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Article 1

Frozen Conflicts and International Law

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Scholars (mostly in international relations and politics) and policymakers (in various countries) have referred to a series of conflicts in the space of the former USSR as "frozen conflicts." Because some now speak of new "frozen conflicts" emerging, it is timely to ask what—if any—legal meaning this expression contains. Moreover, how we characterize these conflicts affects legal and other procedures the parties and others might apply to resolve them. Beyond the open questions of semantics and taxonomy, the so-called "frozen conflicts" merit attention because of their salience to the dispute settlement machinery that they so largely have frustrated.

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Introduction

Political and international relations writers, and to a lesser extent international law writers, since the early 1990s have referred to certain situations, mostly in the space of the former USSR, as "frozen conflicts." What are the legal characteristics of these conflicts? Do they constitute a distinct international law phenomenon? The persistence of the ascription of the term "frozen conflicts" to both long-running and new conflicts justifies giving the term, its usage, and the conflicts a closer look.

Four situations are frequently referred to as frozen conflicts. Transnistria (in Moldova), Nagorno-Karabakh (in Azerbaijan), and South Ossetia and Abkhazia (both in Georgia) are regions in which separatists, with support from an external State sponsor, have functioned as local administrations against the wishes of the incumbent State.[1] Separatism alone does not distinguish these situations as a class. Separatist administrations exist in other places and are not typically called "frozen conflicts." Yet, as will be considered below, a number of legal characteristics are visible in these conflicts that taken together, possibly distinguish them as a type.

Where some have identified new, or possible, "frozen conflicts," these too are in the space of the former USSR. At about the same time as Russia annexed Ukraine's Crimean region, armed conflict erupted in eastern Ukraine.[2] The conflict in eastern Ukraine involved credible allegations of a substantial Russian intervention, both direct and in the form of material

1. Eur. Parl. Ass., *Implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia*, Res. No. 1647 para. 17 (2009); Eur. Parl. Ass., *The consequences of the war between Georgia and Russia,* Res. No. 1633 paras. 9, 32 (2008). Cf. Amanda Akçakoca, Thomas Vanhauwaert, Richard Whitman & Stegan Wolff, *After Georgia: conflict resolution in the EU's Eastern Neigbourhood*, 9 (Eur. Pol'y Ctr., Issue Paper No. 57, 2009).

2. *See* Office of the Prosecutor (I.C.C.), Report on Preliminary Examination Activities 2016 (Nov. 14, 2016), 36–38.

aid to separatists.[3] Two ceasefires adopted at Minsk have addressed the conflict, and an Organization for Security and Co-operation in Europe (OSCE) Special Monitoring Mission operates in the area; from time to time fighting has resumed.[4] The eastern Ukrainian oblasts of Donetsk and Luhansk[5] remain largely outside the control of the government of Ukraine, separatists having declared (though not completely maintained) independent administrations. Policy makers have suggested that the situation in eastern Ukraine in particular might be turning into a "frozen conflict."[6]

The present Article contains three parts. In Part I, with reference to dispute settlement proceedings, State practice, international organization practice, and legal and international relations writings, this Article considers the origin(s) of the expression "frozen conflict". In Part II, the Article recalls the factual background of the four situations most often referred to as "frozen conflicts" (Part II.A), and it identifies particular legal characteristics that we might use to define the expression (Part II.B) as well as legal problems that are concomitants of these situations (Part II.C). In addition, the Article considers the Donbas region of Ukraine (Donetsk and Luhansk), asking whether the situation falls within the scope of the expression "frozen conflict" as (tentatively) defined. The Article concludes with some general observations and a critical assessment.

I. "Frozen Conflict": Etymology

The expression "frozen conflict" is scarcely found in English language publications before the middle of the twentieth century. One of the earliest occurrences, and an isolated one at that, is contained in the 1911 literary review *Academy and Literature*, in a piece by one Wilfrid Randell entitled "The Hero as Baby." Randell wrote,

> "It may be stated as an irrefutable axiom that the initiatory period of a hero's life . . . is rather uninteresting to the general reader, however suggestive and even enthralling it may be to the prophetic senses of his enthusiastic biographer . . . Picture . . . Napoleon weeping bitterly because he was compelled to go early to bed and to leave his leaden soldiers in a frozen conflict on the table . . . ."[7]

And so, too, may it be that little of general interest is to be found in the

3. *See Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukr.* v. *Russ. Fed.)*, Request for the Indication of Provisional Measures, Order, para. 25 (Apr. 19, 2017) (position of the government of Ukraine, as summarized by the I.C.J.). Cf. OFFICE OF THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS, REPORT ON THE HUMAN RIGHTS SITUATION IN UKRAINE (Sept. 16, 2014) 4 n. 2.

4. *See, e.g.*, OFFICE OF THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS, REPORT ON THE HUMAN RIGHTS SITUATION IN UKRAINE (June 3, 2016), 6–7, 11–12.

5. Transliterated from the Cyrillic Ëóãàíñê variously as "Luhansk" or "Lugansk."

6. *See e.g.*, 588 Parl. Deb. H.C. (6th ser.) (2014) col 159–61 (referring to a "risk of a frozen conflict" in eastern Ukraine).

7. Wilfrid L. Randell, *The Hero as Baby*, 2022 ACAD. & LITERATURE 142, 142 (1911).

initiatory period of the expression "frozen conflict."[8] The question here is whether the expression "frozen conflict" might nevertheless have come in more recent times to hold an interest to the public international lawyer.

A. State Practice

The expression "frozen conflict" has acquired no definite meaning and was not heard at all in State practice before the end of the Cold War. To take United States practice as an example, the U.S. Department of State Bulletin, published from 1939 through 1989, contains no reference to "frozen conflicts."[9] Nor does it appear in the Department of State Dispatch between 1990 and 1999, a publication that replaced the Bulletin after 1989.[10] A diligent search (though by no means complete) found no use of the term in the practice of other States before 1989 either.

Legislators and other officials in a number of States since the end of the Cold War however have referred to four situations—Transnistria[11] in Moldova, Abkhazia and South Ossetia in Georgia, and Nagorno-Karabakh[12] in Azerbaijan—as "frozen conflicts."[13]

The Commander of the United States European Command, testifying to the Committee on Armed Services of the United States House of Representatives, referred to "frozen conflicts" in Russia's "so-called 'sphere of influence' or 'near abroad.'"[14] General Breedlove appeared to consider the situation in Crimea to be distinct, albeit part of the same program by Russia "to exert and increase undue influence on the free will of sovereign nations."[15] Members of the U.S. Senate, when addressing OSCE matters, have associated "frozen conflicts" with the former USSR as well.[16] The U.S. Assistant Secretary of State for European and Eurasian Affairs similarly appeared to think that the conflict in Donbas might turn into a "frozen conflict," but that it was not, at least yet, properly characterized that

8. Other examples before the end of the Cold War are scattered and not very numerous and relate for the most part to inner mental states and psychiatry. *See, e.g.*, Edmund Bergler, *On a Five-Layer Structure in Sublimation*, 14 PSYCHOANALYTIC Q. 76, 95 (1945) ("Thus, in every case the starting point in sublimation is the frozen conflict between id and superego.").

9. *See* U.S DEP'T ST., DEP'T ST. BULL. (1939–1989).

10. *See* U.S. DEP'T ST., DEP'T ST. DISPATCH (1990–1999).

11. Sometimes rendered "Transnistria."

12. Нагорный Карабах, transliterated from Cyrillic, variously, as "Nagorno-Karabakh," "Nagorno-Karabagh," "Nagorny-Karabakh," or "Nagorny-Karabagh."

13. Agnia Grigas, *How the US can confront Moscow's frozen conflicts*, THE HILL, (July 7, 2016), http://thehill.com/blogs/pundits-blog/international/286461-how-the-us-can-confront-moscows-frozen-conflicts [https://perma.cc/Q5D6-4PU5]; *see also* John O'Loughlin, Vladimir Kolossov & Gerard Toal, *Inside the Post-Soviet de Facto States: A Comparison of Attitudes in Abkhazia, Nagorny Karabakh, South Ossetia, and Transnistria*, 55 EURASIAN GEOGRAPHY & ECON., 423, 423–24 (2014).

14. 114 CONG. REC. H3067 (daily ed. May 14, 2015).

15. *Id.*

16. *See*, *e.g.*, 111 CONG. REC. S6585 (daily ed. Aug. 2, 2010) (statement of Sen. Cardin).

way at this point in time.[17] Nagorno-Karabakh, by contrast, "is a frozen conflict, as we call it,"[18] a characterization applied to Transnistria too.[19]

After the end of the Cold War, the expression began to be heard occasionally among diplomats and foreign policy makers. Condoleezza Rice, as Secretary of State of the United States, referred to "the longstanding frozen conflicts of South Ossetia and Abkhazia" in 2008.[20] Few, if any, examples from United States practice at that level exist before the early 2000s.[21]

David Cameron, during his time as Prime Minister of the United Kingdom, suggested that the situations in Abkhazia and South Ossetia were frozen conflicts.[22] The Foreign and Commonwealth Office has referred to "the so-called 'frozen conflicts' (involving Moldova (Trans-Dniester), Georgia (Abkhazia and South Ossetia), and between Armenia and Azerbaijan (Nagorno-Karabakh))."[23]

These situations have been noted in the French *Assemblé Nationale* as well, where deputies have referred to them as "*conflits gelés*":

> Les conflits gelés: je me suis tout particulièrement impliqué sur deux de ces conflits gelés, celui de la région séparatiste de Transnistrie et celui du Haut-Karabagh.[24]

In a *Rapport d'Information* in the French National Assembly in December 2015, the situations in Nagorno-Karabakh and Transnistria were described as "*conflits gelés de longue date*."[25] By contrast, the situations in the Georgian regions of Abkhazia and South Ossetia and in the Ukrainian regions of Crimea and Donbass were identified with "separatist tensions" but not

17. *Testimony on Ukraine,* Sen. Foreign Rel. Comm., 115th Cong. (2015) (statement of Victoria Nuland, Assistant Secretary of State, Bureau of European and Eurasian Affairs) ("But Minsk implementation remains a goal worth fighting for because the alternatives are bleak: at best, a frozen conflict in which Donbas becomes an unrecognized gray zone for the foreseeable future . . . .").

18. John Kerry, Secretary of State, Remarks with Azer. Foreign Minister Elmar Mammadyarov (June 3, 2013), http://youtu.be/EmCj2hkVZ1w [https://perma.cc/EZ4U-DNZC].

19. U.S Dep't St., Bureau of Democracy, Human Rights, & Labor, Moldova (2010).

20. Press Release, Condoleezza Rice, Secretary of State, Remarks on Situation in Georgia (Aug. 12, 2008) (available at 2008 WL 3333956).

21. For what seems to be one of the earliest, see Alexander Vershbow, U.S. Ambassador Russ. Fed., Speech to World Affairs Council of Philadelphia: *Challenges and Opportunities in U.S.-Russian Relations* (Nov. 5, 2003) (transcript on file with author) ("We need to work together . . . to resolve what we call the Frozen Conflicts—the secessionist problems in Georgia and Moldova.").

22. 596 Parl. Deb. H.C. (6th ser.) (2015) col. 1195 (UK); Cf. 753 Parl. Deb. H.L. (5th ser.) (2014) col. 104 (UK) (including Abkhazia and South Ossetia as "frozen conflicts").

23. Foreign & Commonwealth Office, Report On The Black Sea Synergy Initiative, 2015, (36655), 5598/15/ (SWD) 15 6, para. 15.10 (UK).

24. Compte rendu 42 du 27 février 2013 [Communication of Jean-Claude Mignon], Commission des Affaires Européennes [Commission of Euorpean Affaris], Assemblée Nationale France [French National Assembly], Feb. 27, 2013 (Fr.).

25. Joaquim Pueyo & Marie-Louise Fort, Rapport D'Information no. 3364 du 16 dêcembre 2015 par la commission des affaires européennes sur la nouvelle politique européene de voisinage [Report No. 3364 submitted to the Presidency of the National Assembly by the Commission of European Affairs], Dec. 16, 2015 (Fr.).

referred to as "frozen conflicts."[26]

The States most directly concerned with Nagorno-Karabakh, Abkhazia, South Ossetia, and Transnistria have referred to those situations as "frozen conflicts." For example, Azerbaijan in 2004 referred to "that frozen conflict" between Armenia and Azerbaijan.[27] Georgia in 2004 referred to "the frozen conflict in Abkhazia."[28] Moldova referred with approval to the New York City Bar Association report on "Thawing a frozen conflict" in Transnistria.[29]

Interestingly, at least in the readily available communications of States at the United Nations, no instance is found of a State other than Moldova, Georgia, or Azerbaijan referring to a situation in its own territory as a "frozen conflict." This is not for lack of communications by States like Cyprus (in respect of the "TRNC") and Serbia (in respect of Kosovo); they have communicated many times about the conflicts in their territory (or claimed territory).[30] They have not however, as far as readily comes to light, referred to those conflicts as "frozen."[31]

B. International Organization Practice

Persons or organs acting in a UN capacity seldom use the expression "frozen conflict." The UN Secretary-General's Representative on internally displaced persons, Francis M. Deng, appears to have been the first.[32] In 2000, Deng referred to the situations in Armenia, Azerbaijan, and Georgia as "frozen conflicts."[33] Not counting verbatim records in which representatives of States used the expression, "frozen conflict" appears in very few UN documents.[34] The *Repertoire of the Practice of the Security Council* does not contain the expression,[35] nor does the *Repertory of Practice of United Nations Organs*.[36]

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26. *Id.* at 6.

27. U.N. SCOR, 59th Sess., 4898th mtg. at 26, U.N. Doc. S/PV.4898 (Jan. 20, 2004).

28. Ravaz Adamia (Permanent Rep. of Georgia to the U.N.), Letter dated July 26, 2004 from the Permanent Rep. of Georgia to the President of the Security Council, U.N. Doc. S/2004/595 (July 26, 2004).

29. Permanent Rep. of the Republic of Moldova to the U.N., Letter Dated Sept. 20, 2006 from the Permanent Rep. of Republic of Moldova to the U.N. Secretary-General, U.N. Doc. A/61/364 (Sept. 20, 2006).

30. E.g., U.N. Secretary-General, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, pg. 4, U.N. Doc. S/PV.6670 (Nov. 29,2011).

31. U.N. SCOR, 66th Sess., 6670th mtg. at 4, 11, U.N. Doc. S/PV.6670 (Nov. 29, 2011).

32. Francis Deng, *Specific Groups and Individuals: Mass Exoduses and Displaced Persons,* para. 5, U.N. Doc. E/CN.4/2001/5/Add.2 (July 3, 2000).

33. *Id.* at paras. 4, 5.

34. *See, e.g.*, Chaloka Beyani, Rep. of the Special Rapporteur on the Human Rights of Internally Displaced Persons, para. 65, U.N.Doc. A/HRC/29/34/Add.3 (Apr. 2, 2015).

35. *See generally* Repertoire of the Practice of the Security Council, UN http://www.un.org/en/sc/repertoire/ [https://perma.cc/H68D-W776].

36. *See generally* Repertory of Practice of U.N. Organs, http://legal.un.org/repertory [https://perma.cc/WJR2-B7JL].

It is to the regional organizations concerned with these situations that one must turn to see the expression in more frequent use. The Parliamentary Assembly of the Council of Europe (PACE) has used the expression in a number of recommendations and resolutions.[37] These have addressed a range of matters, including displaced persons,[38] economic and institutional stabilization,[39] and women's rights.[40] PACE refers to the situations in Abkhazia, South Ossetia, Nagorno-Karabakh, and Transnistria as frozen conflicts.[41]

NATO does not play a role on the ground in the frozen conflicts, but its officials have referred to them from time to time.[42]

As for the multilateral organization most actively concerned with frozen conflicts, the OSCE, its officers have from time to time rejected the expression "frozen conflict." For example, the OSCE High Commissioner on National Minorities, in 2008, said,

> First of all, there is no such thing as a "frozen conflict." Only the conflict resolution process can be frozen. We must therefore redouble . . . our efforts to find a resolution to the unresolved conflicts in the OSCE area.[43]

The OSCE itself nevertheless uses the expression, for example on its webpages,[44] and even when briefing the UN Security Council.[45] One writer says that the first use of the expression "frozen conflict" was by the OSCE in a report dated November 2, 1998.[46] However, the *Yearbook of Polish Foreign Policy* suggests that the personal representative of the OSCE Chairman-in-Office in 1994 referred to the Transnistrian conflict as a frozen conflict.[47]

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37. *See infra,* notes 39–42.

38. Eur. Parl. Ass., *Europe's Forgotten People: Protecting the Human Rights of Long-Term Displaced Persons*, Recommendation No. 1877 para. 12 (2009).

39. Eur. Parl. Ass., *Activities of the European Bank for Reconstruction and Development (EBRD) in 2008: Reinforcing Economic and Democratic Stability*, Res. No. 1672 para. 6 (2009).

40. Eur. Parl. Ass., *Involving Women in the Prevention and Solution of Unresolved Conflicts in Europe*, Res. No. 1716 para. 2 (2010).

41. Eur. Parl. Ass., *Progress of the Assembly's Monitoring Procedure (October 2014-August 2015)*, Res. 2078 para. 9 (2015).

42. *See, e.g.*, Weekly Press Briefing, NATO, James Appathurai, NATO Spokesman (Feb. 10, 2010), https://www.nato.int/cps/ic/natohq/opinions_61430.htm?selectedLocale=EN [https://perma.cc/L434-DQ6A ("[Moldova] also has what some have called a frozen conflict on its own territory in Transnistria.").

43. Knut Vollebaek, Statement to the 742nd Plenary Meeting of the OSCE Permanent Council, at 1, O.S.C.E. Doc. HCNM.GAL/5/08 (Nov. 27, 2008).

44. *See, e.g.*, OSCE, *The Frozen Conflict in Transnistria*, http://www.osce.org/moldova/66269 [https://perma.cc/P6WZ-LWPN].

45. U.N. SCOR, 61st Sess., 5436th mtg. at 3, U.N. Doc. S/PV.5436 (Jan. 16, 2006).

46. Gaël Abline, *La doctrine de l'etranger proche et les conflits gelés*, 46 Revue Belge De Droit International 585, 587 n. 5 (2013) (citing CIO.GAL/75/98 (Nov. 2, 1998)).

