STATE Sovereignty

CONCEPT, PHENOMENON, AND RAMIFICATIONS



ERSUN N. KURTULUS

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Ersun N. Kurtulus

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La Souveraineté, c'est quelque chose.
Charles de Gaulle

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Preface

The main argument of this book was formulated one wonderful spring morning at the highest point of the island of Santa Maria in Azores. Watching the beautiful landscape from 587 meters high and not being able to detach myself from my work, I noticed that I could see the coastlines of the island completely. Some valleys were not visible from my vantage point, but their entrances were. Some parts of the island were covered in fog, while others were glittering under the sunshine. Any sovereign, I thought, watching the island from where I am would be able to have perfect knowledge of the movements in and out of her domain. She would perhaps not have complete surveillance, but if she had sufficient numbers of military, police, and civil servants, she would be able to put into effect whatever she wished to put into effect. She could, moreover, receive recognition from other, similarly powerful sovereigns in other similarly isolated islands. If she was under duress, she would be able to receive help from them by making use of the airport, which has been derelict since the trans-Atlantic passenger flights entered into the era of jet aviation. After all, I concluded, whatever inconsistencies and obscurities we may have in our conceptualizations of sovereignty, the phenomenon is as simple as a set of such facts about the relationship between an agent and a territory, about a sovereign watching and ruling her domain from its highest elevation and receiving acknowledgment of what she is doing.

Many people and institutions have been involved in the work that is presented in the following chapters. I would like to thank the Department of Political Science, University of Stockholm, for funding my doctoral thesis. I am especially grateful to *Stiftelsen för internationalisering av högre utbildning och forskning*—STINT for granting me an award, which enabled me to make use of research environments that exist elsewhere in the world. Among the people working in this department, I would like to thank particularly my supervisor, Kjell Goldmann, whose professionalism and sharp intellectual scrutiny contributed

immensely to improving the quality of this book. I am also grateful to Bo Lindensjö, Jouni Rainakainen, and Daniel Tarshys for their comments in the final stage of the writing process. I would like to thank the Department of Politics and International Relations, University of Kent, for the intellectually stimulating environment that they offered me during the final years of my work. Special thanks are due to Thomas Saalfeld whose warm friendship and wise advice helped me greatly in my new environment.

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Various chapters of this thesis were read and commented upon by Hans Agne, University of Stockholm, Jens Bartelson, University of Copenhagen, Mervyn Frost, Kings College, Lutz Berger, University of Tuebingen, and Richard Sakwa, University of Kent. I would like to thank all of them for their valuable comments.

Finally, special thanks are due to my climbing partner James Twohig and the members of the University of Kent Mountaineering Club (UKC-MC), the student members as well as the old-gits. Our frequent trips to different parts of England, with a lot of climbing, wind, rain, ale, and fun, provided the necessary breaks from what was after all an intensive process of writing and revising.

CHAPTER 1

Introduction

In the contemporary academic writing on sovereignty, the general tendency is one of skepticism. Many scholars argue that sovereignty of states is on the decline because of porous territorial borders and permeable decision-making mechanisms. Others target the concept as such, claiming that it lacks analytical utility and normative justification, while yet a third group reduces its meaning and utility to its presumed functions in disciplinary discourses and discursive practices. The main argument of this book is that these skeptical positions are based on confused, incoherent, or simplistic notions of sovereignty and that they are therefore untenable. Once we expose state sovereignty to conceptual explication and understand it correctly we cannot escape the conclusion that it denotes an all-pervading and important feature of world politics. It refers to a legal and actual status enjoyed by many but not all political entities and it designates an omnipresent empirical phenomenon, the complexities and the workings of which are intelligible to the human mind. In those few cases where we cannot give a clear-cut answer to the question about the sovereignty of a given entity, it is nevertheless possible to explain why this is the case and in which sense the entity in question is idiosyncratic. In order to substantiate these claims, this study will focus on those political entities that constitute the nexus of the concept, the phenomenon, and the ramifications of state sovereignty.

