponsor state from responsibility under IHL. Regrettably, the high threshold imposed by the ICJ acts as yet another incentive for a state to act covertly through the use of a puppet state, rather than overtly through the use of its own organs in the context of an international armed conflict.

³⁵ *Tadić*, above n 30, paras 116–145.

³⁶ ICJ, *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgment, 26 February 2007, [2007] ICJ Rep 43, paras 399–400.

³⁷ International Law Commission 2001, Article 7.

³⁸ *Ibid.*: "The State cannot take refuge behind the notion that, according to the provisions of its internal law or to instructions which may have been given to its organs or agents, their actions or omissions ought not to have occurred or ought to have taken a different form. This is so even where the organ or entity in question has overtly committed unlawful acts under the cover of its official status or has manifestly exceeded its competence. It is so even if other organs of the State have disowned the conduct in question".

The ICJ's test is so restrictive that it makes it very hard, if not impossible, to ever demonstrate the required level of *effective control* before this Court. The fact that this argument could never be made successfully before the ICJ speaks for itself. In conclusion, the very high qualification threshold imposed by ICJ's *effective control* test virtually shields the sponsor state when making use of the armed forces of its puppet.

2.4.1.2 Responsibility Under Common Article 2(2) of the Geneva Conventions

Common Article 2(2) deals with the application of IHL during a situation of occupation. The law of belligerent occupation can apply in two different circumstances. Firstly, it can apply concomitantly with Article 2(1). According to the commentary to the Geneva Conventions:

So far as individuals are concerned, the application of the Fourth Geneva Convention does not depend upon the existence of a state of occupation within the meaning of the Article 42 [of the 1907 Hague Conventions] referred to above. The relations between the civilian population of a territory and troops advancing into that territory, whether fighting or not, are governed by the present Convention. There is no intermediate period between what might be termed the invasion phase and the inauguration of a stable regime of occupation. Even a patrol which penetrates into enemy territory without any intention of staying there must respect the Conventions in its dealings with the civilians it meets.³⁹

Thus, the law of occupation applies in respect of the relation with the civilians encountered as soon as soldiers of the sponsor state advance into the territory of the mother state.

Secondly, the law of occupation applies once “a stable regime of occupation” begins. This takes place after the initial invasion and once the puppet state is firmly established and in control of the given territory. This stage is typically simultaneous with the moment when the military situation on the ground subsides and the hostilities habitually end. Using a term favoured by political scientists, for all intents and purposes, the conflict “freezes” and little, if any, military clashes occur. With the end of hostilities, IHL ceases to apply under Common Article 2(1) of the Geneva Conventions.⁴⁰ Nonetheless, IHL can continue to apply under Common Article 2(2) of the Conventions which covers occupation.

According to Article 42 of the 1907 Hague Conventions: “Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.” Yet, puppet states are created by design and often with the intent to evade the test put forward by Article 42. There certainly are a few forthright cases in which the sponsor state deployed its army in big numbers in support of its puppet. Northern Cyprus is one such case. Consequently, in the

³⁹ Pictet, Article 2.

⁴⁰ See above n 30.

case of Northern Cyprus, we can speak of a clear instance of occupation under the definition above, and thus falling under IHL rules. There is thus no covert occupation in Northern Cyprus, the establishment of the puppet state of the Turkish Republic of Northern Cyprus being a political calculation meant to diminish the reputational cost on the part of Turkey, rather than a way of circumventing IHL. Consequently, the sponsor state, Turkey, is bound by the provisions of the 1949 Fourth Geneva Convention (GC IV), especially Section III (Articles 27–34 and 47–78) dealing specifically with belligerent occupation.