47. The Polish Institute of International Affairs, *1994 Yearbook of Polish Foreign Pol.* 76.

C. The Expression "Frozen Conflict" in Dispute Settlement Proceedings

International lawyers serving as judges or arbitrators have not shown much interest in the expression "frozen conflict." It is not an expression found in any judgment or advisory opinion of the International Court of Justice (ICJ), nor has any judge of the Court used it in a separate or dissenting opinion.[48] The expression does not appear in any decision published in the *Reports of International Arbitral Awards* between 1948 and 2013.[49] It does not appear in the judgments of the main *ad hoc* international criminal tribunals.[50] At least in the most readily searchable awards under ICSID and ICC rules, the expression is absent as well.[51]

One of the rare and perhaps the only example of an international proceeding in which the expression has appeared is the *South China Sea* arbitration.[52] The Philippines used the expression "frozen conflict" in support of a jurisdictional argument. The Philippines' counsel stated as follows:

> [I]f China remains determined to avoid any form of legally binding adjudication or arbitration of the boundary between Itu Aba and the Philippines, in full knowledge that its claim beyond 12 miles from that feature would be rejected by any tribunal hearing the case, the dispute in this part of the South China Sea would remain frozen in place, perhaps permanently. China, as the superior power, would continue to run roughshod over the Philippines . . . and the other coastal states, claiming and exercising all rights and jurisdiction for itself. And all this in regard to a tiny and uninhabitable feature whose sovereignty is in dispute . . . .
>
> [T]he Philippines respectfully submits that the avoidance of such a frozen conflict is consistent with the Tribunal's mandate to promote the maintenance of legal order in respect of the relevant maritime areas, and the avoidance or reduction of threats to international peace and security that inevitably would emanate from a situation of such legal uncertainty, in accordance with the principles of the United Nations Charter and the object and purpose of the 1982 Convention.[53]

The Tribunal noted the point in its summary of the parties' positions,[54] but not in its reasoning on the interpretation and application of the relevant provision of the United Nations Convention on the Law of the Sea

48. International Court of Justice, ICJ, http://www.icj-cij.org/en/advanced-search [https://perma.cc/6268-BJZX] (searching for "frozen conflict" in document search engine of ICJ documents returns two results for use of the phrase).

49. *See generally* Reports of International Arbitral Awards, UN, http://legal.un.org/riaa/dtSearch/Search_Forms/dtSearch.html [https://perma.cc/GK3M-B4NH].

50. As disclosed by searches of the Thomas Reuters/Westlaw databases for the International Criminal Tribunal for the Former Yugoslavia and International Criminal Tribunal for Rwanda.

51. *See generally* International Centre for Settlement of Investment Disputes, ICSID, https://icsid.worldbank.org/en/Pages/ICSIDSearch.aspx?k=;International Criminal Court [https://perma.cc/S43E-7S24].

52. *See infra* notes 53–59.

53. Transcript of Hearing on the Merits and Remaining Issues of Jurisdiction and Admissibility (Day 2) at 128-29, *South China Sea Arbitration (Republic of the Philippines v. People's Republic of China)*, PCA Case Repository 2013-19 (Nov. 25, 2015).

54. *South China Sea Arbitration (Republic of the Philippines v. People's Republic of China)*, PCA Case Repository 2013-19, Award of July 12, 2016, para. 421.

(UNCLOS), Article 121.[55] The Tribunal determined that none of the features in the Spratly area of the South China Sea generates a potential entitlement beyond twelve nautical miles and, therefore, no possible Chinese exclusive economic zone or continental shelf entitlement overlaps the Philippines' exclusive economic zone or continental shelf.[56] Because the entitlements do not overlap, no delimitation between China and the Philippines is entailed.

In reaching this determination, the Tribunal recalled that the Philippines had argued that "unilateral actions in the absence of a precisely defined legal order" may result in "chaos and insecurity."[57] The Tribunal stated that this argument "is connected with the hypothetical situation of potentially overlapping entitlements to maritime zones and the absence of an interim regime pending the delimitation of a maritime boundary."[58] The Tribunal went on to say that its "findings . . . and conclusion that there is no possible overlap of entitlements that would require delimitation, render [the Philippines' concern] purely hypothetical and no basis for further action by the Tribunal."[59]

As will be seen, in the primary situations referred to as "frozen conflicts" an "interim regime" is not absent. An interim regime exists with respect to each of those situations, typically in the form of a regional peace process, albeit a process that has accomplished little and has completely stalled for long periods. Frozen conflicts, though they are difficult to live with, display aspects of a *modus vivendi*. Moreover, the stated reason that a conflict has erupted in the first place is that separatists and the incumbent State have competing or "overlapping" claims as to the constitution of the State. The use of the expression "frozen conflict" in the *South China Sea* arbitration, which in any event was in passing only, referred to a situation that differed from the main examples in these respects.

D. International Law Writers

The expression "frozen conflict" is seldom seen in the writings of international law publicists. The International Law Commission (ILC) does not appear ever to have used it, nor its members in ILC discussions or special rapporteur reports.[60] A search of the reports of the International Law Association (ILA) discloses no occurrence of the expression.[61] It does

55. *Id.* at paras. 473–648.

56. *Id.* at para. 1203.

57. Transcript of Hearing on the Merits and Remaining Issues of Jurisdiction and Admissibility (Day 3) at 98, *South China Sea Arbitration (Republic of the Philippines v. People's Republic of China)*, PCA Case Repository 2013-19 (Nov. 26, 2015).

58. *South China Sea Arbitration*, PCA Case Repository 2013-19, Award of July 12, 2016, para. 1199.

59. *Id.*

60. *See generally* INTERNATIONAL LAW COMMISSION, http://legal.un.org/ilc/dtSearch/Search_Forms/dtSearch.html [https://perma.cc/8YMD-JDFV] (entering the search term "frozen conflict").

61. HeinOnline Database of International Law Association Reports, HEINONLINE, http://heinonline.org/HOL/Index?collection=ilarc&set_as_cursor=clear [https://

not appear in the adopted declarations and resolutions of the *Institut de droit international*. It is absent from the *American Journal of International Law* and from the *Annuaire français de droit international*.[62] It appears only twice in the *European Journal of International Law* and, there, only in passing.[63] The Hague Collected Courses do not contain any example of the expression either.[64]

Leaving aside references to "frozen" financial assets, which are many, one turns to 1973 to find the term "frozen" being used in a sense at least broadly similar to that in which it is used in the phrase "frozen conflict."[65] In his Hague lectures of 1973, Robert Guyer addressed the effects of Article IV of the Antarctic Treaty on conflicting State claims on the southern continent:

> It has been said that this Article has 'frozen' the claims of the parties. In reality, what it does is freeze the consequences of conflicting positions. The conflicting positions as such are left as they are. Every party maintains its original stand. What this Article does is to guarantee all parties that their positions will not be hampered or diminished by the Treaty.[66]

The point is that Article IV allowed States to continue the effective manifestations of claims that they had maintained *in situ*, while making clear that the Treaty did not derogate those claims—or, Guyer might have added, affirm them.[67] This is far from a precise analogue to the main cases of "frozen conflict." For one thing, in a "frozen conflict," the sovereignty of an existing State enjoys widespread recognition against the competing claim of the separatist group.[68] The "frozen" character of such a conflict does not entail equality of legal merit between the competing claims, nor does it entail neutrality between them. The early appearance of the term "frozen" in connection with the Antarctic sovereignty claims perhaps nevertheless presages the use of the term in connection with other unsettled questions.

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perma.cc/U7CT-MBKB] (searching for "frozen conflict in the database with no matching results).

62. Westlaw database of American Journal of International Law, WESTLAW, https://1.next.westlaw.com/Search/Results.html [https://perma.cc/J8E9-6FGF] (searching for "frozen conflict" in the database with no matching results). PERSEE, http://www.persee.fr/search?q=%22conflits+gelés%22&taarticle&c=afdi [https://perma.cc/N3DZ-B784] (searching for "frozen conflict" in the database with no matching results).

63. Arman Sarvarian, *Codifying the Law of State Succession: A Futile Endeavour?* 27(3) EUR. J. INT'L L. 789, 806 (2016); Marc Weller, *Settling Self-Determination Conflicts: Recent Developments*, 20(1) EUR. J. INT'L L. 111 (2009).

64. BrillOnline Reference Works, BRILLONLINE http://referenceworks.brillonline.com/search?s.q=%22frozen+conflict%22&s.f.s2_parent=s.f.book.the-hague-academy-collected-courses&search-go=search [https://perma.cc/8334-8AVN] (searching for "frozen conflict" in the database with no matching results).

65. Roberto E. Guyer, *The Antarctic System*, 139 RECUEIL DES COURS 148, 181 (1973-II).

66. *Id.* Lachs borrowed the same word when referring to the Washington Treaty on Antarctica in 1980. Manfred Lachs, *The Development and General Trends of International Law in our Time: The Peaceful Settlement of Disputes*, 169 HAGUE REC. 217, 218 (1981).

67. *See* Guyer, *supra* note 65.

68. Pierre Jolicoer & Aurélie Campana, *Introduction: Conflits gelés de l'ex-URSS: débats théoriques et politiques*, 40(4) ÉTUDES INTERNATIONALES 501, 509 (2009).

Three occurrences of the expression appear in the *British Yearbook of International Law* to date. Two of these are in the United Kingdom Materials on International Law section (for 2014), one a quotation from the UK Foreign Secretary,[69] the other an extract from the UK representative's statement in the Security Council,[70] both identifying a risk that the conflict in Ukraine might turn into a frozen conflict. The latter referred to the situations in Moldova and Georgia as examples of frozen conflicts. The one reference in the *British Yearbook* outside the State practice section is in a book review.[71] The book under review posited a "sort of 'pseudo-legal theory'" under which the establishment of new self-determination entities depends on the political will of the "great powers."[72] This is not to say that the expression "frozen conflict" is itself "pseudo-legal." It does, however, suggest that writers use the expression more often with a political connotation than a legal one.

At least one writer has referred to Greco-Turkish maritime boundary questions in the Aegean Sea as a "frozen conflict" as well.[73] As with the Philippines' use of the expression in the *South China Sea* proceedings, this was to describe a situation that was rather different from the main cases of frozen conflicts.

The *Max-Planck Encyclopedia of Public International Law* contains no entry dedicated to "frozen conflicts."[74] The term is mentioned in association with irredentism.[75] In that association, three of the main examples of frozen conflicts are given—Abkhazia, South Ossetia, and Nagorno-Karabakh.[76] The two categories—irredentist claims and frozen conflicts—are not coterminous. Not all irredentist claims involve frozen conflicts. It seems however that all or most frozen conflicts involve irredentist claims. The entries for Nagorno-Karabakh[77] and South Ossetia[78] refer to those conflicts as "frozen."

Looking more widely at the legal literature, one finds the occasional reference to "frozen conflicts." Christopher Borgen, writing in the *Oregon*

69. Jacques Hartmann et al., *United Kingdom Materials on International Law 2014*, 2014 BRIT. Y.B. INT'L L. 301, 372 (2014).

70. *Id.* at 371.

71. P. Sean Morris, *Book review*, 83 BRIT. Y.B. INT'L L. 197, 198 (2013).

72. *Id.*

73. Nilufer Oral, *Non-Ratification of the 1982 Law of the Sea Convention: An Aegean Dilemma of Environmental and Global Consequence,* 1(1) PUBLICIST 53, 57 (2009).

74. MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, http://opil.ouplaw.com/search?sfam=&q=%22frozen+conflict%22&prd=EPIL&searchBtn=Search [https://perma.cc/49TU-XYYV] (searching for "frozen conflict" in the database with no matching dedicated pages).

75. *Id.* (searching for "frozen conflict" in the database and found "irredentism, Nagorny-Karabakh, South Ossetia, Yugoslavia, Dissolution of").

76. Francesco Palermo, *Irredentism*, *in* 6 MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 385, 386 (2012).

77. Andriy Y. Melnyk, *Nagorny-Karabakh*, *in* 7 MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 451, 455 (2012).

78. Angelika Nußerger, *South Ossetia*, *in* 9 MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 322, 324 (2012).

Review of International Law, used the term in connection with Transnistria in Moldova:

> The result of the Russian intervention was that Transnistria became effectively partitioned from the rest of Moldova. The fighting cooled, and was replaced by a frozen conflict.[79]

Borgen participated in one of the few rigorous examinations of the legal aspects of a frozen conflict. This was a report by a mission of the Special Committee on European Affairs of the Association of the Bar of the City of New York, comprising a U.S. Court of Appeals Judge, two practicing lawyers (one of whom earlier had served as Attorney General of New York), Borgen, and another law professor.[80] The report was entitled *Thawing a Frozen Conflict: Legal Aspects of the Separatist Crisis in Moldova.*[81] The purpose of the report was to consider "three main legal issues: (a) whether the TMR [separatist entity of Transnistria in Moldova] has a right under international law to autonomy or possibly sovereignty; (b) what the legal concerns are regarding the transfer of property located in Transnistria by the TMR leadership; and, (c) what role 'third party' States have in the ongoing conflict and, in particular, the international legal implications of Russian economic pressure and military presence in the TMR."[82]

The report placed emphasis on the legal limits that constrain an occupation regime: "[a]ny economic activities undertaken jointly with the separatists or insurgents by another party are at the peril of that party. There is no comfort that such activities will be sanctioned after the final resolution of the separatist conflict and they may, in fact, by 'unwound.'"[83] The report rebuked Russia's intervention in Moldova.[84] The report drew attention to the existence of a separatist regime lacking general recognition and the degree of entrenchment of that regime in fact.[85]

The report did not propose a definition of "frozen conflict." It did suggest some of the legal characteristics of the situations that are described as frozen conflicts.[86] These conflicts are not totally unchanging, but their basic outlines remain largely static and, so, they present a long-term problem for individuals, States, and other entities that have to deal with them.[87] The report was mentioned by the European Court of Human Rights in *Ivanţoc* v. *Moldova and Russia*, the Government of Moldova having made

79. Christopher J. Borgen, *Imaging Sovereignty, Managing Secession: The Legal Geography of Eurasia's "Frozen Conflicts,"* 9 OR. REV. INT'L L. 477, 499 (2007).

80. Judge Barrington D. Parker, Jr. (U.S. Court of Appeals, 2d Cir.); Robert Abrams, Mark A. Meyer, Christopher Borgen, and Elizabeth Defeis.

81. Special Committee on European Affairs, *Thawing a Frozen Conflict: Legal Aspects of the Separatist Crisis in Moldova: A Report from the Association of the Bar of the City of New York,* 61(2) REC. ASS'N BAR CITY N.Y. (2006). A summary is attached as an Annex to the Moldova letter (U.N.Doc. A/61/364), *supra* note 29.

82. *Id.* at 202.

83. *Id.* at 209.

84. *Id.* at 209–10.

85. *Id.* at 209.

86. *See generally id.*

87. Borgen, supra note 79, at 495 (citing DOV LYNCH, ENGAGING EURASIA'S SEPARATIST STATES: UNRESOLVED CONFLICTS AND DE FACTO STATES 42 (2004)).

reference to it in pleadings.[88]

The survey here of the literature and practice suggests, on balance, that the expression "frozen conflict" has held little interest for international lawyers. Legal analysis of the expression, accordingly, is sparse. Part of the problem is that the expression "frozen conflict" and terms belonging to the international law lexicon operate in different spheres. Marc Weller referred to the "establishment of the term 'frozen conflicts' *in the diplomatic vocabulary*,"[89] which rightly indicates the locus in which the term more often is heard. Before taking a closer look at the situations typically referred to as "frozen conflicts" with a view to identifying the legal content of the expression, if any, a brief word is in order about the use of the expression in international relations writings.

E. International Relations Writers

In 1968, Louis Kriesberg, a Professor of Sociology at Syracuse University, defined a category of what he called "frozen" disputes. According to Kriesberg,

> The category of "frozen" dispute refers to those conflicts in which both sides have remained fully committed to their incompatible positions but where neither has yet dared to attempt resolution through accommodation, withdrawal, or military conquest.[90]

In 1971 Edwin H. Fedder, a political science professor at the University of Missouri-St. Louis referred to "frozen conflict of the Cold War type that may or may not erupt in military confrontations."[91] As will be seen below, neither of these definitions fits the type of situation that is today typically referred to as a frozen conflict. Kriesberg's definition is under-inclusive: the situations that are often described as "frozen conflicts" have been subject to attempts at resolution, but Kriesberg would exclude these ("neither has yet dared to attempt resolution. . ."). Kriesberg's definition is also over-inclusive; not all intractable disputes are referred to today as "frozen conflicts." Fedder's definition is over-inclusive as well: as will be seen, the conflicts that are today typically described as "frozen" present some risk of military confrontation, even if that risk has receded significantly since the conflict's start.[92] In any event, neither scholar considered the situations that concern writers, diplomats, or policymakers when they have referred in recent years to frozen conflicts. There is little, if any, continuity between these early examples and present-day usage.

The first examples of present-day usage appear in the early 1990s. To give one example, Gregory Copley, in a 1994 edition of the *Defense & For-*

88. Ivantoc v. Moldova, App. No. 23687/05, § 28, Eur. Ct. H.R. (Nov. 15, 2011), http://hudoc.echr.coe.int/eng?i=001-107480 [https://perma.cc/E7Z5-9GE9].

89. Marc Weller, *Settling Self-determination Conflicts: Recent Developments*, 20(1) EUR. J. INT'L L. 111, 137 (2009) (emphasis added).

90. LOUIS KRIESBERG, SOCIAL PROCESSES IN INTERNATIONAL RELATIONS: A READER 553 (1968).

91. EDWIN H. FEDDER, THE UNITED NATIONS: PROBLEMS AND PROSPECTS 35 (1971).

92. *See infra* notes 98–106 and accompanying text.

eign Affairs Handbook, said that "the Nagorno-Karabakh conflict had become a virtual 'frozen' conflict militarily."[93]

Another early occurrence of the term, in reference to Abkhazia, appeared in an article in *Trud*, the former newspaper of the All-Union Central Council of Trade Unions of the USSR.[94] The relevant passage was as follows:

> On the whole . . . the introduction of Russian peacemaking forces in the Inguri River region is accepted in Abkhazia calmly . . . People here realize that the peacemakers will not eliminate the causes which made the war flare out. According to Abkhazian politicians, *the unrecognized republic will have to live for a long time to come in conditions of frozen conflict and uncertain political status*. But this is of course better than existing on the brink of death.[95]

The Foreign Broadcast Information Service (FBIS) published the English translation as set out here.[96]

Though today mainly applied to situations in States that were once part of the Soviet Union, the expression "frozen conflict" has been applied to situations in other parts of the world as well. Writers have referred to "frozen conflicts" in Western Sahara,[97] Kosovo,[98] Bosnia and Herzegovina,[99] Sudan,[100] Cyprus,[101] Korea,[102] Gaza,[103] and even more loosely to

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93. GREGORY R. COPLEY, DEFENSE & FOREIGN AFFAIRS HANDBOOK 1201 (1994).