Thus, the starting point of the argument elaborated in this book is a set of empirical questions about the sovereignty of states and similar entities. Are those states, whose governmental power has collapsed into a state of anarchy, sovereign? How are we to understand the sovereignty of a state, which is politically controlled by another, more powerful state? Is a political entity that has established its political control over a demarcated

piece of territory, but that has not received recognition as a state, sovereign in any sense of the word? How are we to judge the sovereignty of those states that are involved in formal and informal integration-processes? If the member states of a federal state have legislatures that cannot be classified unambiguously as subordinate legislatures, what would this situation imply for the sovereignty of the federal state and the member states respectively? Are the neutralized states, where the alternative to neutralization is military occupation by another state or where neutralization is the prerequisite for the establishment of the state in the first place, sovereign? And the corollary of these questions: what kind of difficulties do we encounter when we make empirical statements about the sovereignty of such entities?

These and similar empirical questions may be compressed into three theoretical questions that will constitute the main focus of attention in the present study.

- What is state sovereignty, that is, what does sovereignty as a descriptive concept refer to at the level of states and similar entities?
- Which kind of political entities are sovereign as a matter of fact and law?
- What types of difficulties are encountered when determining the sovereignty of such entities?

It may be objected that these questions, especially if asked about particular states, are legal questions, and therefore, can only be legitimately answered by international lawyers, constitutional analysts, and scholars of jurisprudence. After all, it may be argued, is it not the case that the issue of whether or not, for instance, Somalia, Northern Cyprus, Taiwan, member states of the European Union or the federal government of the United States of America are sovereign can only be resolved authoritatively by judges, like those of the International Court of Justice, the European Court of Justice, or the Supreme Court of the United States? Seen from a disciplinary perspective, there are at least two reasons to maintain that state sovereignty is also a proper subject matter for political scientists and students of international relations. In the first place, the breakdown of a state, its political control by another state, its involvement in integration-processes, its status as a subject under international law, its constitutional design, and restrictions that may be imposed upon its foreign policy—in short, all those phenomena to which the above-mentioned empirical questions pertain—are either inherently political phenomena or phenomena with clear political implications. In the second place, the concept of sovereignty, despite its ambiguity

and rhetorical connotations, has been and still is, one of the central concepts of the disciplines of politics and international relations. The controversy about its precise meaning and its proper use may occasionally abate during a certain period, just to revitalize during the next; but whatever the intensity of the debate, the concept of sovereignty is always there, as an integral part of the terminology of these disciplines and in spite of occasional proposals that it should be discarded because of its intrinsic obscurity and its irremediable elusiveness. Thus, if the above-mentioned empirical cases are substantial ones and if the concept of sovereignty is an integral part of the vocabulary of political science, then the question arises as to how the theoretical concept of sovereignty is to be employed in empirical research and what kind of methodological difficulties such an attempt may encounter in practice.

As shall be seen in the following chapters, this is a question that is either carefully avoided or categorically rejected, but seldom explicated in detail—and it is this methodological condition that to large extent explains the emergence of or support for skeptical approaches to sovereignty. On the one hand, there is the usual conventional use of sovereignty in empirical disciplines where the content of the concept is often determined by a whole range of rudimentary instruments, by means of a tool kit that contains anything from ad hoc operationalizations to everyday intuitions of the reader about sovereignty. The outcome of this modus operandi has often been a situation where the usage of "sovereignty" is prone to analytical imprecision, vague synonyms, logical inconsistencies, disciplinary incompatibility, quasi-empirical statements, and rhetorical connotations. In this respect, the overly politicized statements about "pooled sovereignty" in the academic debate about the European Union and the frequently repeated but never tested assertion of "loss of sovereignty" in the contemporary literature on international relations are the most notorious but not the only examples. On the other hand, there is a contemporary body of postmodern and post-structuralist literature, which has based its argument on criticism of this state of affairs and doubts about the possibility of employing the concept of sovereignty in empirical research. However, this is a criticism based on epistemological positioning rather than methodological requirements and this is the point where it rises and falls. As shall be seen in chapter 2 of this book, while arguments derived from such a standpoint may be effective when mobilized against empirical approaches to sovereignty, they become self-defeating once the criticism is transcended and the analysis of, or the narrative about, the novel conceptualization of sovereignty is undertaken. The subject/object and concept/referent distinctions rejected initially are necessarily reintroduced subsequently, and consequently,

the criticism of the disciplines and disciplinary approaches to sovereignty collapses into a choice about object of study—political *texts* or political *organizations*—and a preference about disciplinary adherence—*political theory* or *political science*. It may be argued that the overall outcome of this development has been the emergence of two separate bodies of research projects, two large volumes of literature about sovereignty, which have their own premises, their own concerns, and their own disciplinary affiliations but that seldom interact with one another. Consequently, in the available literature, an up-to-date empirical study on state sovereignty refers only in passing to one title from the mainstream postmodern and post-structuralist literature, while these same studies are referred to only twice—and only very briefly—in a recent special issue of a refereed journal on sovereignty.[1]