The law of belligerent occupation found in the aforementioned section of the GC IV regulates the relationship between the occupier, the occupied state and the population under occupation. Article 29 of the Convention clearly lays the responsibility for the occupied territory and its inhabitants on the shoulders of the occupying power: “The Party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.”⁴¹

Important to note is the fact that the Article stresses the dual responsibility under international law of the individual who commits the violation and of the state whose agent he is. These two responsibilities apply in parallel, being complementary to one another. The Convention continues by spelling out the rights enjoyed by the population of the occupied territory, such as the prohibition of any reprisals against civilians and their property (Article 33), the prohibition of deportation (Article 49), the prohibition against compelling the occupied population to serve in the armed forces of the occupier (Article 51) or to take part in military operations against their country (Article 52), respect for the person, honour, family rights, religious convictions and other customs or cultural and spiritual heritage monuments of the occupied population (Article 27), the obligation to offer humane conditions to the detained persons and to allow these detainees to be visited by delegates of the protecting power and of the International Committee of the Red Cross (Article 76), and the obligation to provide medical care, public health and hygiene to the occupied population (Article 56), as well as allowing the functioning of the National Red Cross or Red Crescent Society and other relief societies on the occupied territory (Article 63).

Furthermore, under Articles 54 and 64 GC IV, the occupying power should, as a general rule, keep in place the national laws and institutions of the occupied state. Very little leeway is offered to the occupier to alter the laws or make changes in the institutional makeup of the region they control. The two exceptions under which the occupier can modify the legislation of the occupied territory are spelled in Article 64 of GC IV: (1) “in cases where they [the laws] constitute a threat to its security or an obstacle to the application of the present Convention” and (2) under the need to enact “provisions which are essential to enable the occupying power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory and to ensure the security of the occupying power, of the

⁴¹ GC IV, above n 30.

members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them".⁴² Thus, these exceptions only allow the occupying state limited leeway in bringing about changes to the legal or institutional make-up of the region under occupation. Article 54 further lays down the condition that public officials may only be removed when they refuse to fulfil their tasks.⁴³ Nevertheless, judges cannot be removed from their posts for any reason.⁴⁴

However, as shown above, the main purpose of establishing a puppet state is to achieve a state of *covert occupation*. In these cases, the occupation is instituted and maintained by the military troops of the puppet state and not of the sponsor state. Nevertheless, this army of the puppet state is often made up of former troops of the sponsor state and is under direct, yet covert, command and support of the sponsor state. In other words, as with the entire entity itself, its army is just a façade behind which stands the sponsor state's military.

In this context, it would follow that an occupation by the forces of a puppet state is merely an occupation by its sponsor, and thus imposed upon this sponsor are all the aforementioned obligations of GC IV and the Additional Protocols. However, despite the apparent logic of this argument, it needs to be stressed that at this point, there is no state practice or case law that could prove the acceptance of such a synonymy by the international community.⁴⁵ On the contrary, all United Nations Security Council Resolutions on the situation name the puppet state as the occupier, with very few allusions to the control of the sponsor. To give only one example, Resolution 822 (1993) concerning the Nagorno-Karabakh conflict speaks of the "local Armenian forces", with just vague hints to the involvement of Armenia.⁴⁶

Thus, there currently seems to be a gap in the application of IHL. If the sponsor state has effective control over a territory through its command over the puppet regime, but its forces do not directly occupy the territory under question, the sponsor state escapes the burdens imposed by IHL. Moreover, not only does the sponsor state escape any obligations imposed by IHL, but these obligations are not transferred to

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ A possible exception might be found in the UK Military Manual, which reads at paragraph 11.3.1 that "[i]n some cases, occupying troops have operated indirectly through an existing or newly appointed indigenous government. This type of occupation is not discussed in detail in this chapter. In such cases, despite certain differences from the classic form of military occupation, the law relating to military occupation is likely to be applicable. Legal obligations, policy considerations, and external diplomatic pressures may all point to this conclusion."—UK Ministry of Defence 2004. It is, however, unclear if this passing and un-detailed mention applies to the case of puppet states. Anyhow, due to the use of the word likely, paragraph 11.3.1 can only be read as a guideline or recommendation, leaving the question of whether the creation and maintenance of puppet states should be equated with a state of occupation open. Moreover, such a stance has not been reflected in British state practice.