94. *See Trud*, WIKIPEDIA, https://en.wikipedia.org/wiki/Trud_ [https://perma.cc/R644-CPHH] (Russian_newspaper).

95. *Russian Peacemakers in Abkhazia Eyed*, MOSCOW TRUD, June 14, 1994, at 1 (emphasis added).

96. 116–26 FBIS DAILY REPORT, CENTRAL EURASIA 69, 70 (1994). The author thanks Professor Michael A. Reynolds, Department of Near Eastern Studies, Princeton, for the FBIS references.

97. Anouar Boukhars, *Simmering Discontent in the Western Sahara, in* PERILOUS DESERT: INSECURITY IN THE SAHARA 165–84 (2013) (Frederic Wehrey & Anouar Boukhars eds., 2013); Yahia H. Zoubir, *The United States and Maghreb-Sahel security*, 85(5) INT'L AFF. 977, 986 (2009).

98. Tim Judah, *Making Moves*, 62 THE WORLD TODAY, Dec. 2006, 17, at 18; Dušan Janjiæ, *Solving the Issue of Northern Kosovo and Regional Cooperation*, *in* CIVIC AND UNCIVIC VALUES IN KOSOVO: HISTORY, POLITICS, AND VALUE TRANSFORMATION 221, 225–26 (Sabrina P. Ramet et al. eds., 2015). And not just by writers: see Karel de Gucht, *Statement of the OSCE Chairman-in-Office to the United Nations Security Council*, at 11, U.N.Doc. S/PV/5346 (Jan. 16, 2006).

99. Valery Perry, *At Cross Purposes? Democratization and Peace Implementation Strategies in Bosnia and Herzegovina's 'Frozen Conflict*,' 10 HUM. RTS. REV. 35, 36 (2009).

100. Alex de Waal, *Darfur, Sudan: Prospects for Peace*, 104 AFR. AFF. 127, 133 (2005); Nathan P. Kirschner, *Still Waiting: Securing Basic Human Rights for 'Residents' in an Eventual Abyei Area Referendum*, 33 WIS. INT'L L.J. 512, 520 (2015).

101. Etain Tannam, *Cyprus and the Annan Plan Negotiations: An Organisational Model*, 27 IRISH STUD. INT'L AFF. 189, 189 (2016).

102. Scott Snyder, *'Intractable' Confrontation on the Korean Peninsula: A Contribution to Regional Stability?*, *in* GRASPING THE NETTLE. ANALYZING CASES OF INTRACTABLE CONFLICT 319, 322 (Chester A. Crocker et al. eds., 2005).

103. Anaïs Antreasyan, *Gas Finds in the Eastern Mediterranean: Gaza, Israel, and Other Conflicts*, 42 J. PALESTINE STUD. 29, 42 (2013).

relations between Iran and the United States[104] and relations between the European Union, Russia, and the United States.[105]

The widespread use of the expression is largely socio-political. This is reflected in the definitions that international relations writers and political scientists have proposed. Mary Alice Clancy and John Nagle, for example, writing in 2009, referred to frozen conflicts as "those in which violent ethno-political conflict over secession has led to the establishment of a *de facto* regime that is recognized by neither the international community nor the rump [S]tate from which the secession occurred."[106]

Another attempt at a definition appeared in a special edition of *Études internationales* in 2009. The authors, Jolicoer and Compana, identified four elements:

> -naissance à la suite d'un mouvement sécessionniste dans le context du démembrement d'un État communiste de type fédéral;
>
> -suspension des hostilités par l'établissement d'un cessez-le-feu, généralement renforcé par une opération de maintien de la paix;
>
> -victoire de la partie sécessionniste et formation d'un État *de facto,* dont certains ont évolué au gré des transformations de ces conflits vers des entités étatiques au statut ambigu;
>
> -non-reconnaissance du vainqueur par la communauté internationale ou, depuis septembre 2008 pour l'Ossétie du Sud et l'Abkhazie, reconnaissance très partielle au terme de processus évolutifs à la fois endogènes et exogènes par rapport au conflict.[107]
>
> -birth of a secessionist movement in the context of the dismemberment of a communist State of federal type
>
> -suspension of hostilities by the establishment of a ceasefire, generally reinforced by a peacekeeping operation

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104. Nils Jordet, The Frozen Conflicts Between the United States and Iran: Causal Patterns Prior to the Coup d'etat of 1953 and the Contemporary Attitudes of Hostility (2002) (unpublished Ph.D. dissertation, Tufts University).

105. Interview with David Fouquet, *EU Faces tests as Great Powers in 'Frozen Conflict:' Expert*, Global Times (Dec. 26, 2016), http://www.unpan.org/PublicAdministrationNews/tabid/116/mctl/ArticleView/ModuleID/1469/articleId/52836/Default.aspx [https://perma.cc/H3CN-X2M2].

106. Mary Alice C. Clancy & John Nagle, Frozen Conflicts, Minority Self-Governance, Asymmetrical Autonomies—In Search of a Framework for Conflict Management and Conflict Resolution 14 (2009) (unpublished working paper) (on file with the International Conflict Research Institute).

107. Pierre Jolicoeur & Aurélie Campana, *Conflits gelés de l'ex-URSS: débats théoriques et politiques*, 40 Études Internationales 501, 509 (2009). See also the review of typologies of conflict that are congeners of "frozen conflicts": *id.* at 502–04. Jolicoer & Campana suggest that a proposed definition is also found in Iris Kempe & Kurt Klotzle, *The Balkans and the Black Sea Region. Problems, Potentials, and Policy Options*, 2 C.A.P. 9 (2006). Kempe & Klotzle say that these conflicts "remain 'frozen'—neither active nor resolved—and thereby continually threaten to reescalate into hot violence." *Id.*

> -victory of the secessionist party and the formation of a *de facto* State, which in some cases have evolved with the transformation of these conflicts into State entities with ambiguous status
>
> -non-recognition of the victor by the international community or, since September 2008 for South Ossetia and Abkhazia, very limited recognition at the end of evolutionary processes both endogenous and exogenous in relation to the conflict."]

This definition, with its reference to the "dismemberment of a communist State of federal type," would be time-limited. To this extent, it is reminiscent of the definition of self-determination territories for purposes of Chapter XI of the UN Charter, as territories "which were then known to be of the colonial type";[108] the definition is limited to a particular geopolitical episode, and therefore, on its terms, it is not applicable to others. It would seem to exclude *a priori* much later developments in a non-communist State.

As will be suggested further below, separatism and a degree of internationalization of ceasefires are core elements of the concept of "frozen conflict." Refinements are also needed to complete the definition, particularly with regard to the effectiveness of ceasefire lines, territorial control, and recognition by a State of the separatist entity.

* * *

In summary, writers in international relations, area studies, and political science, by and large, have not asked what legal dimensions, if any, the expression "frozen conflict" might have. Moreover, States, international organizations, and legal writers have not agreed to a legal definition for the expression. The above situations described as frozen conflicts are diverse, so much so that it is difficult to formulate a definition that is both concise and all-inclusive. If, instead of creating a definition that encompasses every situation, one only considers the main conflicts—i.e., those in Moldova, Georgia, and Azerbaijan, which writers in the early 1990s began referring to as "frozen conflicts," and that those States themselves have referred to in the same way—then one can perhaps arrive at a useful definition. The starting point is to identify the international law characteristics that distinguish these main examples from other situations.

II. Defining "Frozen Conflict"

To identify international law characteristics that distinguish frozen conflicts from other situations, each characteristic, taken in isolation, need not be unique to frozen conflicts. Instead, needed is a set of characteristics that, if taken as a whole, pertains to all "frozen conflicts"—and does not describe any situation that is not a frozen conflict. Recalling the emergence of the use of the expression "frozen conflict," and the use of the expression by international and regional organizations, parliamentarians,

108. G.A. Res. 1541 (XV), at 29 (Dec. 15, 1960).

and, to some extent, the foreign policy organs of States—especially the States in which such conflicts exist—today, two situations are widely understood to be frozen conflicts: Transnistria in Moldova and Nagorno-Karabakh in Azerbaijan. In addition, two further situations, also in the territory of States formerly part of the USSR, are widely understood to be—or to have been—frozen conflicts: South Ossetia and Abkhazia, both in Georgia. As noted above, these situations are sometimes identified as no longer belonging to the category of frozen conflicts. Reasons for excluding them are suggested below.

Transnistria and Nagorno-Karabakh—and South Ossetia and Abkhazia before 2008—are the core examples of frozen conflicts, and, from these examples, the distinguishing characteristics of frozen conflicts as a category may be identified. It is not the purpose of the present Article to narrate the extremely complex and lengthy course of events in each region. Extensive accounts of these conflicts have been given elsewhere, particularly in European Court of Human Rights (ECtHR) judgments[109] and in the Independent International Fact-finding Report prepared after the August 2008 conflict between Russia and Georgia.[110] The purpose here instead is to (A) recall salient developments up to the period when the expression "frozen conflict" emerged and then, with those developments in view, (B) distill distinguishing juridical features. Finally (C), some legal problems will be considered that tend to arise with frozen conflicts.

A. Four Conflicts

1. Transnistria

Moldova proclaimed its sovereignty from the USSR on June 23, 1990.[111] The "Moldovian Republic of Transnistria" declared itself a separate territorial unit on September 2, 1990 and its independence as the "MRT" on August 25, 1991.[112] The separatists claimed control over former Soviet military forces and various government organs. Armed clashes began between the separatists and the Moldovan government's forces in November 1990.[113] Russian Federation forces evidently helped arm the Transnistrian separatists,[114] a matter that Moldova brought to the attention of the UN Security Council.[115] Fighting at the end of 1991 and beginning of 1992 was particularly intense, resulting in several hundred deaths.[116] Through the first half of 1992, forces from the Russian Federa-

109. *See id.*

110. 2 INDEPENDENT INTERNATIONAL FACT-FINDING MISSION ON THE CONFLICT IN GEORGIA REPORT, at 61–124 (Sept. 2009).

111. Ilaşcu & others v. Moldova and Russia, 2004-VII Eur. Ct. H.R. 179, 199 (2004). The facts related to Transnistria's emergence and the armed conflict are spelled in this case, as well. *Id.*, at 196–212; *see also* Bill Bowring, *Transnistria*, *in* SELF DETERMINATION AND SECESSION IN INTERNATIONAL LAW 157 (Christian Walter et al. eds., 2014).

112. Ilaşcu v. Moldova, 2004-VII Eur. Ct. H.R. 199.

113. *See id.* at 201.

114. *See id.* at 202.

115. *See id.* at 203.

116. *See id.*

tion in "large numbers . . . went to Transnistria to fight in the ranks of the Transnistrian separatists against the Moldovan forces."[117] The Russian Federation denied that its forces were involved in the conflict and asserted that they had "remained neutral."[118] By March 1992, "the Moldovan army was in a position of inferiority that prevented it from regaining control of Transnistria."[119]

Judge Kovler, dissenting in *Ilaşcu & others* v. *Moldova and Russia,* identified Transnistria's separatism as a self-determination claim.[120] Judge Kovler also credited accounts that described separatism as a reaction against a plan by Moldovan nationalists to unify the country with Romania.[121] Many States and scholars doubt that separatism in Transnistria arose from indigenous sources. They draw attention to the reliance of the separatists on support from Russia.[122]

The Ministers for Foreign Affairs of Moldova, Russia, Romania, and Ukraine, met in Helsinki on March 23, 1992, and set up a Quadripartite Commission and a group of military observers to supervise observance of an eventual ceasefire in Transnistria.[123] The Ministers adopted principles for a peaceful settlement of the Transnistrian conflict.[124] On July 6, 1992, the Commonwealth of Independent States (CIS), decided to offer a CIS peacekeeping force, which would have been comprised of Russian, Ukrainian, Belorussian, Romanian, and Bulgarian troops.[125] Moldova accepted the offer, but the CIS agreement fell apart before the peacekeeping force was deployed.[126]

On July 21, 1992, Moldova and Russia adopted an agreement on principles for the friendly settlement of the armed conflict in the Transnistrian region of Moldova.[127] Article 1, paragraph 1, of the agreement provided for a ceasefire. Article 1, paragraph 2, provided for a "security zone" between the parties to the conflict, the "exact boundaries [of which] will be determined in a special protocol agreed between the parties on implementation of the present agreement."[128] Article 2 called for a control commission consisting of representatives of Moldova, Russia, and the separatists.[129] Article 4 provided for the neutrality of Russia's forces in Moldova (the 14th Army) and provided that modalities and timing for the

117. *Id.* at 205.
118. *Id.* at 207.
119. *Id.*
120. *Id.* at 146.
121. *Id.* at 146–47.
122. *See, e.g.,* Bowring, *supra* note 111, at 157, 165.
123. *See* Ilaşcu v. Moldova, 2004-VII Eur. Ct. H.R. 17.
124. *Id.*
125. *See id.* at 20.
126. *See id.*
127. *Id.* at 21.
128. The text of the agreement on principles is contained in *Ilaşcu* at 61. *See also* Agreement on the Principles for a Peaceful Settlement of the Armed Conflict in the Dniester Region of the Republic of Moldova, Mold.-Russ., July 21, 1992, U.N. Doc. S/24369 (Aug. 6, 1992).
129. *Id.*

withdrawal of those forces were to be "settled by negotiations" between Russia and Moldova.[130] Article 5 provided for a lifting of blockade against the separatist region and for return of displaced persons and the movement of humanitarian aid.[131] A ceasefire agreement was signed on July 21, 1992 "on the basis of the status quo."[132]

When Moldova deposited its instrument of ratification for the European Convention on Human Rights on September 12, 1997, it indicated that it was unable to ensure compliance with the Convention in the area "under the effective control of the organs of the 'self-proclaimed Trans-Dniester republic.'"[133] The European Court of Human Rights accepted that "the Moldovan Government, the only legitimate government of the Republic of Moldova under international law, does not exercise authority over part of its territory, namely that part which is under the effective control of the 'MRT.'"[134] The Court noted that, after the ceasefire of July 21, 1992, "Moldova tended to adopt an acquiescent attitude, maintaining over the region of Transnistria a control limited to such matters as the issue of identity cards and customs stamps."[135] On May 16, 2001, for example, the President of Moldova and the leader of Transnistria signed agreements on the mutual recognition of documents issued by their respective authorities and on foreign investment promotion.[136] At least for a time, the Moldovan government operated the customs posts between the Transnistrian part of Moldova and Ukraine.[137]

A Memorandum of May 8, 1997 set out bases to "normalize" the situation.[138] The parties to the Memorandum were the central government of Moldova and the Transnistrian authorities. Russia and Ukraine signed as Guarantor States. The parties agreed to refrain from use or threat of force in their mutual relations (para. 1).[139] They also agreed to seek a settlement to allocate government competences between them (para. 2).[140] The Memorandum indicated that Transnistria has the right to enter into international "contacts" in respect of economic, scientific-technical, and cultural matters, but that the parties are to "build their relations in the framework of a common state within the borders of the Moldavian SSR as of January of the year 1990" (i.e. within the borders of Moldova as internationally

130. *Id.*
131. *Id.*
132. Ilaşcu v. Moldova, 2004-VII Eur. Ct. H.R. 76.
133. *Id.*
134. *Id.*
135. *Id.*
136. *Id.* at 229.
137. *Id.* at 230.
138. *See* Memorandum on the Bases for Normalization of Relations Between the Republic of Moldova and Transnistria MOSCOW MEMORANDUM (May 8, 1997), https://peacemaker.un.org/sites/peacemaker.un.org/files/MD_970508_Memorandum%20on%20the%20Basis%20for%20Normalization%20of%20Relations%20between%20the%20Republic%20of%20Moldova%20and%20Transdniestria.pdf [https://perma.cc/Y86T-3YBM].
139. *Id.* at 2.
140. *See id.*

recognized) (para. 10).[141] The parties agreed that Moldova is "a subject of international law" (para. 3).[142] The parties requested Russia, Ukraine, and the OSCE to "continue their mediating efforts" (para. 4).[143] In 2004, Moldova rejected a proposal by the Russian Federation to re-organize the country under a federal constitution.[144]

2. Nagorno-Karabakh

Nagorno-Karabakh was an autonomous oblast of Azerbaijan, the latter being a Union Republic of the USSR. Some seventy-seven percent of the inhabitants of Nagorno-Karabakh were of Armenian ethnicity.[145] In 1988, which is to say before the breakup of the USSR but at a time when autonomy movements were afoot in many parts of the country, Nagorno-Karabakh's inhabitants requested to separate from Azerbaijan and join Armenia.[146] The USSR government and the Azerbaijan government rejected the request while the Armenian government accepted it.[147] Armenia and Nagorno-Karabakh proceeded with steps to unify the latter with the former; clashes broke out between Armenians and Azeris.[148] The fighting between the two groups escalated, and the Soviet army placed Nagorno-Karabakh under a state of emergency.[149] Azerbaijan declared independence from the USSR on August 30, 1991.[150] Nagorno-Karabakh declared its separation from Azerbaijan on September 2, 1991.[151] The separatists fashioned the territory as the "Nagorno-Karabakh Republic" (NKR).[152] Soviet forces withdrew, and Armenian forces gained the upper hand in the separatist territory.[153]

Noting the extreme violence in the region, the Presidents of Russia and Kazakhstan attempted to mediate the conflict.[154] However, the resultant Zheleznovodsk Declaration of September 23, 1991[155] did not lead to a cessation of hostilities.