This study contains a general criticism of both approaches. At one level, it may be regarded as an attempt to bridge the gap between the empirically oriented and the philosophically minded study of state sovereignty. On the one hand, the criticism mustered by the latter is taken seriously, but mobilized in order to emphasize the importance of methodological rigorousness in conceptual development. On the other hand, this study attempts to reintroduce, as explicitly as possible, the *premises* of empirical science into social scientific concept formation; an attempt, which finds its ultimate justification in the inevitability of having premises in all kinds of human intellectual activity.

But, why revisit the empirical content of a concept that has been repeatedly discarded by many scholars as empirically useless, factually inaccurate, or morally dubious and embark upon an endeavor that will certainly be frowned upon by the proponents of these two well-established traditions. There are four arguments in support of the approach adopted in the following analysis.

The first argument has to do with the necessity of examining the empirical content—or the empirical validity—of *theories of international politics*. Sometimes the necessity of such a deductive approach is evident and the relationship of the theory to the question of whether or not a category of entities is sovereign, is obvious. To give an example, a scholar of international politics, in a study of interstate relations, adopts a systems-perspective and regards states as the units of the international system. As a second step in the formulation of the theory, he identifies states as sovereign entities, sovereignty, in turn being defined simply as being autonomous.[2] Now, seen from the vantage point of this theory—and, it has to be noted, of other similar theories—there is no way of inquiring into the question of *how many units* the international system

has, or the question of *which are the units* of the international system, without resolving, over and over, the question of whether or not a *given* entity is sovereign—the number of replications of the question being dependent on the number of entities that may be regarded as possible candidates for being the units of the system. Only to the extent that there is a possibility of resolving this empirical question at a micro level will this and similar theories formulated at a macro level acquire empirical value. At other times, the necessity of examining the empirical content of theories is less conspicuous and the relationship between such an inquiry on the one hand and the question of whether or not a given entity, or a category of entities, is sovereign on the other, is much more indirect. For instance, for several decades, scholars of international politics have been debating whether, to put it somewhat crudely, states are losing their significance or whether they are essentially intact. As is well known, the theories that have been formulated in this context have gradually crystallized into two schools of thought about international politics: the so-called realist school and the interdependence school. It is possible to assert that this controversy is about a set of empirical questions, among them, the question of whether or not states are able to control their territories. It may also be maintained that to the extent that control of territory is regarded as a hallmark of sovereignty, the question whether or not an entity, or a category of entities are sovereign becomes related to the observable implications of these groups of theories, with the theories in the first school predicting an affirmative and those in the second a negative answer to it.

The second argument is the inductive version of the previous one and the logical consequence of a general assumption about the nature of empirical science. At an epistemological level, it is possible to presume that *classifications* are a prerequisite for any kind of scientific inquiry into the empirical world. If this presumption is reasonable, then the relevance of questions of the above-mentioned type becomes evident: without any answer to the question whether or not an entity or a category of entities are sovereign, there cannot be any possibility of delimiting a class that consists of "sovereign" entities from that of "non-sovereign" entities. And without such a class of objects, it will not be possible to forge empirically meaningful theories about sovereignty that explain the world. To formulate the same argument in a slightly different but more general way, it is possible to presume that endeavors at developing theories in empirical political science and international relations require the employment of clear-cut concepts that depict clear-cut phenomena, which in turn easily, and perhaps necessarily, collapse into grappling

with questions of the type "if x is sovereign, democratic, a nation, a political party, a terrorist organization and so on." Moreover, this type of classifications is also a prerequisite for the study of *causal relations* in the context of sovereignty. In order to explore the obscure domain of causal relations with regards to sovereignty, we have to have a clear understanding of the dependent or independent variable, "sovereignty." For instance, if we are to test the observable implications of a casual statement such as "recognition causes sovereign status," we have to be able to identify, before taking any further steps in the research, an entity that we know has such a sovereign status—hence the question whether an entity, or a category of entities are sovereign or not.