⁴⁶ UN Security Council (1993) Resolution 822 (1993), UN Doc. S/RES/822.

any other entity. The only way this set of obligations could be transferred to the puppet authorities is under the auspices of Common Article 3 of the Geneva Convention. This article deals with non-international armed conflicts. However, international law prescribes that an intervention by a state in support of armed opposition groups in another country internationalises the armed conflict if the intervening state is either controlling the military opposition group or is itself conducting military operations within the foreign territory.⁴⁷ This position is supported by the ICTY in its Appeals Chamber decision in the *Tadić Case*, which stated that:

[i]n the light of the above discussion, the following conclusion may be safely reached. In the case at issue, given that the Bosnian Serb armed forces constituted a ‘military organization’, the control of the FRY authorities over these armed forces required by international law for considering the armed conflict to be international was overall control going beyond the mere financing and equipping of such forces and involving also participation in the planning and supervision of military operations. By contrast, international rules do not require that such control should extend to the issuance of specific orders or instructions relating to single military actions, whether or not such actions were contrary to international humanitarian law.⁴⁸

Therefore, if the sponsor state controls a territory mainly through the puppet state’s forces, rather than deploying its own in larger numbers, a vacuum is created in the application of IHL. On the one hand, the support of the sponsor state internationalises the conflict, making Common Article 3 of the Geneva Conventions inapplicable and consequently releasing the humanitarian law burden from the shoulders of the puppet state. On the other hand, the limited use of its forces on the territory controlled by the puppet puts the sponsor state under the threshold of belligerent occupation, absolving it of any obligations under IHL.

2.4.2 *Obligations of the Sponsor State Under Human Rights Law*

It should be nonetheless mentioned that the sponsor state does not escape the burden of international human rights law. Responsibility for wrongful acts is primarily based on effective control over the territory where such an act is committed.⁴⁹ It is, however, very important to note that the *effective control* test for the application of human rights law is different from, and should not be confused with, the ICJ’s homonymous *effective control*/Nicaragua test for the application of IHL discussed above. As it will be shown below, the effective control test in human rights law, as defined by the ECtHR, has a much lower qualification threshold.

⁴⁷ Fleck 2008, p. 606.

⁴⁸ *Tadić*, above n 30, para 145.

⁴⁹ ICJ, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 1970*, Advisory Opinion, 21 June 1971, [1971] PCIJ Rep 16, para 118.

All through a long line of case law on the issue of human rights responsibility in puppet states, the ECtHR consistently upheld the principle according to which primary responsibility and liability for human rights violations in a puppet state rests with the sponsor state. The first case in which the ECtHR dealt with the issue of a puppet state is the *Loizidou v. Turkey Case*. In its judgement on the preliminary objections, the Court refuted Turkey's claim that the Turkish Republic of Northern Cyprus (TRNC) is not a puppet state but a democratic state established on the basis of its right of self-determination, and thus fully responsible for the breaches of law occurring on its territory.⁵⁰ The Court came to the conclusion that:

[b]earing in mind the object and purpose of the Convention, the responsibility of a Contracting Party may also arise when as a consequence of military action - whether lawful or unlawful - it exercises effective control of an area outside its 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 its armed forces, or through a subordinate local administration.

In this connection, the respondent government have acknowledged that the applicant's loss of control of her property stems from the occupation of the northern part of Cyprus by Turkish troops and the establishment there of the "TRNC". Furthermore, it has not been disputed that the applicant was prevented by Turkish troops from gaining access to her property.⁵¹

Therefore, apart from clearly establishing responsibility of the sponsor state for the human rights violations of the puppet state, the Court also stresses that the exercise of effective control does not need to be done through military means, as it is needed for the application of humanitarian law, but can also be achieved through the subordination of the puppet state's administration.