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141. *Id.* at 3.
142. *Id.* at 2.
143. *Id.*
144. Louis Balmond, *Chronique des Faits Internationaux*, 108 REVUE GÉNÉRALE DE DROIT INTERNATIONAL PUBLIC 207 (2004).
145. Chiragov v. Armenia, App. No. 13216/05, Eur. Ct. H.R. 1, 3–4 (2015). The facts of the conflict in Nagorno-Karabakh are set out *id.* at 5–7. *See also* Heiko Krüger, *Nagorno-Karabakh, in* SELF DETERMINATION AND SECESSION IN INTERNATIONAL LAW, *supra* note 111, at 214; Melnyk, *supra* note 77; Romain Yakemtchouk, *Les conflits de territoire et de frontières dans les états de l'ex-URSS*, 39 ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL 393, 411–22 (1993) (discussing the early stage of the conflict).
146. *See Chiragov*, at 4.
147. *See id.*
148. *See id.*
149. *See id.*
150. *See id.* at 4–5.
151. *See id.*
152. *See id.*
153. *See id.*
154. *See id.* at 24.
155. *See* Zheleznovodsk Declaration, PEACEMAKER U.N. (Sept. 23, 1991), http://peacemaker.un.org/sites/peacemaker.un.org/files/Azerbaijan_ZheleznovodskDeclaration1991.pdf [https://perma.cc/T6U4-CH75].

A secession referendum on December 10, 1991 purported to show near unanimous support for secession, but the Azeris boycotted it.[156] The conflict between Azeris and Armenians in early 1992 "escalated into full-scale war",[157] where local Armenian ethnic forces—with support from Armenia—gained the upper hand.[158]

On May 5, 1994, a ceasefire agreement, the Bishkek Protocol, was adopted by Armenia, Azerbaijan, and the NKR.[159] Russia mediated talks that led to the ceasefire.[160] Despite the ceasefire, recurrences of armed conflict along the ceasefire line have resulted in large numbers of deaths over the years.[161] Thus in addition to the Bishkek Protocol, the Organization for Security and Co-operation in Europe (OSCE) through its Minsk Group has conducted negotiations concerning Nagorno-Karabakh.[162]

The Ministers of Defense of Azerbaijan and Armenia and the "Nagorno-Karabakh Army Commander" adopted a further Cease-Fire Agreement, "[r]esponding to the call for a cease-fire" contained in the Bishkek Protocol.[163] The Cease-Fire Agreement provided, *inter alia,* that the parties would meet in Moscow under the auspices of the Russian Federation Minister of Defense to "agree on the lines of troops pullback" (para. 2).[164] The "Line of Contact" between the parties to hostilities continued to be a flashpoint,[165] and serious fighting erupted along the Line of Contact from time to time, e.g., in July-August 2014[166] and April 2016.[167]

In November 2007, France, Russia, and the United States, as co-chairs of the Minsk Group presented Armenia and Azerbaijan with Basic Principles for the settling the conflict.[168] Among other points, the Basic Principles call for the following:

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156. *See Chiragov,* Eur. Ct. H.R., para. 17 (2015).

157. See *id.* at 18.

158. *See id.* at 18–23.

159. *See* Bishkek Protocol, PEACEMAKER U.N., May 5, 1994, http://peacemaker.un.org/sites/peacemaker.un.org/files/ArmeniaAzerbaijan_BishkekProtocol1994.pdf [https://perma.cc/68TW-3YY7].

160. *See Chiragov,* Eur. Ct. H.R., at para. 24 (2015).

161. *See id.* at para. 28.

162. The OSCE in 1995 conferred a mandate on the Co-Chairmen of the Minsk Conference to address the conflict: see Mandate of the Co-Chairmen of the Conference on Nagorno-Karabakh under the auspices of the OSCE ("Minsk Conference'), DOC.525/95 (Mar. 23, 1995).

163. Cease-fire Agreement, NAGORNO-KARABAKH RUPUBLIC: MINISTRY OF FOREIGN AFFAIRS, May 11, 1994, http://www.nkr.am/en/ceasefire-agreement/147/ [https://perma.cc/R89L-4VLC]. *See* Otto Luchterhandt, *Der Krieg Aserbaidschans gegen Berg-Karabach im April 2016 aus völkerrechtliche Sicht*, 55 ARCHIV DES VÖLKERRECHTS 185, 220–29 (2017) (discussing the legal effects of the Agreement).

164. NAGORNO-KARABAKH RUPUBLIC: MINISTRY OF FOREIGN AFFAIRS, at para. 2.

165. *See* U.S DEP'T ST., AZERBAIJAN 2014 HUMAN RIGHTS REPORT (2014).

166. *See id.*

167. *See* Perm Rep. of Azerbaijan to the U.N, Letter dated 24 June 2016 from the Permanent Mission of Azerbaijan to the United Nations Office at Geneva addressed to the President of the Human Rights Council, U.N.Doc. A/HRC/32/G/14.

168. *See Statement by the OSCE Minsk Group Co-Chair countries*, ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE [OSCE] (July 10, 2009), http://www.osce.org/mg/51152 [https://perma.cc/YG9J-3SYX].

> -return of the territories surrounding Nagorno-Karabakh to Azerbaijani control;
>
> -an interim status for Nagorno-Karabakh providing guarantees for security and self-governance;
>
> -a corridor linking Armenia to Nagorno-Karabakh;
>
> -future determination of the final legal status of Nagorno-Karabakh through a legally binding expression of will;
>
> -the right of all internally displaced persons and refugees to return to their former places of residence;
>
> -international security guarantees that would include a peacekeeping operation.[169]

Although the Basic Principles were re-affirmed at Head-of-State level on July 10, 2009,[170] international engagement concerning the conflict has been sporadic.[171] The Personal Representative of the OSCE Chairman-in-Office makes occasional visits to the Line of Contact in Nagorno-Karabakh.[172] The Minsk Group conducted a Field Assessment Mission to the area in October 2010, finding a depleted population living in dire circumstances.[173] A further Head-of-State level joint statement was adopted in June 18, 2013.[174] Similar to previous measures, these had little impact on the ground.[175]

The NKR controls some 4000 square kilometers of the former Nagorno-Karabakh Autonomous Oblast, plus some 7500 square kilometers of surrounding districts of Azerbaijan.[176] Armenia has adopted agreements with the NKR, including an Agreement on Military Co-operation (June 25, 1994).[177] Armenia maintains close ties to the NKR and is the latter's main source of support.[178] According to the European Court of Human Rights:

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169. *Id.*

170. *See id.*

171. *See* Nina Caspersen, *Moving Beyond Deadlock in the Peace Talks*, *in* THE INTERNATIONAL POLITICS OF THE ARMENIAN-AZERBAIJANI CONFLICT 184–86 (Svante E. Cornell ed., 2017).

172. *See* Arie Bloed, *OSCE Chronicle: OSCE's 'frozen conflicts' remain volatile,* 20 SEC. & HUM. RTS. 175, 175–76 (2009).

173. Quoted in *Chiragov*, Eur. Ct. H.R., para. 30 (2015).

174. *See* Press Release, Joint Statement on the Nagorno-Karabakh Conflict, by the Presidents of the OSCE Minsk Group Co-Chair Countries (June 18, 2013), www.osce.org/mg/102856.

175. Ali Mortazavian & Mohammad Ghiacy, *Regional and International Cooperation to Reduce Nagorno-Karabakh Conflict*, 10 J. POL. & L. 136, 143 (2017).

176. *See* Executive Summary of "Report of the OSCE Minsk Group Co-Chairs' Field Assessment Mission to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh," Org. for Security & Co-operation Cur. 1 (2011), www.osce.org/mg/76209.

177. Quoted in *Chiragov,* Eur. Ct. H.R., para. 74 (2015).

178. *Id.* at para. 186.

> the Republic of Armenia, from the early days of the Nagorno-Karabakh conflict, has had a significant and decisive influence over the "NKR", . . . the two entities are highly integrated in virtually all important matters and . . . this situation persists to this day. In other words, the 'NKR' and its administration survives by virtue of the military, political, financial and other support given to it by Armenia which, consequently, exercises effective control over Nagorno-Karabakh and the surrounding territories . . . .[179]

According to the Minsk Group, "Nagorno-Karabakh is not recognized as an independent and sovereign State by any of their three countries, nor by any other country, including Armenia."[180] Thus, even its main sponsor has withheld recognition from Nagorno-Karabakh.

SC resolutions 853 (1993)[181] and 884 (1993)[182] affirmed the territorial integrity of Azerbaijan, from which it is also possible to infer a general rejection of NKR's separatist claim. Azerbaijan has, of course, made clear, including in the proceedings of international organizations, that Nagorno-Karabakh is a region of Azerbaijan and should be referred to as such.[183]

3. South Ossetia

Georgia, of which South Ossetia was an autonomous entity, was in turmoil in the final months of the Soviet Union. In December 1990, a nationalist government in Georgia abolished South Ossetia's autonomy and blockaded the territory.[184] Violence broke out between Georgian and Ossetian paramilitaries.[185] Soviet military units entered South Ossetia in April 1991 but the fighting continued.[186] On April 9, 1991, Georgia proclaimed independence from the Soviet Union.[187] On January 19, 1992, South Ossetians held a referendum in which the overwhelming majority of persons participating voted to separate from Georgia and incorporate into Russia.[188] The parliament in South Ossetia declared independence on May 29, 1992.[189] Russia, however, did not recognize South Ossetia as an independent State for some considerable time after.[190]

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179. *Id.*

180. Organization for Security and Co-operation in Europe [OSCE], Déclaration de M. Didier Gonzelez, Représentant Permanent Adjoint, au Conseil Permanent n°811 du 27 Mai 2010 [Statement by Didier Gonzalez, Deputy Permanent Representative of France, Meeting of the OSCE Permanent Council, May 27, 2010], PC.DEL/446/10 (May 27, 2010). *Accord*, *Chiragov*, Eur. Ct. H.R. at para. 28.

181. S.C. Res. 853, para. 8 (July 29, 1993).

182. S.C. Res. 884, para. 8 (Nov. 12, 1993).

183. U.N. GAOR, 71th Sess., 22nd mtg. at 9, U.N. Doc. A/C.3/71/SR.22 (Nov. 7, 2016).

184. INDEP. INT'L FACT-FINDING MISSION ON THE CONFLICT IN GEORGIA 71 (2009) [hereinafter GEORGIAN FACT-FINDING REPORT].

185. *Id*; *see also* Christopher Waters, *South-Ossetia*, *in* SELF-DETERMINATION AND SECESSION IN INTERNATIONAL LAW, *supra* note 110, at 176.

186. GEORGIAN FACT-FINDING REPORT, *supra* note 110, at 71.

187. *Id.* at 151.

188. *Id.* at 72.

189. *Id.*

190. *Id.*

On June 24, 1992, Russia and Georgia adopted an Agreement on Principles of Settlement of the Georgian-Ossetian Conflict ("Sochi Agreement").[191] The Agreement required the opposing parties to withdraw their armed units to create a corridor adjacent to the "line of juxtaposition."[192] The Agreement called for the parties to constitute a Joint Control Commission "to exercise control over the implementation of [the] cease-fire, withdrawal of armed formations, disband[ing] of forces of self-defense and to maintain the regime of security in the region."[193] In the event of violations of the Agreement, the Joint Control Commission was to investigate and take "urgent measures" to restore peace and order.[194] The Agreement forbade economic sanctions and blockade.[195] It guaranteed free movement of "commodities, services and people."[196] Within these boundaries, the separatist authorities controlled most of the territory of South Ossetia.[197]

On October 31, 1994, Georgia, South Ossetia, Russia, and North Ossetia, adopted an Agreement on Further Development of Georgian-Ossetian Peaceful Settlement Process and on Joint Control Commission ("Georgian-Ossetian Agreement").[198] The Georgian-Ossetian Agreement stated in its introductory section that "during the two years that lapsed since the signing of the Sochi Agreement no major results were achieved in the promotion of political dialogue."[199] The Georgian-Ossetian Agreement noted that the Joint Control Commission constituted under the Sochi Agreement had "largely fulfilled its functions of ensuring control of ceasefire, withdrawing armed units and maintaining safety measures" and it called for the Joint Control Commission to be "transformed into a permanent mechanism."[200] Optimistically, the Georgian-Ossetian Agreement aimed to strengthen the institutions designed to resolve the conflict. Realistically, however, separatist conflict was becoming intractable, and Georgia had resigned itself to a long-term standoff.

The Georgian-Ossetian Agreement also provided that the CSCE (OSCE) Mission in Georgia was to participate in the Joint Control Commission.[201]

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191. *Agreement on Principles of Settlement of the Georgian-Ossetian Conflict*, U.N. PEACEMAKER (June 24, 1992), http://peacemaker.un.org/sites/peacemaker.un.org/files/GE%20RU_920624_AgreemenOnPrinciplesOfSettlementGeorgianOssetianConflict.pdf [https://perma.cc/3R83-S5B2].

192. *Id.* art. 1, para. 2.

193. *Id.* art. 3, para. 1.

194. *See also Agreement on Further Development of Georgian-Ossetian Peaceful Settlement Process and on Joint Control Commission*, U.N. PEACEMAKER (Oct. 31, 1994) https://peacemaker.un.org/sites/peacemaker.un.org/files/GE_941031_AgreementFurtherDevelopment.pdf [https://perma.cc/R5NQ-K5VF].

195. *Id.* art. 4.

196. *Id.*

197. *See further* Yakemtchouk, *supra* note 145, at 422–24.

198. U.N. PEACEMAKER, *supra* note 194.

199. *Id.*

200. *Id.* at para. 1, § a, § c.

201. *Id.* at para. 4.

On May 16, 1996, Georgia and South Ossetia, with the facilitation of Russia as mediator, adopted a Memorandum on Measures of Providing Safety and Strengthening of Mutual Confidence between the Sides in the Georgian-Ossetian Conflict ("Georgian-Ossetian Memorandum").[202] Under the Georgian-Ossetian Memorandum, the parties agreed to refrain from the use or threat of force.[203] They agreed to host regular meetings with law enforcement bodies in order to suppress criminal activity in the conflict zone.[204] The Georgian-Ossetian Memorandum also called for the parties to de-militarize and to take steps toward "full scale political settlement of the conflict."[205] No such settlement emerged.[206]

Differences concerning South Ossetia and Abkhazia were a central factor in the deterioration of Georgia and Russia's relations from early 2004 to 2008.[207] On July '273 10, 2004, the President of Georgia, said that "South Ossetia will be reintegrated into Georgia within a year at the latest."[208] The parties narrowly averted military conflict in the summer of 2004.[209]

Georgia at the time sought to change the terms of the ceasefire agreements that had ended the armed conflicts of 1991–1994, particularly the terms assigning peacekeeping duties to Russian forces.[210] Georgian politicians believed that the Russians were enforcing an internal boundary between Georgia and its regions of South Ossetia and Abkhazia.[211]

After Kosovo's declaration of independence from Serbia on February 17, 2008, Russia indicated its support for the South Ossetian separatists.[212] This step further aggravated the situation. In March 2008, the parliaments of Abkhazia and South Ossetia appealed for recognition of their putative statehood.[213] In April 2008, Russia instituted closer cooperation with South Ossetia and Abkhazia on a range of practical matters.[214] Georgian and South Ossetian forces exchanged artillery fire in July 2008.[215] Large-scale hostilities broke out in August 2008 between Georgia and Russia.[216] On August 26, 2008, Russia formally recognized Abkhazia and

202. *Memorandum on Measures of Providing Safety and Strengthening Mutual Confidence between the Sides in the Georgian-Ossetian Conflict*, U.N. PEACEMAKER (May 16, 1996), https://peacemaker.un.org/sites/peacemaker.un.org/files/GE_960516_Memorandum%20on%20Measures%20of%20Providing%20Safety%20and%20Strengthening%20of%20Mutual%20Confidence.pdf [https://perma.cc/5YPW-L8JZ].

203. *Id.* at para. 1.

204. *Id.* at para. 5.

205. *Id.* at para. 9.

206. GEORGIAN FACT-FINDING REPORT, *supra* note 184, at 7–8.

207. *Id.*

208. *Id.* at 12.

209. *Id.* at 14.

210. *Id.* at 15.

211. *Id.* at 16.

212. *Id.* at 27.

213. *Id.*

214. *Id.*

215. *Id.* at 31.

216. *See id.* at 28.

South Ossetia as independent States.[217]

After the August 2008 conflict, Russia changed its formal position on South Ossetia. It recognized the region as a "state" and concluded agreements with it in the form of State-to-State instruments, for example a Treaty on Friendship, Cooperation and Mutual Assistance[218] and a military base treaty.[219] Apart from Russia, Nicaragua, Venezuela, and Nauru, no State has recognized South Ossetia or Abkhazia.[220]

4. Abkhazia

Abkhazia, like Ossetia, was an autonomous unit within the Georgian Soviet Socialist Republic under the Soviet Union. On August 24, 1990, Abkhazia's Supreme Soviet declared the "State Sovereignty of the Abkhaz Soviet Socialist Republic," a declaration evidently not intended to establish an independent State.[221] Nevertheless, considerable disquiet existed between Abkhazia and the central government of Georgia,[222] and efforts to reach a new constitutional settlement were prolonged and unsuccessful.[223]

Georgian troops entered Abkhazia on August 14, 1992, and armed conflict erupted.[224] Armistices were called, but none lasted.[225] Georgian forces took control of the eastern and western parts of the territory, while Abkhaz forces took control of the central part.[226] On September 3, 1992 Georgia, Russia, the Abkhaz government, and the leaders of the North Caucasus Republics of Russia adopted the Moscow Agreement.[227] The Moscow Agreement ensured the territorial integrity of Georgia and called for a ceasefire starting at noon on September 5, 1992.[228] It established a Monitoring and Inspection Commission, composed of representatives of Georgia, "including Abkhazia," and Russia.[229] The parties agreed to "remove any impediment to the free movement of goods and services and of persons engaging in lawful activities" and to assure transportation links, in

217. *Id.*; *see* Frédérique Coulée & Hélène Picot *Pratique française du droit international* 54 ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL 696–99 (2008) (discussing the ceasefire of August 2008); *see also* Sabrina Robert-Cuendet, *Aspects historiquies et juridiques de la Crise d'Août 2008: des Conflits interethniques à la Guerre Ouverte avec la Russie*, 54 ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL 173–95 (2008).