The third argument pertains to the ubiquitous necessity of drawing a line between *political rhetoric* on the one hand and *scientific terminology* on the other—although, it has to be admitted, this task is notoriously difficult if not sometimes simply impossible. Political rhetoric usually takes the form of statements, sometimes simultaneously made, expressing a claim that a given territorial entity, because of this or that event "has lost" or "has gained" in terms of sovereignty. What is required to evaluate the accuracy of such statements is a clear, elaborate, and tenable answer to the question of the empirical content of the concept of state sovereignty. Seen from such a viewpoint, the question of whether or not the entity concerned is sovereign becomes a test-question, by means of which statements may be revealed as having rhetorical characteristics, and thereby, distinguished from testable statements about facts. To put it differently, in order to be able to establish the rhetorical character of such conflicting empirical statements about sovereignty, we need to have a *sustainable* notion of what sovereignty is. As shall be seen in chapter 7 of this volume, in the context of a discussion about the locus of state sovereignty within the European Union, such a demarcation is not only necessary, especially if a situation where scientific terminology functions merely as a prolonged arm of rhetorical political debate is to be avoided, but it is also achievable—even if in a somewhat rudimentary form. However, it may still be objected that, in general terms, a discipline such as political science cannot insulate itself completely from political rhetoric and that, as a result of this, there is no way of eliminating rhetorically laden dimensions of concepts, and among them those of the concept of "sovereignty," from the terminology of the discipline. At an epistemological level, this criticism is most probably justified, but at a practical level it may be countered with reference to an example from recent history: at the height of political tension in Zimbabwe in April 2000, President Robert Mugabe described a new law allowing seizure

of white-owned farmland without compensation as a "victory over colonialism" and declared that "[a]t last the people of Zimbabwe have acquired their sovereign rights. They can now say the land belongs to them."[3] Now, it would not take many arguments to prove the point that Mugabe was using the word "sovereign rights" purely in a rhetorical sense: in this context, it is possible to make references to the brutal reign of the so-called veterans at that time and argue that the notion of sovereignty is incompatible with the breakdown of law and order; that if there was any sovereignty to speak about, then this was perhaps the sovereignty of an unidentifiable and unaccountable political group; or that what was involved was perhaps the sovereign power of a certain section of the people over another, a minority section; and that all this has nothing to do with realization of popular sovereignty or sovereign rights of people, and so on. However, what is important for the purposes of the argument here is the fact that each of these and other conceivable statements that refute Mugabe's claim about the acquisition of sovereign rights can only be made on the basis of an empirical understanding of sovereignty—regardless of whether that understanding is implicit or explicit, sophisticated or rudimentary.

The fourth and the last argument has to do with the fact that there is an urgent need to put an end to the *differential treatment* of the concept of sovereignty in the literature of politics and international relations. It is justified to claim that when dealing with most of the key concepts in these disciplines, such as *law*, *democracy*, *federalism, nations*, *power*, and the like, scholars tend to handle them *not* as pure and simple concepts, but in relation to their respective referents: as concepts referring to social phenomena or facts ontologically independent of the words used to signify them. However, when it comes to sovereignty, a different procedure is usually followed: any student of this concept is authoritatively directed to conducting a historical analysis, as if the concept was coined in the first place *merely* for the unquenchable historical curiosity of future generations of scholars and as if the concept *necessarily* belongs to the realm of history of ideas. Thus in modern accounts of international relations—and in one case, even in that of international law[4]—it is common practice to be content with making references to Bodin and other political philosophers of later centuries who addressed the question of sovereignty. By contrast, it would be unthinkable to attempt to understand, for instance, the problems of modern democracy simply with reference to Athenian democracy or to transform basic questions of jurisprudence into a conceptual history of law or in short, to recast imperatively any attempt at synchronic conceptual analysis into a diachronic one when it

comes to concepts other than sovereignty. As a result of this general attitude, there is a conspicuous lack of literature that approaches the concept of state sovereignty from the point of view of contemporary empirical political science and international relations—to be distinguished from that of political philosophy and history of ideas. The most comprehensive work published on this subject matter is from mid-1980s,[5] while two valuable works from 1990s focus on international relations as such, rather than exclusively on state sovereignty.[6] This study is an attempt to contribute to this empirically oriented body of literature.

