Making Peace with De Facto States

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Paper prepared for the 5th Geopolitical Conference: Strategic and Geopolitical Issues in the Contemporary World

The geopolitical importance of unrecognized states and territorial non-state actors.

13 November 2015, Charles University, Prague

Draft, please do not cite without my permission

ABSTRACT De facto states have proved to be much more durable than what was initially expected: they were not simply transient phenomena that would collapse on their own. From being very much a niche topic, research on de facto states has also gradually moved into the mainstream. The internal dynamics of de facto states are now better understood, and previous simplifications have been replaced by more sophisticated and nuanced analysis. This paper looks at some of the remaining challenges for the literature: the terminological confusion, the effects of non-recognition and, in particular, the impact of these developments on the prospect for conflict resolution: can we, literally, make peace with de facto states?

When I first started doing research on de facto, or unrecognised, states nearly ten years ago, the literature was scarce, and there was, in particular, a lack of understanding of the internal dynamics of these entities. The dominant image of de facto states - in the media, in foreign ministries and also in some academic literature - was of criminalised badlands that were characterised by infighting warlords, extortion and the smuggling of dangerous goods, including drugs and even radioactive material. Models for this are not hard to find. Chechnya between 1996 and 1999 was riven by violent infighting and was aptly described as "a hotbed of crime and terror" (Hughes, 2007, p. 93). Inspiration could also be taken from the failed states or ungoverned territories that by the early

1990s had come to be seen as significant threats to international security. The tribal areas of Pakistan are often described as “the most dangerous place on earth” (Hussain, 2012), and the threats emanating from Yemen and increasingly ungoverned Libya are never far from the news headlines.

What I hoped to show with my research (Caspersen, 2012; Caspersen, 2008) was that this image is overplayed. Although warlords, infighting and organised crime did play a central role in some de facto states -especially in the early stages of de facto independence - most have in fact taken a decisive step away from this initial disorder, which is in any case not uncommon for a post-war context. A lack of external sovereignty does not condemn an entity to disorder. De facto states have managed to impose effective control over most of the areas to which they lay claim, have built at least rudimentary state institutions, and some have even introduced political reforms. Lack of recognition provides a strong incentive to build effective institutions and introduce political reforms: it aids the survival of de facto states and serves an important legitimating function both internally and externally.

De facto states also tended to be viewed as transitory phenomenon; they existed in a temporary limbo in-between the stable alternatives of de jure independence or, more likely, forceful reintegration into their parent state. Most were consequently expected to soon go the way of Chechnya and Republika Srpska Krajina and become one of history’s violent footnotes. However, it has become clear that de facto states are not simply ephemeral phenomena, that will collapse on their own (Broers, 2013); they have demonstrated their longevity. The four de facto states in the former Soviet space have all existed for more than two decades, as have Somaliland and Iraqi Kurdistan, while Northern Cyprus and Taiwan have existed as de facto states for more than four decades. Moreover, new contested territories have emerged which may soon the meet the criteria for de facto states, most notably the Donetsk People’s Republic and the Lugansk People’s Republics in Ukraine.

While we have been making our peace with the existence of de facto states, our understanding of them has become a lot more nuanced and the research on de facto states has become increasingly sophisticated. From being very much a niche topic, the study of de facto states has gradually moved into the mainstream, not just of conflict studies, which is where my own research originated, but also of area studies and International Relations. De facto states may still be seen as esoteric anomalies, but they are anomalies that can tell us something important about state-building, sovereignty and the international system.

The current state of the research however still leaves me with three questions: firstly a question of terminology: what do we call these entities? Secondly, how important is lack of (widespread) recognition? Thirdly, does our more nuanced understanding have any effect on the prospect for conflict resolution - on how we can, literarily, make peace with de facto states? I will answer the first two questions fairly briefly, and spend the remainder of the paper on the third question.