218. Nuβberger, *supra* note 78, at 327.

219. *Id.*

220. *Id.*

221. GEORGIAN FACT-FINDING REPORT, *supra* note 184, at 73; Angelika Nuβberger, *supra* note 78, at 327.

222. Nuβberger, *supra* note 78, at 327.

223. GEORGIAN FACT-FINDING REPORT, *supra* note 184, at 74–75.

224. *Id.* at 76.

225. *Id.*

226. *Id.*

227. *See generally* U.N. Security Council, Annex to Letter dated 8 September 1992 from the Charge d'Affaires A.I. of the Permanent Mission of the Russian Federation to the United Nations Addressed to the President of the Security Council, U.N. Doc. S/24523 (Sept. 8, 1992), https://peacemaker.un.org/sites/peacemaker.un.org/files/GE_920903_Moscow%20Agreement.pdf [https://perma.cc/4LMY-TXVQ] [hereinafter Letter dated Sept. 8, 1992].

228. *Id.* at 2.

229. *Id.*

particular the Transcausasian Railway.[230] They called for UN and OSCE assistance in peace-building,[231] appealing to the UN and CSCE (OSCE) to "support the principles of settlement . . . and to promote respect for them, particularly by sending fact-finding missions and observers."[232] Russian armed forces were to remain in the territory as "strictly neutral."[233]

The Moscow Agreement broke down almost immediately. Abkhaz forces, with outside assistance, seized the western part of the country, thus establishing a consolidated territory contiguous to the Russian Federation.[234]

The Secretary General of the United Nations appointed a Special Envoy to Georgia in May 1993 for purposes of implementing a ceasefire in Abkhazia.[235] Heavy fighting continued in summer 1993.[236]

Russia, Georgia, and the Abkhaz separatists adopted a further ceasefire agreement on July 27, 1993 under an Agreement on a Ceasefire in Abkhazia and Arrangements to Monitor its Observance.[237] The July 27, 1993 Agreement forbade the introduction of further forces into the area.[238] The Agreement provided for "trilateral Georgian-Abkhaz-Russian interim monitoring groups" to supervise the ceasefire.[239] The interim monitoring groups were to "establish close liaison" with the international observers who were to arrive later.[240] The parties agreed to "create conditions for the legitimate authorities in Abkhazia to resume their normal functions."[241] The Agreement further provided for a Joint Commission on the Settlement in Abkhazia, to be comprised of representatives and observers from the UN and CSCE.[242] In what might be described as a "good faith" or "non-abuse of process" clause, the parties to the Agreement stipulated that they would not "use its provisions or the cease-fire regime for any actions which could be prejudicial to the interests of any one of them."[243] The Agreement reiterated that Russian troops in Abkhazia "shall observe strict neutrality."[244]

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230. *Id.* at 3.
231. GEORGIAN FACT-FINDING REPORT, *supra* note 184, at 76.
232. Letter dated Sept. 8, 1992, *supra* note 227, at 4.
233. *Id.*
234. GEORGIAN FACT-FINDING REPORT, *supra* note 184, at 77.
235. U.N. Secretary General, Report of the Secretary-General Concerning the Situation in Abkhazia, Georgia para. 5, U.N.Doc. S/1994/80 (Jan. 25, 1994); *see* Yakemtchouk, *supra* note 145, at 426–29.
236. Kenneth Anderson, Louis Hammond, *Georgia/Abkhazia: Violations of the Laws of War and Russia's Role in the Conflict*, 7 HUMAN RIGHTS WATCH (Mar. 1, 1997), https://www.hrw.org/reports/1995/Georgia2.htm [https://perma.cc/QCX9-34E9].
237. *See generally* U.N. Security Council, Agreement on a Ceasefire in Abkhazia and Arrangements to Monitor its Observance, U.N. Doc. S/26250 (July 7, 1993), https://peacemaker.un.org/sites/peacemaker.un.org/files/GE_930727_AbkhaziaCeasefireAndArrangementsToMonitorObservance.pdf [https://perma.cc/7G3C-VVNH].
238. *Id.* at para. 1.
239. *Id.* at para. 2.
240. *Id.* at para. 5.
241. *Id.* at para. 8.
242. *Id.* at para. 4.
243. *Id.* at para. 10.
244. *Id.* at para. 7.

UN Security Council Resolution 858 of August 24, 1993 welcomed the Agreement of July 27, 1993 and established a UN Observer Mission in Georgia (UNOMIG).[245] UNOMIG served to verify compliance with the July 27, 1993 Agreement.[246] The Secretary General of the UN, in a report pursuant to an earlier SC resolution, said that the ceasefire "is generally being respected" and that "it is [his] view that conditions now prevail which permit the deployment of the proposed military observer mission."[247] Georgia withdrew heavy artillery from the region.[248] Evidently taking this as an opportunity, Abkhaz forces launched a large offensive against Georgian-held positions.[249] As a result, practically all of Abkhazia came under Abkhaz separatist control.[250]

On April 4, 1994, Georgia, Russia, the Abkhaz separatists, the UN, and the CSCE (OSCE) adopted a Declaration on Measures for a Political Settlement of the Georgian-Abkhaz Conflict.[251] The parties to the Declaration agreed to the deployment of a peacekeeping force incorporating a Russian component.[252] The Declaration set out certain governmental activities that would be subject to "joint action" by the central government of Georgia and Abkhazia's separatist government,[253] but it also stipulated that "Abkhazia shall have its own Constitution, legislation, and appropriate State symbols, such as an anthem, emblem and flag."[254] The parties formed a standing committee to reestablish "State and legal relations."[255]

On the same day as the Declaration on Measures for a Political Settlement, Russia, Georgia, the Abkhaz separatists, and the UN High Commissioner for Refugees adopted a Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons.[256] Among other measures, the Quadripartite Agreement provided for a Commission to facilitate the

245. U.N. Security Council, Res. 858, U.N. Doc. S/RES/858 (Aug. 24, 1993), https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/700/43/img/NR070043.pdf?OpenElement [https://perma.cc/9E2X-QXJ7].

246. *Id.*

247. Report of the Secretary General in Pursuance of Security Council Resolution 849 (1993), para. 17, U.N.Doc. S/26250 (Aug. 6, 1993) http://repository.un.org/bitstream/handle/11176/51829/S_26250_Add.1-EN.pdf?sequence=3&isAllowed=y [https://perma.cc/KW5L-3K74].

248. *Id.* at Annex I, para. 6.

249. GEORGIAN FACT-FINDING REPORT, *supra* note 184, at 78.

250. *Id.*

251. Declaration on measures for a political settlement of the Georgian/Abkhaz conflict signed on 4 April 1994, transmitted by Letter Dated 5 April 1994 from the Permanent Representative of Georgia to the United Nations Addressed to the President of the Security Council, U.N. Doc. S/1994/397 (Apr. 5, 1994) http://peacemaker.un.org/sites/peacemaker.un.org/files/GE_940404_DeclarationOnMeasuresForPoliticalSettlementGeogianAbkhazConflict.pdf [https://perma.cc/KF23-D847].

252. *Id.* at para. 5.

253. *Id.* at para. 7.

254. *Id.* at para. 6.

255. *Id.* at para. 8.

256. Quadripartite agreement on voluntary return of refugees and displaced persons signed on 4 April 1994, U.N. Doc. S/1994/397 (Apr. 5, 1994), https://peacemaker.un.org/sites/peacemaker.un.org/files/GE_940404_QuadripartiteAgreementVoluntaryReturnRefugees.pdf [https://perma.cc/S9UV-RS76].

return of refugees and displaced persons to Abkhazia from the rest of Georgia.[257] The Commission was to include CSCE (OSCE) representation.[258] The Quadripartite Agreement, under a section of further provisions, stipulated the facilitation of travel between Abkhazia and the rest of Georgia.[259]

On May 14, 1994, Georgia and the Abkhaz separatists adopted an Agreement on a Cease-Fire and Separation of Forces.[260] This agreement "formalized" the commitments adopted on April 4, 1994.[261] Additionally, it established a security zone extending twelve kilometers to either side of the boundary of Abkhazia and the rest of Georgia (i.e., a zone of twenty-four kilometers in total).[262] The security zone was to be free of all armed forces of the parties to the conflict.[263] On both the separatist and central government sides of the security zone, a further "restricted-weapons zone" was established in which heavy military equipment was excluded.[264] Each of the restricted weapons zones extended approximately twelve additional kilometers beyond the security zones.[265] The security zone and the two restricted-weapons zones were defined by map appendix.[266] The parties also agreed to pursue a "comprehensive political settlement."[267] The Agreement provided for the deployment of the Peacekeeping Force of the CIS and military observers in the security zone and included provisions treating Russia as a third party (i.e., not a party to the conflict).[268]

SC resolution 937 of July 21, 1994, welcomed the Agreement.[269] SC resolution 937 extended UNOMIG's mandate to include "monitor[ing] and verify[ing] the implementation by the parties of the Agreement."[270] Further, UNOMIG was to cooperate with the CIS peacekeeping force.[271]

It was along the lines defined in the May 14, 1994 Agreement that the conflict between Georgia and the Abkhaz separatists would stabilize and thus become "frozen."[272] The article in Trud referring to the situation in Georgia as a "frozen conflict" was published the month after these transactions.[273]

257. *Id.* at para. 5.
258. *Id.* at para. 3, §§ (a)-(g).
259. *See id.* at para. 3, § (b).
260. Agreement on a Ceasefire and Separation of Forces, U.N.Doc. S/1994/583, (May 14, 1994), https://peacemaker.un.org/sites/peacemaker.un.org/files/GE_940514_AgreementCeasefireSeparationOfForces.pdf [https://perma.cc/3Z78-PX59] [hereinafter Ceasefire Agreement].
261. *See id.* at preamble.
262. *See id.*at paras. 2(a), 5.
263. *See id.* at para. 2(d).
264. *See id.* at para. 2(c).
265. *See id.* at para. 5.
266. *Id.* at para. 5.
267. *See id.*
268. *See id.* at para. 2(b); *see* S.C. Res. 937, paras. 2-4 (July 21, 1994).
269. *See* S.C. Res. 937, *supra* note 268, at preamble.
270. *See id.* at para. 6(a).
271. *See id.* at para. 6(b).
272. *See* Ceasefire Agreement, *supra* note 260, at 3.
273. Moscow Trud, *supra* note 95.

Also involved in the Georgian peace process, from July 1997 onward, was the Group of Friends of Georgia, a body established in December 1993 comprised of France, Germany, Russia, the United Kingdom, and the United States.[274] As for the Georgians and Abkhaz themselves, direct contacts took place in a Bilateral Georgian-Abkhaz Coordination Commission for Practical Issues from August 1997 onward.[275]

As noted above, the inter-State conflict between Russia and Georgia in August 2008 was accompanied by Russia's recognition of Abkhazia and South Ossetia as independent States.[276]

B. Seven Characteristics of the Frozen Conflict

From the foregoing, we see that the frozen conflicts share certain characteristics:

(1) armed hostilities have taken place, parties to which include a State and separatists in the State's territory;
(2) a change in effective control of territory has resulted from the armed hostilities;
(3) the State and the separatists are divided by lines of separation that have effective stability;
(4) adopted instruments have given the lines of separation (qualified) juridical stability;
(5) the separatists make a self-determination claim on which they base a putative State;
(6) no State recognizes the putative State;
(7) a settlement process involving outside parties has been sporadic and inconclusive.[277]

Some observations in respect of each of these characteristics may be made.

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274. Vladimir Socor, *New Group of Georgia's Friends Founded*, JAMESTOWN FOUND. (Feb. 7, 2005, 12:00AM), https://jamestown.org/program/new-group-of-georgias-friends-founded/ [https://perma.cc/WJH3-AVPK].

275. *See Concluding Statement on the Outcome of the Resumed Meeting between the Georgian and Abkhaz Parties*, PEACEMAKER UN (Nov. 19, 1997) https://peacemaker.un.org/sites/peacemaker.un.org/files/GE_971119_Concluding%20Statement%20on%20the%20Outcome%20of%20the%20Resumed%20Meeting.pdf [https://perma.cc/6CGM-SS4X] (stating the parties agree to the creation of a Coordination Council); *Statement on the Meeting between the Georgian and Abkhaz Parties*, PEACEMAKER U.N. (Aug. 14, 1997), https://peacemaker.un.org/sites/peacemaker.un.org/files/GE_970814_Statement%20on%20the%20meeting%20Georgian%20and%20Abkhaz%20parties.pdf [https://perma.cc/JRQ7-SA32] ("The parties agreed on the need to maintain constant contact for the purpose of resolving the problems that gave rise to the conflict.").

276. *See* U.N. Conference on Disarmament, *Letter Dated 28 August 2008 from the Permanent Representative of the Russian Federation to the conference on Disarmament Addressed to the Secretary-General of the Conference Transmitting the Texts of the Statement by the President of the Russian Federation and the Statement by the Ministry of Foreign Affairs of the Russian Federation Dated 26 August 2008 on Recognition of the Independence of South Ossetia and Abkhazia*, 4, U.N. Doc. CD/1849 (Sep. 4, 2008).

277. *See id.*

1. Hostilities Between a State and Separatists

External intervention or assistance is a salient fact in the frozen conflicts. The scope of external intervention or assistance, and the attention given by international actors to the external dimension of the conflict, vary from one conflict to another. However, armed hostilities between the State and separatists have occurred, and the formal processes and instruments associated with each conflict acknowledge those hostilities as an important concern.

2. Changes in Effective Control of Territory as a Result of Hostilities

Not all armed conflicts result in a change in effective control of territory. Rebels, in some internal armed conflicts, never gain a stable foothold, a reality reflected, for example, in the Commentary to Article 10 of the Articles on State Responsibility.[278] In each of the four examples in Part II.A above, however, the use of force resulted in the separatist party establishing effective control of an area within the territory of the State.

Applying a reductionist approach, some have claimed that boundary disputes and territorial disputes are the same.[279] It is true that the ICJ in *Burkina Faso/Mali* said that the difference between the two "is not so much a difference in kind but rather a difference of degree . . . The effect of any delimitation, no matter how small the disputed area crossed by the line, is an apportionment of the areas of land lying on either side of the line."[280] The difficulty is that both the legal authorities and a general appreciation suggest that, at some point, the "difference of degree" has qualitative effects.[281] And, even in a situation where only a very small disputed area is at stake, the difference is one of legal substance, a point made visible in decided cases.[282] The separatists in a frozen conflict have set up new boundaries within an existing State for purposes of defining a putative new State. Their boundary claim, and the existing State's rejection of it, are not ordinary matters of delimitation. Such a claim reflects the effective change of control characteristic of frozen conflicts.

3. Lines of Separation with Effective Stability

Lines separating hostile forces, even after a ceasefire, are not necessarily stable. The possibility of a prolonged instability of lines between separatist forces and a government was acknowledged in *Sargsyan* v. *Azerbaijan*, where the European Court of Human Rights noted:

278. "At the outset, the conduct of the members of the movement presents itself purely as the conduct of private individuals. It can be placed on the same footing as that of persons or groups who participate in a riot or mass demonstration . . . ." *See Draft Article on Responsibility of States for Internationally Wrongful Acts*, [2001] 2 Y.B. INT'L L. COMM'N 50, U.N. DOC. A/56/10.

279. *See id.* at 5.

280. *See Frontier Dispute (Burkina Faso v. Mali)*, 1986 I.C.J. Rep. 554, 563 (Dec. 22).

281. *Id.*

282. See *Request for Interpretation of the Judgement of 15 June 1962 in re Temple of Preah Vihear*, 2013 I.C.J. Rep. 281, 316–17 (Nov. 11).

> that under international law (in particular Article 42 of the 1907 Hague Regulations) a territory is considered occupied when it is actually placed under the authority of a hostile army, "actual authority" being widely considered as translating to effective control and requiring such elements as presence of foreign troops, which are in a position to exercise effective control without the consent of the sovereign.[283]

The region in question, Gulistan, was on "the frontline" between opposing forces, not obviously controlled by the separatists or the neighboring State supporting them.[284] Thus, even after separatists have gained effective control of territory, peripheries to that territory may lack stable lines of separation between the separatists and the State.[285] Nevertheless, in the frozen conflicts, lines of separation for considerable periods of time are plainly identifiable and not subject to significant change.[286] Border fencing or other obvious indications of the lines of separation are a possibility.[287]

The stability of a "frozen conflict" is relative. Some writers have suggested that situations usually included among the main examples are not accurately described as "frozen conflicts," because they "display . . . increased risks of relapses into violence."[288] However, the risks of relapse, and even the fact of on-going violence at a low intensity, are characteristics of the situations that, in current usage, are described as frozen conflicts. If one is to maintain consistency, the situation presenting no such risk does not merit that description. A situation in which violence is unlikely might be "frozen" but it is not a "conflict."

An international lawyer would better describe such a situation as a "dispute" or a "difference," because terms such as those entail "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons," without necessarily entailing armed conflict or the potential for armed conflict.[289] Disputes and differences, it is true, include situations that have erupted into armed conflict or other violence (or could); most armed conflicts have a dispute or difference at their heart. However, not all disputes or differences escalate to armed conflict.[290] After a dispute or difference has escalated to armed conflict, and the parties fail to reach a comprehensive settlement, the risk likely remains, even if

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283. Sargasyan v. Azerbaijan, App. No. 40167/06, Eur. Ct. H.R. 1, 47 (June 16, 2015), https://perma-archives.org/warc/Q86F-KRKP/20171218015949/http://hudoc.echr.coe.int/eng?i=001-155662 [https://perma.cc/Q86F-KRKP].

284. *Id.*

285. *Id.*

286. *Id.*

287. As with the border fences in Abkhazia and South Ossetia, noted by Lord Wallace of Saltaire, 746 Parl. Deb. H.L. (2013) col. 1204 (UK). It is arguable that Abkhazia and South Ossetia by that time (however, on other grounds) no longer precisely fit the definition.

288. *See* DON LYNCH, ENGAGING EURASIA'S SEPARATIST STATES: UNRESOLVED CONFLICTS AND DE FACTO STATES 42 (2004); Niklas Nilsson, *EU and Russia in the Black See Region: Increasingly Competing Interests?*, 8 ROMANIAN J. EUR. AFF. 25, 30 (2008).