In *Ilaşcu and Others v Moldova and Russia* case, the ECtHR goes into a broader discussion on the ways in which the sponsor state can control its puppet. These means cover a wide range, from political, financial or economic support to the more straightforward military backing. According to the Court's judgement:

[t]he 'MRT', set up in 1991-1992 with the support of the Russian Federation, vested with organs of power and its own administration, remains under the effective authority, or at the very least under the decisive influence, of the Russian Federation, and in any event that it survives by virtue of the military, economic, financial and political support given to it by the Russian Federation.

That being so, the Court considers that there is a continuous and uninterrupted link of responsibility on the part of the Russian Federation for the applicants' fate, as the Russian Federation's policy of support for the regime and collaboration with it continued beyond 5 May 1998, and after that date the Russian Federation made no attempt to put an end to the applicants' situation brought about by its agents, and did not act to prevent the violations allegedly committed after 5 May 1998.⁵²

⁵⁰ ECtHR, *Case of Loizidou v Turkey*, Preliminary Objections, 23 March 1995, Appl. No. 15318/89, para 54.

⁵¹ *Ibid.*, para 62.

⁵² *Ilaşcu*, above n 27, paras 392-393.

It follows from the argument of the Court that even after the sponsor state vests the puppet with its own administration or military, it continues to be liable for its action if it has either (1) decisive influence over the decisions of the new administrative organs and/or (2) its aid, either military, financial, political, economic or of any other nature is indispensable to the puppet's survival.

In conclusion, under human rights law, the sponsor state has the full burden of responsibility for violations occurring on the territory of its puppet. In order to retain this responsibility, effective control of the sponsor does not need to be exercised through military means but can also be done through the subordination of the puppet state's administration. On the other hand, the sponsor state holds responsibility over the puppet state under the law of belligerent occupation only if it militarily occupies the territory in a direct manner using its own troops. If the occupation is done primarily through the troops of the puppet, the sponsor state escapes any obligations and responsibility under IHL, thus transforming the puppet states into a grey zone of total impunity for violations of the laws of war.

2.4.3 Obligations of the Puppet State

It is important to explain at this point that the puppet regime itself escapes any burden of responsibility under international law. As a general rule, states are traditionally seen as the primary guarantors and violators of human rights. Few exceptions exist from this rule. The first exception is made in the case of insurgencies. Despite the lack of agreement on a legal definition of insurgency, there is wide consensus in the academic and legal world that insurgents are actors in an internal conflict⁵³ and their obligations stem primarily out of Common Article 3 of the 1949 Geneva Conventions. However, as clarified above, the support offered to the puppet by the sponsor state internationalises the conflict, taking it out of the civil war framework and deeming Common Article 3 inapplicable to their case.

A second exception is that of national liberation movements (NLMs). These are in the words of Article 1(4) of the 1977 Additional Protocol I to the Geneva Conventions:

peoples [...] fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.⁵⁴

Therefore, NLMs derive their status out of their right to self-determination. However, the right to self-determination only applies to a very limited number

⁵³ Schoiswohl 2004.

⁵⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, opened for signature 12 December 1977, 1125 UNTS 3 (entered into force 7 December 1979).

of qualified peoples. The right exists either in the colonial context or as remedial secession in cases where the rights of a people were violated by the state, and no internal self-determination remedy was offered. However, none of the puppet states discussed in this research fulfils this set of criteria. Nonetheless, a case where a genuine claim for self-determination is supported and advanced with the critical aid of a third party state is not unthinkable. On the other hand, in these cases, the genuine self-determination claim gains the wide support of the international community, placing the entity under the category of a nascent state. State practice does not record any instance in which a genuine self-determination claim was solely advanced through the aid of a third party state against the will of the international community at large. Consequently, it is safe to conclude on this matter that while none of the regimes of the current puppet states qualify as NLMs, there is also little chance that any future such regime will.

A third exception is represented by the *de facto* states. The reasons puppet states do not qualify as *de facto* states were discussed in the first part of the paper. However, international case law exhibits an interesting paradox in this respect. While there is no instance of equating puppet states with *de facto* states for the purpose of establishing liability of these entities *per se* for breaches of international law, the differentiation was blurred when it came to the responsibility of the authorities of the puppet state or of private individuals acting on the territory of these entities for violations of international law.