Making Peace with the Concept of De Facto States

As more authors, from different disciplines and with different research foci, have started researching these unrecognised entities, a plethora of terms have been used: de facto states, unrecognised states, contested states, shadow states, para states, phantom states etc. (see e.g. Broers, et al., 2015). However, there appears to be an emerging consensus on using the term 'de facto states' and I am happy to bow to this. The term 'unrecognized states' which I initially favoured, since I was interested in the effects of non-recognition, worked better as a pre-2008 concept, i.e. before Russia's recognition of Abkhazia and South Ossetia. The term 'de facto states' is better able to also encompass partially recognised states. Using this term, moreover, also makes it possible to include entities that have not actually claimed independence, but still function as state-like entities, such as Taiwan and Iraqi Kurdistan. There is no need to shrink the universe more than necessary and as a

field we do not benefit from a lack of consensus on which term to use, as it makes it harder to search for literature, reduces the number of citations etc. In fact, as I will argue below, I think it is beneficial to conceptualise de facto states as one end of a spectrum of contested governance.

Making peace with Non-Recognition

As I argued above, lack of recognition does not condemn an entity to anarchy, nor to international isolation or indeed oblivion. Some de facto states have managed to build surprisingly effective institutions and have introduced political reforms, and some enjoy a reasonably high level of international engagement. But I would still maintain that lack of (widespread) recognition does matter. The degree of this impact varies, but it is profound. Although some de facto states, such as Taiwan, and to a lesser extent Northern Cyprus and Somaliland, are fairly well-integrated into the international system, important doors remain closed, and access still seems to be dependent on the approval of the parent state, or the continued inability of the parent state to function effectively, as in the case of Somaliland (see Caspersen, 2015). More research is however needed on this aspect, including on the interaction between international engagement, state-building and political reforms.

Lack of recognition moreover remains an existential threat: the territorial integrity of the parent state is still seen as the overriding international norm, and it is still widely accepted that the parent state is allowed to use force to reintegrate the territory, even if against the will of the population of the de facto state. As the forceful reintegration of Tamil Eelam demonstrated, there may be some international criticism in case of severe human rights violations, but it quickly dies down and does not question the right of the parent state to rule over the territory. The narrative of future recognition moreover plays an important legitimising function internally; it helps the leaders excuse current shortcomings and allows the leaders to keep the entity in a state of exception, for example illustrated by the continued martial law regime in the case of Nagorno Karabakh. This does not mean

that the pursuit of recognition is necessarily the main preoccupation of the leaders of the de facto states. Many of them realise that international recognition is unlikely, at least in the foreseeable future, and instead pursue a strategy of engagement. They hope that this will improve the status quo and strengthen their de facto independence in the short-to-medium term and possibly make future recognition more likely; or at least make international acceptance of forceful reintegration less likely (Caspersen, 2015). However, how sustainable is this and what are the effects on internal dynamics - legitimacy, institution-building - of prolonged experiences of non-recognition? This is another area for future research.

How to Make Peace with De Facto States

There is now a considerably body of research on the internal dynamics of de facto states. This has greatly improved our understanding of them and has helped displace previously dominant simplifications. What has not changed is that the territories are contested. The de facto states may be relatively happy with the status quo – it may be possible to survive and even thrive without recognition - but the parent states are not and the existence of the de facto state is seen to violate the principle of territorial integrity.[1] The question is if it matters for the prospect of conflict resolution that these entities are not simply criminalised badlands; that many of them have managed to create state-like entities, sometimes with surprisingly effective institutions? Does it make it more, or less, likely that a sustainable solution can be found?

While the context of unresolved conflict is sometimes downplayed in the literature on de facto states, it is very much present in literature on rebel governance, and scholars working in this field have in fact made very similar arguments: rebels cannot be reduced to warlords and rebel-controlled areas should not be seen as areas where anarchy prevails. Alternative forms of governance often emerge and we can sometimes even speak of a rebel political order; institutions are built and some

[1] At least insofar as an explicit demand for independence is made

public services, including health and education, provided (Mampilly, 2011; Arjona, et al., 2015). Although there is always an element of coercion, citizens are occasionally encouraged to participate in citizens' forums or elections for local committees may be held (Kasfir, 2015). Such governance is argued to strengthen the position of the rebel forces (see e.g. Arjona, et al., 2015).