289. Mavrommatis Palestine Concessions (Greece v. U.K.), Judgment, 1924 P.C.I.J. (ser. A) No. 2, at para. 21 (Aug. 30).

290. *Id.*

a ceasefire has taken hold.[291]

4. Lines of Separation with (Qualified) Juridical Stability

The practice concerning ceasefires shows that ceasefires in many instances are adopted on-the-spot. They are measures of a practical character. It is typically commanders in the field who adopt them, even if they are following political direction when they do so.[292] By contrast, follow-on agreements, adopted at the political level, suggest that the parties intend the situation to be longer-lasting.[293] In many instances, such agreements have conferred at least a qualified juridical stability on ceasefire lines that the lines would otherwise lack.[294] For example, in connection with the escalation of hostilities across the Line of Contact between government-controlled areas of Azerbaijan and Nagorno-Karabakh, Russia said that the agreements of 1994 and 1995 are of "unlimited character and remain the basis of the ceasefire."[295] The agreements provide a more definite legal basis for monitoring the situation and for challenging breaches—which is not to say that these agreements contain robust dispute settlement provisions.[296] They seldom contain more than consultation clauses.[297] The parties to such agreements nevertheless view their terms regarding ceasefire lines as legally binding.

Border control arrangements between the separatist region and another State are a distinct matter, but generally would further stabilize the separation regime. Russia introduced simplified border-crossing between separatist regions in Georgia in 2000, a measure protested by Georgia.[298]

Stability as a criterion of "frozen conflict" is implicit when authorities distinguish certain other conflicts from the frozen ones. For example, the Minister of Foreign Affairs of Serbia, addressing the Security Council in 2011 said, "[w]hile some speak of Kosovo as a frozen conflict, I believe that

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291. *Id.*

292. David M. Morriss, *From War to Peace: A Study of Cease-Fire Agreements and the Evolving Role of the United Nations*, 36 VA. J. INT'L. L. 801, 898 (1996).

293. In the discussions in the Special Committee concerning the Friendly Relations Declaration, State representatives made a distinction between "ceasefire positions" and a "line of demarcation" adopted under an armistice agreement: Report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, para. 73, U.N. Doc A/6799 (Sept. 26, 1967). Here, positing two separate elements to the definition of "frozen conflict"—effective lines of separation and judicially stable lines of separation—broadly accords with the distinction made in the Special Committee.

294. *Id.* at para. 148.

295. Luchterhandt, *supra* note 166, at 226 n. 150 (quoting *Note verbale from the Permanent Representative of the Russian Federation to the OSCE* (Apr. 12, 2016). The note stated (in German trans. by Luchterhandt from the Russian) that "*die Abkommen aus den Jahren 1994 und 1995 unbefristeten Charakter haben und wie bisher Grundlage des Waffenstillstandes . . . in der Konfliktzone sind.*" *Id.*

296. *See id.* at 172–233.

297. *Id.*

298. *See* Letter dated 7 December 2000 from the Permanent Representative of Georgia to the United Nations addressed to the President of the Security Council, Mr. Peter Chkheidze S/2000/1163, annex (Dec. 7, 2000).

the situation is fluid and dynamic."[299] This implies that the Minister understood frozen conflicts not to include "fluid and dynamic" conflicts.[300] If those terms described Kosovo in 2011 at all, then they did so because of the rejection by Serbia of Kosovo's independence. The question of effective control by that time was largely settled, and, though Serbia challenged the location of Kosovo's boundaries, this was not a "fluid" situation in the sense of an armed conflict in which territory continued to change hands.[301] In view of the other criteria posited here, there are other grounds for excluding Kosovo from the category "frozen conflict" (e.g., widespread recognition of its statehood, in particular by its supporters and by a large number of other States).[302] The Serbian Minister's observation about fluidity is nonetheless instructive for identifying the limits of a definition of "frozen conflict."[303]

5. *Self-Determination Claims Associated with the Establishment of a Putative State*

So a frozen conflict entails an armed conflict between separatists and a State (B1), a change in effective control of territory (B2), the establishment of effective lines of separation between hostile armed forces (B3), and the at least qualified juridical stabilization of those lines (B4).[304] Implicit in the first and second of these—armed conflict between separatists and a State and a change in effective control of territory—a frozen conflict has characteristics that distinguish it from the legal regime of occupied territory. A frozen conflict entails a claim to self-determination by a separatist group where the group has acted on that claim by declaring its independence.[305] Moreover, the putative new State exercises elements of effective control within the territory that the separatists have seized.[306] The stabilization of the lines of separation between warring forces thus correlates here to a more or less thorough crystallization of separate administrative and political structures in the separatist entity. Occupation, in itself, entails no such claim to separate the territory,[307] and the legal regime applicable to occupied territory, far from entailing administrative-political

299. U.N. SCOR, 66th Sess., 6670th mtg. at 4, U.N. Doc. S/PV.6670 (Nov. 29, 2011).
300. *Id.*
301. *Id.* at 8 (highlighting key developments in Kosovo such as the democratization process).
302. *Id.*
303. To be distinguished are situations where the central authorities have made concessions to a separatist or insurgent group but only temporarily. *See, e.g.*, Balmond, *supra* note 147, at 737 (discussing agreements between Colombia's government and the ELN (Spring 2000) and FARC (Nov. 1998)).
304. *See supra* Parts I B. 1, I B. 2, I B. 3, and I B. 4.
305. *Id.*
306. *Id.*
307. Thus, the several qualifications that the I.C.J. used in the *Wall* Advisory Opinion when describing the situation in the West Bank, which though involving an occupation did not involve a formal claim to annexation: Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. Rep. 136, 184 para. 121 (July 9).

change, strictly limits it.[308]

A frozen conflict is not one in which the opponents of the government seek to replace the government in the State as a whole.[309] They seek instead to set up a new State in part the old State's territory. A claim to self-determination and independence is central to each of the frozen conflicts, whatever one makes of the *bona fides* of the separatist groups or their claims.

The existence of a separatist administration makes certain practical accommodations possible in respect of a frozen conflict that would not be possible in respect of a mere uprising or rebellion. For example, the United States Department of State, through its Bureau of Democracy, Human Rights, and Labor, has "engage[d] Transnistrian authorities, nongovernmental organizations (NGOs) and academics to encourage civic activism to prevent trafficking and build networks and cooperation."[310] A California court considered the possibility of an extradition request to authorities in South Ossetia (though it did not say expressly whether a request to such authorities would be proper).[311] As was seen with the South African "homelands," Rhodesia, and the TRNC, however, just because certain practical accommodations are possible does not mean that they are lawful.

6. Non-Recognition of the Putative State

An unrecognized putative State is one of the defining characteristics of the situations typically described as frozen conflicts.[312] The entities associated with the frozen conflicts are noted among the main current examples of putative States that have failed to receive widespread recognition.[313] For example, the ILA in its report on recognition and non-recognition in international law, refers, *inter alia,* to Transnistria, Abkhazia, South Ossetia, and Nagorno-Karabakh.[314]

The lack of recognition suggests that no State is prepared to settle the matter on the separatists' terms. The process of claim is stalled, in particular because the separatist party makes a claim that States are not prepared to accept.[315] It follows that recognition of the separatist entity by a State changes the situation. Under the typology suggested here, after recognition the situation is no longer, in the strict sense, "frozen," because at least

308. *See e.g.,* under the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, 322 (Aug. 12), Art. 54; 1907 Hague Regulations Respecting the Laws and Customs of War on Land, 36 Stat. 2277, 1 Bevans 631 (Oct. 18), Arts. 42–56.

309. Note the distinction in Comments (5) and (6) to ARSIWA, Art. 10, *supra* note 279, at 50–51.

310. U.S DEP'T ST., BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, *supra* note 19.

311. INT'L L. ASS'N, Washington Conference, *Recognition/Non-Recognition in International Law*, n. 90 (Wladyslaw Czaplinski, Chair; Christopher Borgen & Aziz Tuffi Saliba, Co-Rapporteurs) (Mar. 2014) (citing Cnty. of L.A. v. Ind. Lumbermens Mut. Ins. Co., 2010 Cal. App. Unpub. LEXIS 2146 (Cal. App. 2d. Div. 1, Mar. 25, 2010)).

312. *See* 111 Cong. Rec. S6585, *supra* note 16.

313. *Id.*

314. *Recognition/Non-Recognition in International Law*, *supra* note 314.

315. *Id.*

one State, having recognized the separatist entity as a State, favors a definitive settlement that abandons the *status quo ante*.[316] Abkhazia and South Ossetia, if this view is taken, were frozen conflicts before 2008 but they are not now. It is not necessarily the case that the disputes—or conflicts—in such situations have been resolved. It is posited here that they have entered a different phase.

7. *Settlement Process (Sporadic and Inconclusive)*

As noted in Part II.A above, each of the "frozen conflicts" has given rise to attempts at settlement involving other States or multilateral institutions.[317] The element of stability in "frozen conflicts" owes, in part, to the ceasefire lines recognized in instruments adopted by the parties. It owes as well to the settlement processes established, in some cases, under the same instruments that establish or recognize the ceasefire lines. Those processes entail obligations on the State party not to impede the search for peaceful settlement, which, in turn, entails qualifications on the right of the State party to protect its territorial integrity by force, or at least that is what the separatist party and its sponsor are likely to say.

The ceasefire agreement of July 27, 1993 between Russia, Georgia, and the Abkhaz separatists was noted above.[318] Of particular interest in that agreement was the provision prohibiting "any actions which could be prejudicial" to any party (para. 10).[319] This would sound like an interim measures provision between parties in an arbitration or adjudication—except that, in a formal dispute settlement setting, juridical equality between the parties is presumed.[320] In a separatist conflict between a State and a non-State entity in the territory of the State, such a level legal playing field is not self-evident. Paragraph 10 of the agreement of July 27, 1993 placed the State and the separatists in a position of parity: the interests of both received protection in what amounted to a stabilization clause, to remain in force, it would seem, for an indefinite period.[321] While such a clause provides a basis for a settlement process—parties are unlikely to negotiate if they are not assured a semblance of juridical equality for purposes of the negotiation—it also places an obstacle in the way of the incumbent State that might otherwise seek to achieve a solution on the ground by force in defense of its territorial integrity.

A settlement process might also get in the way of international court proceedings that the incumbent State has instituted in respect of matters arising out of the situation. At any rate, a respondent State in such proceedings is likely to say that the settlement process should prevent the exercise of jurisdiction by the court. It is unsurprising that Russia, in

316. *Id.*
317. *See supra* Part I A.
318. Agreement on a Cease-Fire in Abkhazia and Arrangements to Monitor Its Observance, U.N. Doc. S/26250, Annex I (July 27, 1993).
319. *Id.* at para. 10.
320. *Id.*
321. *Id.*

addressing Ukraine's request for provisional measures at the ICJ, argued, *inter alia,* that the request "would . . . cut across implementation of the Minsk Agreements, of which you heard nothing yesterday [from Ukraine]."[322] According to Russia, the Package of Measures adopted on February 12, 2015 at Minsk was "a significant step . . . to de-escalate the conflict," and these measures "are repeatedly referred to by international actors as *the only uncontested solution* to the conflict."[323] If a political settlement process is the "only" way forward, and it leads nowhere, then the conflict necessarily remains "frozen."

That settlement processes for these conflicts have not led to settlements suggests a problem of ripeness,[324] which in turn suggests the legal concept of justiciability. However, ripeness and justiciability, notwithstanding a venerable debate over their meaning in international adjudication, have relatively definite meaning.[325] When a party invokes those concepts, it is typically to say that a situation contains no legal dispute.[326] It is not useful to describe frozen conflicts as not ripe or justiciable in this sense. The long duration of frozen conflicts owes to the refusal of one or more parties to accept pacific settlement, not to the lack of a legal dispute. Given the political will, the parties to a frozen conflict (as defined) could adopt a jurisdictional instrument covering all or some of the outstanding issues between them.

It is true that separatist conflicts are seldom subject to the jurisdiction of a court or tribunal. However, as the Abyei arbitration shows, no legal principle prevents parties to such conflicts from agreeing to adjudicate or arbitrate in respect of territorial boundaries and related questions.[327] If a legal dispute exists, then it is capable of adjudication or arbitration. Frozen conflicts without a doubt involve legal disputes, even if underlying strategic and political factors make pacific settlement elusive.

C. Legal Problems Associated with "Frozen Conflicts"

A "frozen conflict" may have indirect or secondary effects. A number of these may be of a legal character and so merit consideration here.

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322. International Court of Justice Verbatim Record CR 2017/2, at 15 (Mar. 7, 2017).

323. Rogachev (for Russia), *id.* at 18, para. 10 (emphasis added).

324. *See, e.g.,* Annex to Letter dated 15 June 2016 from the Permanent Representative of Liechtenstein to the United Nations addressed to the Secretary-General, U.N. Doc. A/70/955-U.N. Doc. S/2016-547 ("participants stressed that the legal and political context was still not ripe to resolve other, sometimes protracted, crises resulting from self-determination claims (e.g., Transnistria, Nagorno-Karabakh)") (June 23, 2016).

325. *See, e.g.*, Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. Rep. 14, 26–28 paras. 32–35 (June 27); Border and Transborder Armed Actions (Nicar. v. Hond.), Judgment, 1988 I.C.J. Rep. 69, 144–45, (Dec. 20) (separate opinion by Judge Shahabuddeen).

326. *Id.*

327. *See generally* Gov't of Sudan v. Sudan People's Liberation Movement/Army (Perm. Ct. Arb. 2009) ("Abyei Arbitration").

1. International Responsibility

At least two questions of international responsibility have arisen in connection with so-called frozen conflicts. First, there is a question of the international responsibility of a State that sponsors—and perhaps directs or controls—insurrectionists. Second, there is a question of the international responsibility of the insurrectionists themselves.

a. International Responsibility of a State Sponsoring Insurrectionists

A frozen conflict may give rise to questions of State responsibility. The European Court of Human Rights has found that the State behind the separatists might well be internationally responsible for conduct taking place in the separatist area.[328] This has been the case in situations typically described as "frozen conflicts";[329] it has been the case in areas under direct occupation, in particularly in northern Cyprus.[330]

Ukraine v. *Russia* at provisional measures phase did not exclude the possibility of State responsibility under the International Convention for the Suppression of the Financing of Terrorism (ICSFT) in connection with terrorist acts in a situation like that in eastern Ukraine,[331] but as Ukraine presented its case the grounds were not established for the indication of provisional measures under the Convention.[332] Ukraine in its request to the ICJ for indication of provisional measures against Russia argued that a State might be responsible for a breach of the ICSFT in connection with the conduct of public and private actors in its territory who have given aide to an insurgent group in another State.[333] In particular, Ukraine maintained that Russia "failed to take appropriate measures to prevent the financing of terrorism in Ukraine by public and private actors on the territory of the Russian Federation and that it has repeatedly refused to investigate, prosecute, or extradite 'offenders within its territory brought to its attention by Ukraine.'"[334] The Court, in its Order of April 19, 2017, determined that a dispute existed in respect of the interpretation and application of the ICSFT;[335] and that the "procedural preconditions" (attempts to settle by

328. *See* Case of Ilascu & Others v. Moldova and Russia, App. No. 48787/99, Eur. Ct. H.R. paras. 385, 394 (July 8, 2004).

329. *Id.*; Chiragov & Others v. Armenia, App. No. 13216/05, 2015 Eur. Ct. H.R. paras. 186–87 (2015).

330. *See generally* Case of Cyprus v. Turkey, App. No. 25781/94, 2001 Eur. Ct. H.R. (May 10, 2001).

331. *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation).* Request for the Indication of Provisional Measures, Order, para. 29 (Apr. 19, 2017). At the time the present Article went to press, the dispute remained *sub judice,* the Court by Order dated May 12, 2017 having set June 12, 2018 and July 12, 2019 as time-limits for the submission of Ukraine's Memorial and the Russian Federation's Counter-Memorial, respectively.

332. *Id.*

333. *Id.*

334. *Id.*

335. *Id.* para. 31.

negotiation, attempts to submit to arbitration) had been met.[336]

For the Court to indicate provisional measures, the Court also must satisfy itself that the purported rights that provisional measures would protect "are at least plausible"—*i.e.*, it must be at least plausible that the party or parties whom the measures would protect possess the purported rights.[337] Nobody doubted that the fighting in eastern Ukraine had caused a substantial number of civilian deaths.[338] It was not clear however that the civilian deaths had resulted from terrorist acts; required elements of the definition of terrorism had not been established (*e.g.*, elements of intention or knowledge, element of terrorist purpose).[339] Because the provisions of ICSFT that Ukraine had invoked concern only terrorist acts (and not, for example, breaches of international humanitarian law in an armed conflict), the Court concluded that Ukraine had not established that the rights which it sought to protect were plausible.[340] The Court hastened to add that this conclusion was without prejudice to the Parties' obligation to observe the requirements of the ICSFT.[341]

b. International Responsibility of the Insurrectionists

The ILC was clear that its work on State responsibility did not cover "[t]he topic of the international responsibility of unsuccessful insurrectional or other movements."[342] It did expressly cover the situation, however, where such movements succeed in establishing a new State. Under ARSIWA Article 10, paragraph 2,

> The conduct of a movement, insurrectional or other, which succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered an act of the new State under international law.[343]

The ILC reasoned that "the attribution to the new State of the conduct of the insurrectional or other movement is again justified by virtue of the continuity between the organization of the movement and the organization of the State to which it has given rise."[344] This assumes that the separatists, before the definitive termination of the incumbent State's effective presence and legal title, had an "organization"—which suggests, in turn, that the situation was stable, at least to the extent that the separatists effectively organized some or all of the territory they claimed.[345] As suggested above,

336. *Id.* at paras. 53–54.
337. *Id.* at para. 63.
338. *Id.* at para. 16.
339. *Id.* at para. 75.
340. *Id.* at para. 76.
341. *Id.* at para. 77.
342. International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, art. 10, no. 16, Supplement No. 10 (A/56/10), chp.IV.E.1 (November 2001), http://www.refworld.org/docid/3ddb8f804.html [https://perma.cc/LD73-R8ZL].
343. *Id.*
344. *Id.* at 50–51.
345. *See id.* at 50.

frozen conflicts are characteristically stable in that way.