The major break came with the establishment of the ICTY. Dealing with the crimes committed by individuals on the territory of the former Yugoslavia, the Court was directly faced with the issue of puppet states and the subsequent question of the extent of their leaders' liability before the Court. The Court saw fit to counter this possible issue of jurisdiction by laying down the broadest possible definition for a state. Rule 2 of the ICTY Rules of Procedure and Evidence stipulates in this respect that a state is a:

- (i) A State Member or non-Member of the United Nations;
- (ii) An entity recognised by the constitution of Bosnia and Herzegovina, namely the Federation of Bosnia and Herzegovina and the Republic Srpska; or
- (iii) A self-proclaimed entity *de facto* exercising governmental functions, whether recognised as a State or not.⁵⁵

Thus, the only characteristic required of an entity to qualify under this definition is for it to exercise governmental functions within a territory. No threshold for this capacity is further required. The objective of this broad definition is purely pragmatic. It attempts to make sure that no gaps would exist that could be construed to limit the Court's jurisdiction over exactly such entities as puppet states. The Court indeed indicted a number of senior leaders of puppet states like Republic Srpska, ranging from simple individuals to the political head of the regime, Radovan Karadžić.

⁵⁵ UN 2009 International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991: Rules of Procedure and Evidence, UN Doc. It/32/Rev.44, Rule 2.

The United States Court of Appeals followed suit. In its *Kadic v Karadžić* case, it equated Republic Srpska with a state in order to ensure that no impunity would follow from the unclear status of the entity. The Court highlighted in this respect that “[t]he inquiry, after all, is whether a person purporting to wield official power has exceeded internationally recognised standards of civilised conduct, not whether statehood in all its formal aspects exists”.⁵⁶

The importance of this case law lies in the fact that while individual responsibility exists for genocide and crimes against humanity, the prohibition of torture on the other hand is still linked to the state. Article 1 of the 1984 Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment limits the definition of torture to acts “inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.⁵⁷ The broader definition of the state in the understanding of the ICTY and the US Court of Appeals serves to make the officials of all stately entities, including puppet states, liable for the crime of torture.

As previously mentioned, there is also a well-established general prohibition of genocide and crimes against humanity. Private individuals bear criminal responsibility under international law for the perpetration of such crimes. The US Court of Appeals in the *Kadic v Karadžić* case underlined in this respect that:

[w]e do not agree that the law of nations, as understood in the modern era, confines its reach to state action. Instead, we hold that certain forms of conduct violate the law of nations whether undertaken by those acting under the auspices of a state or only as private individuals.⁵⁸

Article 4 of the 1951 Convention on the Prevention and Punishment of the Crime of Genocide further stipulates that: “Persons committing genocide or any of the other acts enumerated in Article 3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.”⁵⁹

In the same way, the statutes of all international criminal courts do not require any proof of official capacity for inferring criminal responsibility of private persons for crimes of genocide or crimes against humanity.⁶⁰ However, authorities of the puppet states do not face international criminal responsibility for any other crimes or human rights violations outside the scope of the prohibition of genocide, torture and crimes against humanity.

⁵⁶ *Kadic v Karadžić*, US Court of Appeals 2nd Circuit, 13 October 1995 (*Kadic*), para 158.

⁵⁷ Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).

⁵⁸ *Kadic*, above n 56, para 152.

⁵⁹ Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951).

⁶⁰ Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002), Articles 6 and 7; UN Security Council 1993 Report of the Secretary-General pursuant to para 2 of Security Council Resolution 808 (1993), UN Doc S/25704, Annex: Statute of the International Tribunal, Article 5; UN Security Council 1994 Resolution 955 (1994), UN Doc. S/RES/955, Annex: Statute of the International Tribunal for Rwanda, Article 3.