Thus, it must have been clear by now that this study is not yet another attempt at demonstrating sovereignty to be an essentially *contested*, or alternatively an essentially *uncontested* concept belonging to the realm of pure ideas. In spite of its merits for the epistemologically enlightened self-reflection of scholars, such an endeavor would be of limited practical value when it comes to explaining phenomena that lie outside of the territorial confines of the academic world. Besides, the enterprise would merely repeat a standpoint which, its unorthodox origins notwithstanding, is gradually becoming the conventional wisdom in the field. Therefore, the content of the following pages will rather be an attempt to shift the focus of attention to the material world in order to understand the *complexities of a political institution or an organization—or in short, an artifact*—that has been fiercely contested by diplomats, politicians, negotiators, mediators, terrorists, and separatists. And it is one of the underlying assumptions of this study that it is mainly this contention that makes state sovereignty one of the main concerns of the empirically oriented students of international relations, the lawyers of international law and the analysts of constitutional theory. Hence, it is presumed, these disciplines should be able to say, and indeed can say—even if not authoritatively and conclusively—something systematic about the basic features of a political organization the benefits and the disadvantages of which affect the lives of so many people.

In order to provide evidence for the main argument of this study that state sovereignty, by referring to a legal status and a factual condition possessed by many political entities, captures one of the most important features of international relations and, also, in order to counter the skeptical and simplistic conceptualizations of state sovereignty, this study will systematically concentrate on the three broad questions mentioned earlier. The ensuing chapters are organized in such a way that each chapter is related to some important aspect of one of these questions. Thus, the next three theoretical chapters address the first question mentioned earlier: *What is state sovereignty, that is, what does sovereignty as a*

descriptive concept refer to at the level of states and similar entities? Chapter 2 is devoted to a critical scrutiny of both conventional approaches to sovereignty, which regard this question to be answerable on the basis of operational definitions and the contemporary skeptical perspectives, which argue that it cannot be answered at all—or not in a noncontingent way. Those readers who are not interested in this epistemological—and to a large extent European—debate may skip this heavily theoretical chapter and move on to chapter 3, where the general domain of state sovereignty and the relevant body of literature will be determined on the basis of a classification of different theories of sovereignty. The purpose of this chapter is to demarcate the subject matter—or the ontological choice—of the ensuing analysis of state sovereignty within the broader context of the general concept of sovereignty. Chapter 4 comprises a conceptual analysis of state sovereignty conducted on the basis of three classical dichotomous questions—that is, whether state sovereignty is legal or factual, qualitative or quantitative, and indivisible or divisible. The contents of the next four chapters is partially dependent on the results of the analysis conducted in this chapter, that is, the conclusion that the concept of state sovereignty refers to two distinct but interdependent phenomena—one of them legal and the other one factual. Hence, the second question investigated in this book, *Which kind of political entities are sovereign as a matter of fact and law?* will be addressed in two different chapters. Juridical state sovereignty is analyzed in chapter 5. On the whole, this chapter provides a general assessment of the three different explanations given in the disciplines of international relations and international law with regard to the question of which kind of entities possess sovereign rights and are endowed with this type of sovereignty. The arguments about loss of factual state sovereignty are addressed in chapter 7, partially with point of departure in the recent literature on the subject and partially with reference to the debate about the locus of sovereignty in the European Union and other similar cases. Chapter 6 and chapter 8 focus on the third and last question studied in this book, *What type of difficulties are encountered when determining the sovereignty of such entities?* The main theme in chapter 6 is the problematic cases of juridical state sovereignty, where the relationship between such cases and the degrees and types of recognition will be examined in some detail. Chapter 8 turns to the problematic cases of factual state sovereignty, which will be explained, among other things, with reference to what will be called the problem of the collective sovereign agent and the problem of counterfactuals. Chapter 9 is devoted to the conclusions of the whole inquiry.