Kasfir (2015)argues that rebel governments are frequently "fragile, fluid and short-lived" but also contend that there is a great deal of variation. At the end of the governance continuum we find rebel political order, which is more directly comparable to governance in conventional polities. For this to be possible, a certain duration of territorial control is needed. Now we might assume that de facto states would simply constitute a further extension of this continuum. But Kasfir contends that with de facto states, we are dealing with a different category, since they are "no longer governed under the pressure of anticipated violence" (2015, p. 31). I would argue that this underestimates the continued effect of (potential) violence in the case of de facto states; the type of governance found in de facto states, and in particular its legitimation, is heavily influenced by the unresolved conflict and the persistent threat of a military offensive. Moreover the definitions of de facto states typically recognise the lack of rigidity and especially how territorial control is both variable and reversible; rebel forces may increase their territorial control and thereby become de facto states, while some de facto states reverted to being cases of rebel governance (Caspersen, 2012). I would therefore argue that it makes sense to see de facto states as the end of a spectrum of rebel governance; their territorial control is more durable and direct violence has largely ceased, thus allowing for greater institution-building. Moreover, the focus of the leaders is no longer on securing a military victory but instead on defending this, and on pursuing international recognition of the de facto situation. This may make the leaders even more concerned with their international image. But although these entities have passed an important threshold in gaining de facto independence, I would posit that they are not qualitatively different.

The literature on rebel governance focuses on how it affects the conditions faced by civilians in intra-state wars, but there are also a few who suggest that it may impact on the post-settlement situation (Mampilly, 2011). I would however hypothesise that the degree of rebel, or separatist, governance affects both the ability and willingness of the conflict parties to reach an agreement and its sustainability. The impact on conflict resolution, broadly conceived, has however not been systematically analysed, and the only view prevalent in the existing literature is that the existence of de facto states prolongs a conflict and poses a significant, possibly insurmountable, obstacle to a negotiated solution. The separatists have won the war, or at least the first round of conflict. A stalemate could be said to exist insofar as the de facto states cannot reach the goal of international recognition through military escalation, and the risk of a catastrophic war is forever present, but it is a 'soft' stalemate not a hurting one (see e.g. Hopmann & Zartman, 2010, p. 2). Entities such as Nagorno-Karabakh, Abkhazia, South Ossetia, Somaliland and Northern Cyprus already enjoy the de facto independence and territorial control to which other separatists aspire, and the leaders of these entities therefore have little reason to compromise. As King asks, 'why be a mayor of a small city if you can be president of a country?', 'why be a lieutenant in someone else's army if you can be a general in your own?' (2001, p. 551)

There is little doubt that these entities are negotiating from a relative position of strength and this will make it hard to convince them to accept less than full independence. De facto states constitute the extreme end of the spectrum as far as territorial control is concerned. It is far more common for a secessionist movement to control no territory or only a few districts, or there may be pockets of contested territories where, for example, the state rules by day and the rebels by night (Kasfir, 2015). In such cases, the secessionist leaders will have far greater incentive to agree to a peace agreement that promises them a degree of self-government or a guaranteed share in power, which compared to the fluid and unstable nature of rebel governance would constitute a gain.

The policy implications of this argument are straightforward and readily adopted by central governments: avoid the creation of a de facto state and do your utmost to weaken it if one does emerge. Make sure that incipient rebel governance is not strengthened through international engagement; possibly avoid negotiating directly with rebel leaders as this implies recognition of their status; isolate de facto states, for example through blockades; and fight any links that would legitimise or normalise their existence.

Another version of this argument would point to the involvement of patron states. Secessionist movements strong enough to achieve de facto independence, and in particular maintain it, usually enjoy the support of a patron. Such third party involvement is widely seen as an obstacle to a negotiated solution (Doyle & Sambanis, 2000) and the parent states are quick to dismiss de facto states as pawns in a strategic game played by their more powerful patrons. Although de facto states should not be seen as mere puppets of their patrons – the dependence may indeed go both ways (Caspersen, 2009) - the patron state may enjoy an effective veto in any peace talks. This will, at a minimum, complicate attempts to find a solution, as more players have to agree.

All else being equal a conflict becomes much harder to resolve once the secessionist forces secure de facto independence and especially if they manage to maintain it for a period of time. However, all else is not equal: the territorial control also makes it possible to build institution and ensure greater internal cohesion (Kasfir, 2015). And this could pull in the opposite direction. One of the factors argued to explain the longevity of civil wars is the number of factions involved: the more factions involved, the longer the war is likely to last (Doyle & Sambanis, 2000). This is especially the case if the factions themselves lack cohesion and a clear line of command. The dynamics are unpredictable in such conflicts and negotiating a lasting solution is near-impossible: who do you negotiate with; will they be able to deliver their followers? The need for credible commitment in peace talks is widely emphasised in the literature (Walter, 2002) and such commitment would seem to necessitate

negotiators who are in control of their community.[2] This would suggest that separatist state-building could in fact have a positive effect on conflict resolution.