Unfortunately, outside the three exceptions presented above, there are no legal obligations vested in puppet states. There is no treaty law or customary international law dealing with the obligations of puppet states. Little as it may be, the only exception is that of individual responsibility for crimes against humanity, genocide and torture. Apart from this exception, the organs of the puppet state together with the people who commit human rights violations in these territories fall between the lines of international law in a grey zone of impunity.

Various attempts have been made to fill this gap. Professor Theodor Meron was the first to open the debate with his 1984 article in the *American Journal of International Law*, *Towards a Humanitarian Declaration on Internal Strife*.⁶¹ 1988 saw Meron publish the Draft Model Declaration on Internal Strife,⁶² while Hans-Peter Gasser wrote the Code of Conduct in the Event of Internal Disturbances and Tensions⁶³ in an attempt to summarise all international standards on the subject. Finally, one year later, the Oslo Statement on Norms and Procedures in Times of Public Emergency or Internal Violence⁶⁴ emerged, followed by the 1990 Declaration of Minimum Humanitarian Standards at Turku/Abo (Turku Declaration).⁶⁵ The latter attempted to provide humanitarian standards meant, in the terms of Article 2, to “be respected by, and applied to all persons, groups and authorities, irrespective of their legal status and without any adverse discrimination”.⁶⁶ Unfortunately, all of these attempts remained in the realm of academic endeavours, with no response so far in the sphere of applicable law.

Summing up, no responsibility of the puppet state for international law violations exists. The few attempts to fill this liability gap and enact rules on this matter unfortunately remained just at the level of academic wishful thinking, never seeing their reflection in hard law. On the other hand, international law clearly establishes private responsibility for individuals committing a series of grave human rights violations on the territory or in the name of a puppet state.

⁶¹ Meron 1984.

⁶² Meron 1988, pp. 59–76.

⁶³ Gasser 1988, pp. 51–53.

⁶⁴ UN General Assembly 1987 Letter dated 26 June 1987 from the representative of Norway to the commission on Human Rights addressed to the Under-Secretary-General for Human Rights (transmitting the Oslo Statement on Norms and Procedures in Times of Public Emergency or Internal Violence), UN Doc. E/CN.4/Dub.2/1987/31.

⁶⁵ Expert Meeting (1990) Declaration of Minimum Humanitarian Standards, Adopted by an expert meeting convened by the Institute for Human Rights, Åbo Akademi University, in Turku/Åbo, Finland, 2 December 1990. <http://www.ifrc.org/Docs/idrl/I149EN.pdf>. Accessed 14 June 2016.

⁶⁶ Ibid.

2.5 Conclusion

As shown above, the use of fake secessionist claims materialised as puppet states offers the perfect venue for a state to escape the constraints of international law, especially those of IHL, and perform de facto annexations. This consequently leads to prolonged instances of covert occupation. As long as the sponsor states are able to frame such entities in terms of statehood and equate them with de facto states, the situation is not likely to change. On the contrary, neither the world community nor international legal scholars have concerned themselves with this issue so far. In the meantime, while states, big and small, are able to use this gap within international law to pursue their imperialist agendas under a legal veil, principles like the illegality of annexation seem to be dead letters. Maybe the most worrying part of this state of affairs is that international law itself is defeated by the use of its own criteria. Instead of effectively outlawing annexation, the current rules of international law offer the tools to effectively, even if covertly, achieve it. While the law can be bypassed using its own criteria, law cannot be enforced, and an unenforceable law has little, if any, meaning in practice.

The present paper's main intention is to present this problem and to call attention to the growing trend of covert occupation. The first and most urgent step in dealing with this is piercing the veil by correctly defining the phenomenon at hand. These entities should not be seen in terms of statehood anymore, but in terms of occupation. They are not states, or de facto states—they are puppet states and by this they are instances of covert occupation. Once this is fully acknowledged, the gap that currently exists in IHL needs to be closed by establishing that this form of *covert occupation* is occupation nonetheless, and by treating it as such.

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