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CHAPTER 2

Referents of Sovereignty or Discourses of Sovereignty: Referent as Discourse and Discourse as Referent

The contemporary approach to the concept of "sovereignty" may be characterized as a titanic clash between two extreme methodological positions, which in different ways underpin the skepticism about sovereignty. On the one hand, there is the unproblematic employment of the term in empirical research, where an understanding of its substance is at best attained by operationalizations or operational definitions or at worst simply left to the intuitions or preconceptions of the audience. On the other hand, there is, what a contemporary critic has aptly called, the "indefinability thesis,"[1] that is, the overproblematized philosophical treatment of the word as part of a "discourse" or "discursive practice," where the content of the word is allowed to vary historically from one period to another, to describe in the end, among other things, the functions or the foundations of contemporary scientific discipline(s). The basic assumption of this study is that neither of these approaches is satisfactory in the context of empirical investigations. Sovereignty cannot be regarded as a set of operations or a "primitive term,"[2] the meaning of which is given beforehand and is not in need of further logical and empirical explication. Nor can the concept be regarded as some sort of a chimera, or a kind of disciplinary tool or premise with specific functions, with no immediate or contingent relation whatsoever to a nonlinguistic or nondiscursive world. In this chapter, a critical assessment of these two broad approaches to the concept of

sovereignty will first be undertaken. Then the focus of attention will be shifted to the general outlines of a third way of addressing what is, after all, a methodological issue.

The Referent of Sovereignty—Quasi-Empirical Statements, Definitions, and Operationalizations

At the most elementary level, the problem of sovereignty is caused by an empirically weak, semantically equivocal, but rhetorically powerful concept being used in empirical investigations or being incorporated into empirical statements. This situation is probably the reason why some scholars have despaired at straightening the subsequent confusion and called for discarding the term altogether from the vocabulary of politics and international relations.

The adherents of this "abandonment thesis"[3] have been several and may be found in different periods. Harold Laski, for instance, argued as early as 1925 that as "a theory of political organisation" sovereignty is "of dubious correctness in fact" and that "it is at least probable that it has dangerous moral consequences." Thus, he claimed that "it would be of lasting benefit to political science if the whole concept of sovereignty were surrendered."[4] Writing just before the outbreak of the Second World War, Edward H. Carr regarded the emergence of taxonomies as an indication that "the label [sovereignty] had ceased to perform its proper function as a distinguishing mark for a single category of phenomena" and he predicted that "[t]he concept of sovereignty is likely to become in the future even more blurred and indistinct than it is at present."[5] In the mid-1960s, another influential scholar, Stanley I. Benn, argued that "it would be a mistake to treat 'sovereignty' as denoting a genus of which the species can be distinguished by suitable adjectives" and suggested that "there would seem to be a strong case for giving up so Protean a word."[6] In the available literature, it is also possible to find more recent attempts at disposing of the concept. Richard Falk, for instance, maintains that "the viability of sovereignty as concept and project seems increasingly dubious" and argues that "[w]hen the polemical function of a concept outweighs its empirical referent, it may be time to consider scuttling the concept itself, or at least severely circumscribing its use."[7] Michael Newman, to give another contemporary example, claims that "the concept of sovereignty is so ambiguous and distorted that it is now a barrier to analysis."[8]

There are at least three arguments that may be raised against the proposal to discard the concept of sovereignty from the disciplinary

terminology. At the *sociological* level, it would probably not be an exaggeration to claim that the confusion and debate about sovereignty in the academia forms a paradoxical contrast to the state of affairs that distinguish some everyday aspects of actual political life. Political actors of various kinds, from secessionist movements engaged in war to statesmen involved in international peace negotiations, often seem to have a specific type of institution or organization in their mind when they speak about state sovereignty or act in relation to it. To the extent that what is involved in these contexts is an intelligible political demand or goal encapsulated in the concept of "sovereignty," then the suggested "abandonment thesis" is tantamount to saying that the student of politics and international relations is unable to have—and as a matter of fact, will never be able to have—a proper understanding of a concept the referent of which is aspired by statesmen, secessionists, terrorists, and activists. At the *disciplinary* level, it is probably the case that few, if any, central concepts of political science and international relations would escape this sort of criticism—and the ensuing proposal for abandonment—that has been directed against the concept of sovereignty. Seen from such a vantage point, it might be argued, as one scholar does, that "if we were to abandon all essentially contested terms in political science the field would be severely impoverished."[9] At the *epistemological* level, it is doubtful whether it is at all possible to completely avoid the problems caused by ambiguous and abstract concepts such as the concept of sovereignty. If theoretical concepts are prone to vagueness and if science does not start with observation statements, because some sort of theory precedes all observations,[10] then all other things being equal, the "abandonment thesis" is tantamount to nothing more than suggesting in practice that we swap one theoretical and ambiguous concept with another.