The ability to identify what Zartman (1995) would term a 'valid spokesperson' does however not translate into a willingness to accept a compromise solution. In cases where de facto independence has already been achieved, any solution short of independence is unlikely to prove acceptable; the negotiators will in most cases insist, at least, on the continued de facto independence of the entity. The leaders of Nagorno Karabakh are for example adamant that independence is non-negotiable, and insist that Azerbaijan has to accept the 'current reality', i.e. Karabakh's de facto independence, as a basis for any solution.[3] It may, in other words, be possible to negotiate an agreement, but not necessarily one that the parent state would be able to accept.

It is possible that there is a threshold beyond which 'rebel control' makes an agreement more difficult to achieve. The Free Aceh Movement (GAM) in Indonesia appears to have been on the 'right' side of this threshold. Between 1998 and 2005, when the Memorandum of Understanding was signed, the Free Aceh Movement had control over a handful of districts and managed to establish elements of governance in this area, including the supply of some public services. As part of this strategy, GAM incorporated different societal forces which helped ensure a more legitimate and cohesive movement (Barter, 2015). However, the territorial control remained confined and GAM suffered significant military setbacks in the years leading up to the agreement. They consequently came to realise that independence was not realistic and eventually settled for extensive autonomy (Merikallio & Ruokanen, 2015). But unlike a more fractionalised movement, they were able to make it stick; they avoided a significant split and could use the incipient institutions already created to consolidate their power and implement the agreement (Barter, 2015; see also International Crisis Group, 2013). In the case of Sudan, on the other hand, the Sudanese

[2] The literature on commitment problems in civil wars has however generally treated the conflict parties as unitary actors.

[3] Interview with Hrachya Arzoumanyan, expert in the NKR foreign ministry, Stepanakert, 1 November 2008

People's Liberation Movement/Army was in control of a much larger territory and was able to create a partially effective system of governance that provided "a degree of stability of certain areas of South Sudan" (Mampilly, 2011, p. 22). The SPLM/A made clear that they would not settle for autonomy and would only accept an agreement that included an independence referendum following an interim period; this would give them a way out, if the central government failed to reform the state, and it also satisfied the separatist faction of the SPLM/A. This faction came to be dominant following the signing of the agreement and South Sudan became independent in 2011 (see e.g. Brosché, 2008). Such an agreed secession could provide stability – although it did not in this case, as I will return to shortly – but it will rarely be acceptable to the parent state. A similar framework has been suggested in the case of Nagorno Karabakh: a popular vote following an interim period would determine the region's future status. However, Azerbaijan is vehemently opposed to any vote that could lead to independence for Nagorno Karabakh, arguing that the whole country must have a say if the referendum includes the option of independence (see for example (Trend Agency, 2011). In other conflicts, the insistence on territorial integrity also comes from the international mediators. The "Basic Principles for the Division of Competencies between Tbilisi and Sukhumi" which the UN proposed in 2001 and which remained the framework for mediation efforts for several years, spoke of Abkhazia as a "sovereign entity, based on the rule of law, within the State of Georgia". The Abkhaz leadership however refused to even receive the document (Francis, 2011).

So far the discussion has made no distinction between different types of separatist governance, but this could also have an impact. Do the leaders rely on popular support or on coercion? Is their governance purely focused on security or do they also provide other public services? Some de facto states have implemented political reforms and it could be argued that the resulting movement away from military leaders, or warlords, towards civilian politicians would tempter the militaristic rhetoric, increase diversity, and open up for alternative solutions. When Abkhazia held multiparty elections in 2004, which resulted in the victory of the non-regime candidate Sergei Bagapsh, there were initially hopes that this would make it easier to reach a negotiated solution, especially when combined with