It might be asked whether there is a correlation between *(i)* the rule embodied in ARSIWA Article 10(2), which opens the door to attributing responsibility to organized groups but not to bandits and the like, and *(ii)* the rules under the law of armed conflict, which distinguish between non-international armed conflicts and mere riots or civil disturbances.[346] However, the rules belong to different domains. The rules under the law of armed conflict are concerned with "the ability to plan and carry out military operations for a prolonged period of time"[347] or "responsible command entail[ing] some degree of organization of those armed groups, including the possibility to impose discipline and the ability to plan and carry out military operations."[348] It would seem that a group having such ability or "responsible command" is more likely to have the territorial "organization" contemplated under ARSIWA Art. 10(2)—but it is not necessarily the case that it does.[349] So, while there are some parallels between the two, the law of responsibility and the armed conflict rules correlate incompletely at best.

2. Breach of Ceasefire Lines

Ceasefire lines are not protected by the same privilege that entrenches State borders. At the same time, parties to a conflict do not have the freedom to ignore ceasefire lines at will. The Friendly Relations Declaration (1970), immediately after stating that every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State, states as follows:

> Every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect. Nothing in the foregoing shall be construed as prejudicing the positions of the parties concerned with regard to the status and effects of such lines under their special regimes or as affecting their temporary character.[350]

This duty "to refrain from the threat or use of force" does not apply in precisely the same way to international lines of demarcation as it does to

346. *See, e.g.,* Prosecutor v. Bemba Gombo, ICC-01/05-01/08, Decision pursuant to Art. 61(7)(a) and (b) of the Rome Statute, para. 231, paras. 233–34 (June 15, 2009), https://www.icc-cpi.int/CourtRecords/CR2009_04528.PDF [https://perma.cc/7H2B-4RXD].

347. Prosecutor v. Dyilo, ICC-01/04-01/06-2842, Decision on the confirmation of charges, para. 234 (Jan. 29, 2007), https://www.icc-cpi.int/CourtRecords/CR2007_02360.PDF [https://perma.cc/93ZC-AADD].

348. Prosecutor v. Bemba Gombo, ICC-01/05-01/08, Judgment pursuant to Article 74 of the Statute, para. 234 (Mar. 21, 2016), https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF [https://perma.cc/8M98-74KS].

349. INTERNATIONAL LAW COMMISSION, *supra*, note 342, at chp. IV E.1.

350. G.A. Res. 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 9 I.L.M. 1292, 1294 (Oct. 24, 1970) [hereinafter Resolution 2625].

State borders.[351] The savings clause acknowledges the distinctions between the two. It clarifies that the duty not to violate the lines of demarcation is subject to the "positions of the parties concerned." More in particular, the "parties concerned" have rights under the instruments that established or recognized those lines. As a result of the lines' temporary character, the involved State(s) reserve their pre-existing rights.

At the time of drafting, some State representatives on the Friendly Relations Special Committee objected to including any reference at all to "international lines of demarcation."[352] They objected that it was not clear:

> "how words that had no standard definition in international law could be turned into a legal concept . . . Concern naturally arose when it was proposed that international lines of demarcation were to be equated with the concept of State boundaries and hence with territorial inviolability. Difficult political issues were also involved."[353]

A number of representatives said that "they would be opposed to any intent to assimilate [demarcation] lines to boundaries and would reject any draft which sought to place them on the same footing."[354] It was also recognized that not all "lines of demarcation" are juridically alike: they "belonged to different categories and . . . their juridical character differed from case to case,"[355] a contingent characterization that reflects the origin of such lines in different agreements.

Evidently in defense of the provision on demarcation lines, another State representative said that "it was not the aim . . . to imply some kind of guarantee of territorial integrity."[356] A purpose of such lines was, instead, "to bring about a halt in the use of force so that the methods of peaceful settlement envisaged in the Charter could operate."[357]

It might follow that, if "the methods of peaceful settlement" failed, or if they, as with the frozen conflicts, were inconclusive for a long duration, the deference attached to demarcation lines might lose its rationale. However, even where it might be open to a party to use force in response to breaches

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351. *Id.*

352. *Id.*

353. G.A., *Report of the 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States*, para. 97, U.N. Doc. A/6230 (June 27, 1966) [hereinafter 1966 Report]. Thanks to Otto Spijkers, Utrecht University, for the helpful compilation of Reports of the Special Committee. *See* Otto Spijkers, *Special Committee on Principles of International Law concerning Friendly Relations (Part I)*, INVISIBLE COLLEGE BLOG (Mar. 3, 2010), https://invisiblecollege.weblog.leidenuniv.nl/2010/03/03/special-committee-on-principles-of-inter/ [https://perma.cc/H46W-A6FW].

354. U.N. G.A., *Report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States*, para. 66 (Sept. 30, 1968). The General Assembly adopted the Friendly Relations Declaration without a vote. U.N. GAOR, 25th Sess., 1883rd plen. mtg. at 1, U.N. Doc. A/PV 1883 (Oct. 24, 1970).

355. U.N. G.A., *Report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States*, para. 72, U.N. Doc. A/6700 (Sept. 26, 1967).

356. 1966 Report, *supra* note 353, at para. 96.

357. *Id.*

of ceasefire lines, parties that use force in disregard of the lines have drawn sharp rebuke.[358] Some writers have nevertheless suggested that ceasefire instruments may permit armed response to a violation. For example, in connection with the Sochi Agreement between Georgia and its region of South Ossetia:

> The language of Sochi and its accompanying documents is not very clear or specific, so it is open to a variety of interpretations . . . Peacekeepers are allowed to suppress violations of the agreement and ceasefire, but these . . . are subject to joint command provisions, which make it unclear what should happen when the violations are caused by one of the parties. Certainly, Sochi does not give Georgian and Russian peacekeepers any specific, clear-cut rights to use force in response to actions by the other party that violate the agreement—in the way that, say, Turkey argued it had specified rights under the 1960 Treaty of Guarantee on which it grounded its later interventions in Cyprus.[359]

Turkey, the "specified rights" notwithstanding, was subject to international opprobrium for its use of force in Cyprus.[360] Turkey's intervention was treated as a serious breach of a fundamental rule of international law and the consequences arising from it were subject to non-recognition. An agreement that is "not very clear or specific" presents an *a fortiori* case: acting to suppress alleged violations of a ceasefire under a relatively weak agreement is likely to be rejected by key parties as unlawful.

3. Armed Bands and Mercenaries

The incumbent States in frozen conflicts have indicated that mercenaries and other armed bands from abroad have been involved in supporting the separatists.[361] As the ICJ has emphasized, supporting an insurrectional movement, if no exception to the prohibition of threat or use of force applies, is unlawful.[362] A State is obliged "to refrain from organizing or encouraging the organization of irregular forces or armed bands including mercenaries, for incursion into the territory of another State."[363]

4. Accession to International Organizations

The constitutive instruments of many (though not all) multilateral organizations set out substantive requirements for the accession of appli-

358. *Id.* at para. 100. Luchterhandt's view that Azerbaijan's use of force in April 2016 constituted a breach of the prohibition against use of force. *See* Luchterhandt, *supra* note 163, at 187–203.

359. Timothy William Waters, *Plucky Little Russia: Misreading the Georgian War Through the Distorting Lens of Aggression*, 49 STAN. J. INT'L L. 176, 186–87 (2013).

360. *See, e.g.*, S.C. Res. 360, para. 1 (Aug. 16, 1974) (noting that the Security Council "recorded its formal disapproval of the unilateral military actions undertaken against the Republic of Cyprus").

361. *See, e.g.*, Ilaşcu and Others v. Moldova and Russia, App. No. 48787/99 Eur. Ct. H.R. paras. 77–79 (July 8, 2004).

362. Military and Paramilitary Activities in and Against Nicaragua (Nicar. V. U.S.), Judgment, 1986 I.C.J. Rep. 14, para. 195 (June 27).

363. Resolution 2625, *supra* note 350, at 1294.

cant States as future members.[364] Organizations also develop their requirements for accession through practice, and the result in some cases has been the growth of those requirements above and beyond the terms of the constitutive instrument.[365] NATO is a salient example. Philip Breedlove, former Commander of U.S. European Command and NATO Supreme Allied Commander, Europe, wrote in 2016 that "Putin no doubts knows that . . . NATO will be reluctant to accept a nation as a member if it is caught up in a so-called frozen conflict."[366] Indeed, a frozen conflict might hinder the process of accession under North Atlantic Treaty Article 10, because consensus among the Allies ("unanimous agreement") would be harder to reach if an internal conflict cast doubt on a candidate's ability to "contribute to the security of the North Atlantic area." Stability is also an expectation for participation in NATO's Membership Action Plan (MAP).[367] MAP aspirants are expected to "settle ethnic disputes or external territorial disputes including irredentist claims or internal jurisdictional disputes by peaceful means in accordance with OSCE principles and to pursue good neighbourly relations."[368] Even if, in some cases, the existence of such disputes and claims might provide a rationale for closer ties to a security organization, the difficulties remain.

Persistence of a conflict also might hinder accession to the EU:

> En conclusion, on soulignera que l'adhésion de la Turquie à l'Union Européenne ne se fera pas avant que des réformes politiques et sociales ne soient entreprises et que des conflits gelés ne soient définitivement réglés; on a cité l'exemple du problème kurde.[369]
>
> [In conclusion, it should be emphasized that Turkey's accession to the European Union will not happen until political and social reforms are undertaken and that frozen conflicts are finally settled; we have cited the example of the Kurdish problem.]

5. *Relations with Other States*

Relations between a separatist region under a "frozen conflict" and other States may present complications as well. For example, part of Moldova's boundary with Ukraine is in the Transnistrian part of Moldova.[370] Russia's establishment of separate border regimes for Abkhazia and South Ossetia along those parts of Georgia's border with Russia has been noted.

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364. *Id.*
365. *Id.*
366. Philip M. Breedlove, *NATO'S Next Act: How to Handle Russia and Other Threats*, 95 FOREIGN AFF. 96, 96, 102 (2016).
367. North Atlantic Treaty art. 10, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243.
368. Press Release, NATO, Membership Action Plan (MAP), ch. I, para. 2(c), NAC-S (99) 066, (Apr. 24, 1999).
369. Assemblée Nationale France, Commission des affaires européennes, Danielle Auroi, Rep. 88 (Oct. 15, 2013).
370. *See* Ukr.: Moving Beyond Stalemate?: Hearing Before the Comm'n on Sec. & Cooperation in Europe, 111th Cong. 10 (2010) (statement of Daniel A. Russell, Deputy Assistant Sec'y of State for Russ., Ukr., Belr. & Mold.).

6. Human Rights Claims

Human rights claims arise in large numbers from frozen conflicts. The prospect for such claims in national courts is poor, because both the incumbent State and the State sponsoring the separatists are likely to deny jurisdiction over the separatist entity.[371] Where a regional human rights organ has jurisdiction—as one does for the situations addressed in Part I.A above—it is under that jurisdiction that the claims most likely would be heard. The European Court of Human Rights, as noted, has heard claims arising out of several of the frozen conflicts.

7. Displaced Persons

Displaced persons, including internally displaced persons, merit separate note. Large numbers of persons have been displaced by frozen conflicts.[372] A number of human rights claims arising out of frozen conflicts have involved the rights of displaced persons.[373] The Guiding Principles on Internal Displacement,[374] developed in the 1990s under a Commission on Human Rights mandate,[375] is an international instrument specifically to address this problem. It has been invoked in connection with frozen conflicts.[376]

8. Other Legal Problems Arising out of Frozen Conflicts

A range of other legal problems may arise out of frozen conflicts. The law of military occupation is implicated by such situations, as are questions of the applicability of the rules of international humanitarian law concerning international armed conflict and internal armed conflict.[377]

Money laundering and trafficking in illegal drugs and arms are other problems associated with frozen conflicts.[378] Terrorists have used separatist areas as safe-havens.[379] The States involved have from time to time

371. *See*, *e.g.*, Chiragov v. Armenia, App. No. 13216/05 2015 Eur. Ct. H.R. at para. 119.

372. One of the worst episodes of displacement has been the Nagorno-Karabakh conflict. A Human Rights Watch report estimated that the conflict displaced over 750,000 Azeris from Nagorno-Karabakh, Armenia, and parts of Azerbaijan. Armenian authorities say that 335,000 Armenians were displaced from Azerbaijan and 78,000 internally. *See* Sargasyan v. Azerbaijan, App. No. 40167/06 2016 Eur. Ct. H.R., at para. 22.

373. *See., e.g.,* Olaru and Others v. Moldova, App. No. 13136/07, para. 19 ECHR (July 28, 2009) (Racu claim).

374. *See* Francis M. Deng (Rep. of the Secretary-General), Guiding Principles on Internal Displacement, 5-14, Report to Human Rights Comm'n U.N. SCOR, 54th Sess., U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998).

375. *See* Economic and Social Council Res. 1992/243 (July 20, 1992) noting Human Rights Commission Res. 1992/73 (Mar. 5, 1992).

376. *See* Francis M. Deng, *supra* note 33, at 4, para. 6. *Cf.* Chiragov v. Armenia, App. No. 13216/05 2015 Eur. Ct. H.R. at paras. 99-102.

377. *See* Chiragov v. Armenia, App. No. 13216/05 2015 Eur. Ct. H.R., at paras. 99-102.

378. Lt. Gen. David Tevzadze, Minister of Def. of Geor., EAPCs Role in the Int'l Fight Against Terrorism, 2 (June 7, 2002), http://www.nato.int/cps/en/natohq/opinions_19768.htm [https://perma.cc/M4C3-6TV5].

379. *Id.*

invoked international environmental law in connection with frozen conflicts as well.[380]

Further legal problems that may arise out of a frozen conflict were suggested in the New York Bar report on Transnistria. These included recognition and preservation of rights to private property, including investment protection.[381]

* * *

Frozen conflicts are associated with a large number of legal problems. The problems noted above are by-products, not defining characteristics, of frozen conflicts. Whether a particular problem arises in connection with a particular frozen conflict depends, in part, on what other processes—human rights claims, investment claims, accession talks, etc.—are afoot.

III. Eastern Ukraine and the Limits of "Frozen Conflict"

A number of observers have suggested that the situation in eastern Ukraine is at risk of turning into a frozen conflict. For example, the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, in a report on Ukraine in April 2015 said that "[t]he prospect of the situation in Donbas evolving into a 'frozen conflict' . . . is increasingly possible."[382] National authorities have expressed similar concern. According to the UK Secretary of State for Foreign and Commonwealth Affairs,

> This is the great risk—that the Russian objective is simply to achieve a frozen conflict, and a situation in which, de facto, Russia exercises very extensive leverage over Ukraine, and Ukraine operates not as a truly independent sovereign nation, but as a semi-independent nation. We have seen Russian attempts elsewhere to manage frozen conflicts . . .
>
> I suspect that the mindset in the Kremlin is that the Russians can have any number of those conflicts, and that they can remain open, simmering for ever [sic].[383]

A review of developments in the region since violence erupted there in 2014 suggests that that "prospect" is indeed possible.[384] There are the two separatist groups who say that they intend to create independent "States" in eastern Ukraine.[385] An armed conflict has frustrated the effective control of the Ukrainian central government in parts of eastern Ukraine where

380. *See, e.g.,* Yashar Aliyev (Permanent Rep. of Azer. to the U.N.), Letter dated Nov. 8, 2016 to the U.N. addressed to the Secretary-General, U.N. Doc. A/71/607-S/2016/944 (Nov. 10, 2016).

381. Permanent Rep. of the Republic of Moldova, *supra* note 29, at 9–10.

382. Beyani *supra* note 34.

383. Mr. Hammond (Secretary of State for Foreign and Commonwealth Affairs), U.K. HOUSE OF COMMONS HANSARD, vol. 592 no. 108, col. 625 (Feb. 10, 2015). *Cf.* Angus Robertson, U.K. HOUSE OF COMMONS HANSARD, vol. 596, no. 14, col. 1194 (June 10, 2015).

384. Beyani, *supra* note 34.

385. *See id.* at 5.

those groups are active.[386]

As described elsewhere in detail,[387] the *volte face* of the government of Viktor Yanukovych on the question of a Ukraine-EU relationship was followed in November 2013 by demonstrations in Kyiv; the demonstrations escalated; and in February 2014 Yanukovych's government came to an end. Invoking a range of putative justifications under international law,[388] the Russian Federation on March 21, 2014 forcibly annexed the Crimean region of Ukraine.[389] In the eastern part of Ukraine, serious disturbances broke out in two oblasts, Donetsk and Luhansk. The effective power of the central government of Ukraine in the two oblasts significantly eroded during the ensuing months.[390] Fighting in May 2014 resulted in many dead, including civilians.[391] The central government did not restore full control to Donetsk and Luhansk.[392] Military aid, including groups of military personnel and aircraft, entered the region from Russia to support separatist groups in the two oblasts.[393] On May 11–12, 2014, separatists in Donetsk and Luhansk declared themselves the "Donetsk People's Republic" (DPR) and "Luhansk People's Republic" (LPR).[394] No State has recognized them as such.

Part I. B, above, posited that one of the elements of a frozen conflict is an attempt at settlement, typically involving external actors, in particular States and multilateral institutions, where that attempt has been inconclusive but continues in sporadic fashion.[395] Attempts to settle the situation in eastern Ukraine, as in the frozen conflicts, have been inconclusive but continue. The attempts began in 2014 with an initiative by Ukraine. Ukraine on June 20, 2014, transmitted to the UN Secretary-General a unilateral statement "[o]n peaceful settlement of the situation in the Eastern regions of Ukraine."[396] The statement took into account work of the Trilateral Contact Group of Ukraine, Russia, and the OSCE and a meeting

386. Findings on Formerly State-Financed Institutions in the Donetsk and Luhansk Regions, Org. for Sec. & Co-Operation in Eur., at 3, SEC.FR/273/15 (Mar. 30, 2015) [hereinafter Thematic Report].

387. *See, e.g.*, ANDREW WILSON, UKRAINE CRISIS. WHAT IT MEANS FOR THE WEST (2014).

388. *See* Vitaly Churkin (Permanent Rep. of the Russian Fed'n), Letter dated 19 Mar. 2014 to the U.N. addressed to the Secretary-General, Annex, U.N. Doc. A/68/803-S/2014/202 (Mar. 20, 2014).

389. Thomas D. Grant, *Current Developments: Annexation of Crimea*, 109 AM. J. INT'L L. 68, 68 (2015).

390. *See* Yuriy Sergeyev (Permanent Rep. of Ukr. to the U.N.), Letter dated May 29, 2014 from the Permanent Rep. of Ukr. to the U.N. to the Secretary-General, at annex, U.N. Doc. A/68/895 (May 30, 2014).

391. *See* Amnesty International, Written Statement, Human Rights Council on its Twenty-Sixth Session, May 22, 2014, U.N. Doc. A/HRC/26/NGO/7 (June 2, 2014).

392. Thematic Report, *supra* note 386.

393. *See, e.g.*, Chargé d'affaires a.i. of the Permanent Mission of Ukraine to the U.N., Letter dated Aug. 18, 2014 from the Chargé d'affaires a.i. of the Permanent Mission of Ukraine to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2014/602, at annex I, 2 (Aug. 18, 2014).

394. *See* Thematic Report, *supra* note 386.

395. U.N. Conference on Disarmament, *supra* note 276.

396. Permanent Rep. of Ukraine to the U.N., Letter dated June 20, 2014 from the Permanent Rep. of Ukraine to the United Nations addressed to U.N. Secretary-General,

between the President of Ukraine with the representatives of Lugansk and Donetsk regions.[397] It indicated a unilateral ceasefire on Ukraine's part, which was to last from 10:00 PM June 20 to 10:00 AM June 27.[398] The statement indicated willingness to extend amnesty to separatists who did not commit "grave crimes"; to establish a "controlled corridor" for the evacuation of forces that had originated in Russia; and to conduct an "inclusive dialogue with peaceful citizens."[399] The statement proposed that a ten kilometer buffer zone later be established at the Ukraine-Russia border and that power be decentralized to benefit the Eastern regions.[400] These steps do not resemble those adopted in the multiple instruments connected with the frozen conflicts. In particular, the buffer zone proposed by Ukraine would have re-affirmed the existing international boundary, not introduced an effective line of separation within Ukrainian territory.[401] It also appears to have envisaged the continued integration of the Eastern regions with Ukraine, even if under an autonomy plan.[402] The proposals in Ukraine's unilateral statement were not implemented.[403]

The Minsk Agreement of September 5, 2014 (Minsk I),[404] in contrast with Ukraine's unilateral statement, resembled, in parts, the agreements in frozen conflicts. The Minsk Agreement stipulated immediate bilateral "cessation of the use of weapons."[405] It introduced monitoring and verification by a multilateral organization (the OSCE).[406] It stipulated the decentralization of power under the title of an "*interim* status of local self-government" (para. 3) (emphasis added).[407] "Interim" implies that further steps were to be taken. If the "interim" situation is one of "local self-government," then the further steps well might entail more local self-government.

An Implementation Memorandum adopted shortly after (September 19, 2014) referred to the "line of contact" between the armed units of the opposing parties.[408] The line of contact was for purposes of specifying the bilateral ceasefire obligation.[409] The Implementation Memorandum also

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https://peacemaker.un.org/sites/peacemaker.un.org/files/UA_140607_Peaceful_Settlement-Situation-Eastern-Ukraine.pdf [https://perma.cc/4VC6-D3DJ].

397. *Id.*

398. *Id.*

399. *Id.*

400. *Id.*

401. Permanent Rep. of Ukraine, *supra* note 390.

402. *Id.*

403. *See, e.g., infra* note 416.

404. Permanent Rep. of Ukraine to the U.N., Annex I to Letter dated Feb. 24, 2015 from the Permanent Rep. of Ukraine to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2015/135 (May 9, 2015), https://peacemaker.un.org/sites/peacemaker.un.org/files/UA_140905_MinskCeasfire_en.pdf [https://perma.cc/M82C-XNB5].

405. *Id.*

406. *Id.*

407. *Id.*

408. *Memorandum of the Trilateral Contact Group outlining the parameters for the implementation of commitments of the Minsk Protocol,* OSCE (Sept. 19, 2014), http://www.osce.org/home/123806 [https://perma.cc/6LQH-2Z7D].

409. *Id.*

required opposing forces to withdraw from the line of contact to a distance of at least fifteen kilometers, so as to open a "ceasefire zone" not less than thirty kilometers in width, which the Memorandum referred to as "the security zone."[410] It was in this "security zone" that OSCE monitors were to be deployed.[411]

These provisions establishing a "ceasefire zone" and "security zone" suggest the entrenchment of the geographical position of a separatist entity, one of the hallmarks of a frozen conflict. However, the September 2014 Minsk Agreement and its implementation were against the backdrop of a relatively fluid and unsettled situation.[412] To this extent, the situation in the Eastern regions, as of September 2014, was still to be distinguished from the frozen conflicts. The separatist entities in eastern Ukraine had not entrenched themselves behind an effective ceasefire line, even though an agreement had sought to establish one.[413]

The Minsk I ceasefire was shaky almost from the start.[414] By early 2015, it had fallen apart altogether.[415] Separatist forces of the self-styled "Donetsk People's Republic" (DPR) and "Lugansk People's Republic" (LPR) renewed their offensive against the government and seized the part of the city of Donetsk (the airport) that had not been under their control.[416]

The Trilateral Contact Group of Ukraine, Russia, and the OSCE convened again in February 2015 at Minsk.[417] The result was a new Package of measures for the implementation of the Minsk agreements (Minsk II).[418] Minsk II re-affirmed the September 2014 ceasefire. It also stipulated new terms, including the separation of forces with particular categories of weapons by zones of 50 km, 70 km, and 140 km (para. 2).[419] The "security zones" were defined as starting from the "*de facto* line of contact," referred to in the September 19, 2014 Implementation Memorandum (para. 2).[420]

The provision for security zones in Minsk II thus was based on a "line of contact" that had already existed for some four months. The longevity of the line of contact perhaps suggests that physical separation had crystallized between the areas of separatist control and the rest of Ukraine. How-

410. *Id.*
411. *Id.*
412. *See generally*, *OSCE*, *supra* note 408.
413. *Id.*; *see infra* note 429.
414. *See, e.g.*, Permanent Rep. of Ukraine to the U.N., Letter dated 5 November 2014 from the Permanent Rep. of Ukraine to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2014/792, http://repository.un.org/bitstream/handle/11176/308652/S_2014_792-EN.pdf?sequence=3&isAllowed=y [https://perma.cc/3UYR-UUPZ].
415. *See, e.g., infra* note 428.
416. *Russian-backed separatists seize Donetsk airport in Ukraine*, THE GUARDIAN (Jan. 15, 2015), https://www.theguardian.com/world/2015/jan/15/russian-backed-separatists-seize-donetsk-airport-ukraine [https://perma.cc/4ZN8-NULT].
417. S.C. Res. 2202, (Feb. 12, 2015).
418. *Id.* (stating the Security Council "welcome[d]" the Package).
419. *Id.* Annex I.
420. *Id.* Annex I.

ever, the situation on the ground remained fluid.[421] Notwithstanding the ceasefire agreement, armed engagements continued into autumn 2016 at frequent intervals.[422] NATO noted that violations of the Minsk Agreements concerning eastern Ukraine had occurred "almost every day" since their adoption (i.e., for two years) and that February 2017 witnessed particularly heavy fighting.[423]

Moreover, Minsk II contained express terms that served to prevent the entrenchment of separatist political institutions. In particular, the February 12, 2015 package of measures called for "dialogue" to define "modalities of local elections" that would accord with Ukrainian law.[424] The elections would be monitored by the OSCE's Office of Democratic Institutions and Human Rights (ODIHR).[425] Minsk II also called for resumption of central government control over the banking system in the area of conflict[426] and over the border of Ukraine with Russia in the Donetsk and Lugansk regions.[427] That is to say, steps continued for preserving the unity of Ukraine as a territory under one legal system, even if the door was open to special rights for Donetsk and Luhansk.[428]

Regional organizations similarly sought to prevent the entrenchment of separatist institutions in eastern Ukraine. The Parliamentary Assembly of the Council of Europe (PACE) stated as follows:

> The "DPR" and "LPR"—established, supported and effectively controlled by the Russian Federation—are not legitimate under Ukrainian or international law. This applies to all their "institutions," including the "courts" established by the *de facto* authorities.[429]

A recent national court decision suggests that an insurgent group may have capacity as a matter of international law to establish courts;[430] this does not mean that every group has that capacity, nor that every organ purportedly constituting a court is a court. In any case, such "courts" as there are in Donetsk and Luhansk are reported barely functioning: "Parallel 'justice systems', established by the 'DPR' and 'LPR', remain largely non-operational, face serious resource constraints and are not capable of operating

421. *See, e.g., infra* note 434.

422. *See* Eur. Parl. Res., *Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities,* Res. No. 2133, Art. 11 (2016).

423. *Joint Press Point, Rose Gottemoeller, NATO Deputy Sec'y Gen., and Volodymyr Groysman, Prime Minister of Ukr.*, NATO (Feb. 9, 2017), http://www.nato.int/cps/en/natohq/opinions_140847.htm [https://perma.cc/23ZH-EEWC].

424. International Court of Justice Verbatim Record, *supra* note 322, at para. 4.

425. *Full text of the Minsk agreement*, FIN. TIMES (Feb. 12, 2015), https://www.ft.com/content/21b8f98e-b2a5-11e4-b234-00144feab7de) [https://perma.cc/KF2U-KU3P].

426. *See id.* at para. 8.

427. *See id.* at para. 9.

428. *See id.* at para. 11.

429. Euro. Parl. Res., *supra* note 434, at para. 3.

430. *See* Jonathan Somer, Opening the Floodgates, Controlling the Flow: Swedish Court Rules on the Legal Capacity of Armed Groups to Establish Courts, BLOG EUR. J. INT'L L. (Mar. 10, 2017), http://www.ejiltalk.org/opening-the-floodgates-controlling-the-flow-swedish-court-rules-on-the-legal-capacity-of-armed-groups-to-establish-courts [https://perma.cc/CUB2-LRVX].

throughout all non-government-controlled areas."[431]

Steps also continued in the eastern region for monitoring the external border of Ukraine. For example, the OSCE (as of January 9, 2017) maintained observers at the Russian checkpoints at Gukovo and Donetsk—i.e., at the frontier between Russia and Ukraine.[432] Arrangements such as these, though unlikely to be decisive, impede the separatists from forming an effective organization in the areas they claim.[433]

These considerations distinguish Donetsk and Luhansk from the separatist entities in the frozen conflicts, the latter having gone further toward the creation of separate organs of administration and effective severance from the State.

In summary, several factors cast doubt on whether the eastern regions of Ukraine fit the description of a frozen conflict. In particular, the situation on the ground remained relatively fluid. The central government was encouraged to continue to provide services to people in the separatist areas—e.g., by making courts in nearby government-controlled areas available for inhabitants of Donetsk and Luhansk.[434] Moreover, the international actors continued to aim to resolve the conflict comprehensively, rather to manage the conflict area for an indefinite duration.[435] Though the parties involved in Minsk II noted the separation lines between the secessionist areas and the rest of Ukraine, they did not treat those lines with the degree of formality seen in the frozen conflicts.[436] Neither Ukraine nor the international actors involved had taken practical steps to accommodate a division of the territory of the State.[437]

At the same time, salient features of the frozen conflicts have arisen in eastern Ukraine. A settlement process, having as yet produced no settlement, has been invoked against the incumbent State in order to deflect other approaches.[438] The ICJ at provisional measures phase in *Ukraine* v. *Russia* rejected Russia's plea that Ukraine had not met preconditions of negotiation and attempt to arbitrate set out in the ICSFT.[439] So, to that extent, Russia's attempt to use a negotiation process to frustrate the ICJ as a dispute settlement mechanism for the conflict in eastern Ukraine did not work.[440] Still, some of the other phenomena identified above as ancillary

431. *See* OSCE Special Monitoring Mission to Ukraine, *Thematic Report: Access to Justice and the Conflict in Ukraine* 6 (Dec. 2015).

432. OSCE, *OSCE Observer Mission at the Russian Checkpoints Gukovo and Donetsk*, http://www.osce.org/om [https://perma.cc/PAS2-BNQP].

433. *See* Thematic Report, *supra* note 431, at 5.

434. Euro. Parl. Res., *supra* note 434, at para. 17.3; *see also* Thematic report, *supra* note 431, at 10–13.

435. *Id.* at para. 17.5.

436. *See id.* at para. 11.

437. *Id.*

438. *See* Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of all Forms of Racial Discrimination (Ukr. v. Russ. Fed.), Order on Request for the Indication of Provisional Measures, 2017 I.C.J. paras. 74–77 (April 17).

439. *See id.* at para. 54.

440. *See id.* at para. 104.

to frozen conflicts are visible in eastern Ukraine. In particular, questions of the responsibility of State sponsors of the insurgents have arisen;[441] a crisis of displaced persons continues;[442] and the significant numbers of civilian casualties have raised questions of humanitarian law.[443]

Conclusion

The present Article has considered the origins and meaning of the expression "frozen conflict." Applied in particular to a series of separatist crises in the former Soviet Union starting in the 1990s, the expression has purchase in the media, and it is sometimes seen in international relations writing and in State practice as well. The purpose here has been to consider whether the expression denotes a concept of international law. A number of difficulties come to light, when a legal view of "frozen conflicts" is taken.

First, the juridical phenomena of the frozen conflict are diffuse. Far from comprising a single cohesive core, these phenomena have little or no necessary juridical connection to one another, even if they are related to or even arise from the same overall situation. In short, the frozen conflict entails a multiplicity of problems or disputes, not a single, readily identified phenomenon.

The divided or separable character of legal disputes related to or arising from the same situation is not remarkable in itself. Divisibility of disputes was seen, for example, in the *South China Sea* proceedings that concluded in 2016. The Tribunal there did not accept "that it follows from the existence of a dispute over sovereignty that sovereignty is also the appropriate characterization of the claims" raised in the proceedings.[444] The Tribunal also rejected characterizing a dispute over delimitation and a dispute over entitlement as the same dispute. That is to say, the Tribunal understood that a dispute as to where a line of delimitation is to be drawn between two States having maritime entitlements that overlap is not the same as a dispute as to what the scope of a State's maritime entitlements are.[445] Indeed, even in a single arbitral or judicial proceeding where jurisdiction existed to deal with all the issues (which it did not in the *South China Sea* arbitration), the phenomena still would be distinct: "it does not follow . . . that a dispute over an issue that may be considered in the course of a maritime boundary delimitation constitutes a dispute over maritime boundary delimitation itself."[446] One need take no view as to whether the South China Sea is a frozen conflict (as the Philippines suggested it ran the risk of becoming).[447] The Tribunal's reasoning and decision are in any

441. *See* Eur. Parl. Assemb. Res. *supra* note 434, at para. 4.
442. *See id.* at para. 11.
443. *See id.* at para. 6.
444. South China Sea Arbitration (Phil. v. China), Award on Jurisdiction and Admissibility, para. 152 (UNCLOS Annex VII Trib. Oct. 2015).
445. *Id.* at para. 156.
446. *Id.* at para. 155.
447. *Id.* at para. 9.

event indicative of how multiple legal disputes can cluster or coincide around a common core of historical, social, military, or political origins. A frozen conflict well may have such common origins, yet it entails a variety of juridically distinct disputes. This variegation of the topic "frozen conflict" means that a legal definition, if it is useful at all, will be useful only for limited purposes.

Second, to apply the term "frozen conflict" to a given situation has a tendency to pre-judge the situation. One element of the definition proposed above is the inactivity or ineffectiveness of processes for resolution. It seems apt to include this as an element of the definition, because the main examples of situations that writers have described as frozen conflicts have displayed it—and, where a resolution process has succeeded or shows reasonable prospect of succeeding, a situation is unlikely to be described that way. It follows that describing a situation as a "frozen conflict" suggests that hope for resolution is not rational.

A lawyer is duty-bound as a matter of professional responsibility to bring the client's attention to the difficulties of a case. It is also a duty to advise solutions to the client's problems, where solutions are possible. For a lawyer acting as problem-solver, the better course would be to take each of the various disputes arising out of the conflict as a separate matter, rather than to counsel the incumbent State to reconcile itself to permanent stasis.

Third, there is a problem of legal fragmentation. Use of the term "frozen conflict" implies that much of Eurasia is subject to a regional international law at variance from general international law. For some time, writers have suggested that the Russian Federation defines international public order differently from other States.[448] At least one writer sees a connection between Russia's claim to a *droit de regard* over the "near abroad" and Russia's support for the separatists in the frozen conflicts.[449]

Regional rules of international law certainly exist. Not all rules, however, can be regionalized if a semblance of basic order is to remain. Moreover, some of the main cases of "frozen conflict" involve parties where one State takes the position that it belongs to a particular region and the other State disagrees. The question of Ukraine's association with Euro-Atlantic institutions forms the backdrop to Ukraine's conflicts with Russia. As a matter of geopolitics, Russia's quest for a wider Eurasian organization seems closely connected with the invasions and annexations in Ukraine. Even if the basic rules that stabilize international boundary settlements could be subject to a regional special law, the existence of such a law in parts of Eurasia would not settle disputes as to which States belong to which parts.

448. *See* LAURI MALKSOO, RUSSIAN APPROACHES TO INTERNATIONAL LAW 147–59 (Oxford Univ. Press 2015); ROY ALLISON, RUSSIA, THE WEST, AND MILITARY INTERVENTION 210–13 (Oxford Univ. Press 2013). *See also* Christopher J. Borgen, *Whose Public, Whose Order? Imperium, Region, and Normative Friction*, 32 YALE J. INT'L L. 331, 344–46 (2007).

449. Abline, *supra* note 46, at 585–617.

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The "frozen conflict" is a mélange of juridical concepts, invoked to entrench a stalemate between separatist forces and an incumbent government on the territory of a recognized State. When and with what emphasis a given concept is invoked varies among the frozen conflicts and during the course of a given conflict. In four situations that writers—and sometimes States—have referred to as frozen conflicts, all of the seven legal criteria identified above have appeared. Moreover, a new situation might arise in which those criteria also appeared. The criteria define a potentially open set of cases, even if few or none have arisen yet outside the original ones. A definition of frozen conflict emerges in this way.

The expression remains, at best, at the edges of legal discourse. Courts, tribunals, and other legal organs scarcely use it. Its use in political and diplomatic settings is more frequent, a practice that probably owes to its evocative quality. No doubt international relations writers will continue to use it as well.

The present Article has suggested a definition. However, the expression "frozen conflict" is more useful for its exposure of a strategy than for legal analysis. That is the strategy—a hybrid of law, politics, and armed force—employed by their sponsors to entrench separatist entities while frustrating the incumbent States from bringing the conflicts to closure.