the previous year's regime change in Georgia. After all, the new Abkhaz government included people who had taken part in Track II dialogue and who reportedly acknowledged the need for compromise with Georgia.[4] The problem is however that the kind of democratisation that we find in de facto states is usually constrained (Caspersen, 2011). We may find competing political parties and candidates, but on the issue of independence we tend to find intra-communal consensus, even if there may be disagreements over how best to achieve international recognition or how to improve the status quo. It is not merely hardliners who regard sovereignty as non-negotiable. Elections are not separate from the overall secessionist project; in both Abkhazia and Nagorno Karabakh, the electoral processes are for example founded on ethnic exclusion (Ó Beacháin, 2015). Moreover, the reasoning for the general population can be strikingly similar to the political elites: "why be a minority in someone else's states when you can be a majority in your own"? Years of propaganda that has painted the parent state as a bloodthirsty enemy makes such a question rhetorical. Political reform is therefore by no means a panacea. Along with institution-building it also results in stronger and more legitimate entities, and both leaders and followers may consequently see even less reason to consider a risky compromise.

A common state is rarely a realistic solution if the conflict involves a de facto state, or a considerable level of rebel governance; at least not in the short term. Given the refusal of the parent state to accept secession - and usually also various forms of shared sovereignty - the best that can be hoped for is for relations between the de facto state and the parent state to be re-established and for mistrust to gradually subside. But this should be easier to accomplish with effective entities that are not ruled by authoritarian warlords. Over the long term, new dynamics may result, especially if the security threat subsides. The narrative of future recognition and the persistence of an external threat are powerful instruments for ensuring internal cohesion in the de facto state, but their effectiveness is likely to wane if recognition remains unlikely. This could open up for a rapprochement with the parent state.

[4] Interview with Paata Zakareishvili, Tbilisi, 31 August 2006

It may be that there is a threshold of territorial control, in terms of extent and duration, beyond which it will be hard to find a mutually acceptable solution. But this could to some extent be offset by institution-building and political reforms. Effective separatist governance could moreover have a positive effect on sustainability of any agreement reached. Whether the state is maintained or not, a common cause of instability following the signing of a peace agreement is a lack of capacity in the formerly contested territory (Caspersen, Forthcoming). Without sufficient capacity the local leaders will be unable to manage violent spoilers, and will also lack the resources to supply public services and thereby find it harder to legitimise the agreement.[5] This further adds to the risk of spoiler violence. Following the signing of the 1996 agreement for Mindanao, in the Philippines, the region became a byword for anarchy; the autonomous government, led by the former rebel movement, did not have the capacity to defeat or marginalise spoiler groups and also struggled to provide public services; as a result the agreement lost backing from the local population and spoiler groups were strengthened (Lara Jr & Champain, 2009). The risk of instability is augmented if the former rebels institute a regime that lacks inclusivity. During the Sudanese war, the rule of the SPLM/A had been focused on security; it had failed to build effective institutions and it had also remained dominated by the Dinka ethnic group (Mampilly, 2011). This became a problem following the 2005 peace agreement and especially following South Sudan's independence. The government was authoritarian, ethnically exclusive, and unable to meet the economic expectations of the inhabitants (Sriram, 2008; Brosché, 2008). It did not take long before internal divisions came to the fore and civil war broke out (Jones & Anderson, 2015). This demonstrates that the territories held by rebel forces cannot simply be treated as *terra nullius*. Moreover not only territorial control matters, institutional capacity and the nature of the rebel regime impact on the sustainability of a settlement. It seems that if an agreement is reached – which may be a tall order indeed – then de facto states, or a high degree of rebel political order, could provide a basis for sustainable peace, especially if a degree of diversity has been institutionalised.

[5] The risk of secession in case of sufficient capacity is often exaggerated; peace agreements collapse more often due to recentralisation efforts by the central government

Conclusion

There is clearly a need for systematic research of this topic, but the above discussion at least suggests that the improved understanding of de facto states does have implications for conflict analysis. Reaching a compromise solution when a de facto states is involved will never be easy, but the longer-term prospects, and the conditions for the inhabitants in the meantime, depend on the type of de facto states that has been created; the degree to which effective institutions have been built and political reforms introduced. This moreover also matters for the sustainability of any agreement reached. Analytically, I have called for viewing de facto states as the end of a continuum of rebel governance, and just like the literature on rebel governance has policy implications, so does the above discussion. Isolating or weakening de facto states is not the only possible response, and it may indeed backfire and simply increase the influence of the patron state. Engagement is an alternative: not just for the sake of civilians during the war (Mampilly, 2011), but also to strengthen reform forces within these entities which could gradually create a situation more conducive to compromise and to a sustainable agreement.

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