These and similar arguments may explain why the concept of sovereignty has eluded such attempts at jettisoning, and it is still used in statements about the observable world. The methodological solution that has emerged in this context has been twofold. As shall be seen in due course, some scholars have used the concept in a *quasi-empirical sense*, where notwithstanding the manifestly empirical nature of the statements involved, the concept of sovereignty has been allowed to linger at an abstract level, and its meaning, unexplored and undefined, has been left to be determined by the intuitions and preconceptions of the readers.[11] A similar development in this respect has been the synonymous use of the concept of sovereignty with other, equally abstract and ambiguous terms, such as "state" or "power"—although such a modus operandi often

leads to intermingling the "defining properties" of the concept with its "accidental properties" and in the process increasing the confusion surrounding its meaning.[12]

The other, more common way of employing the concept of sovereignty in an empirical context has been to formulate or reformulate "working definitions,"[13] "useful" formulations,[14] and operational definitions or operationalizations of varying degrees of rigorousness and explicitness. The evolution of this method—or more accurately, this methodological modus vivendi—are intricate, and although the details of its development are probably of great interest to the philosophers of science, they are not directly pertinent to the more routine work of the practitioners of social science. Thus, it should be sufficient to note here that the origins of operationism—or operationalism—are embedded in the distinction between theoretical statements and observation statements—or "protocol sentences"—made, but never adequately sustained, by logical positivists. The method may be regarded as the outcome of a long and gradual process that started with the publication of Bridgman's seminal work on operations, *The Logic of Modern Physics*, in 1927.[15] In a specific sense, it may be seen as a reflection of the gradual weakening of the "correspondence rules" that have been formulated as a substitute for the problematic distinction between theoretical and observation terms at the level of epistemology to the everyday work of social scientific disciplines. The negative consequences of this development for the methodology of social sciences have been described by Outhwaite as "a curious mixture of parsimony and generosity"

> [T]he standard view offered the attractive possibility that the central problems of social scientific concept formation, the construction of the basic terms picking out the essential features of the social world, could be side-stepped by the use of more or less arbitrary definitional postulates leading to formalized theories.
>
> . . . The standard view implied the "operationalisation" of social scientific concepts, the construction of testable and measurable "indicators" for alienation, *anomie*, authoritarianism or whatever.[16]

With respect to the employment of the concept of sovereignty in empirical research, these negative aspects have had, and still have, two consequences. In the first place, as the content of the following chapters testifies, implicit or explicit operationalizations of *the* concept of sovereignty by scholars of politics and international relations independently of one another in practice has led to a *multiplication of the concepts of*

sovereignty. This has been the case even in those situations where such a multiplication cannot be justified in terms of the intrinsic ambiguity or the complex referent of the concept. This paradoxical proliferation of theoretical concepts (among them sovereignty) as a result of attempts to render a *single* theoretical concept empirical is to a large extent the outcome of the logic of operationism. Bridgman writes, with reference to the concept of "length," that "we mean by any concept nothing more than a set of operations; *the concept is synonymous with the corresponding set of operations*."[17] The issue is, of course, what would happen if a concept had several operations, that is, in the more precise terminology of Hempel, several "testing operations" yielding several "test results."[18] The reply to this question is straightforward and logically coherent in Bridgman's work: "[i]f we have more than one set of operations, we have more than one concept, and strictly there should be a separate name to correspond to each different set of operations."[19]

The outcome of such an approach cannot be anything but, as has been pointed out by Hempel, an infinite multiplication of scientific concepts:

> [T]he operationist maxim under discussion would oblige us to countenance a proliferation of concepts of length, of temperature, and of all other scientific concepts that would not only be practically unmanageable, but theoretically endless. And this would defeat one of the principal purposes of science; namely the attainment of a simple systematically unified account of empirical phenomena.[20]

As far as attempts at infusing empirical content into the concept of sovereignty are concerned, the overall impact of this methodological condition has been multiplication of the concept by, so to speak, "slicing" its referent into different—and often overlapping—fragments. This point may be illustrated with reference to a recent definition given to sovereignty. In an attempt to find "a formulation broad enough to encompass much of the diversity of definitions, but discrete enough to be useful," Daniel Philpott defines sovereignty as "supreme authority within a territory."[21] In spite of the expressed ambition of formulating an extensive definition, what is involved here is the creation of an isolated and insular notion of sovereignty, which encompasses one half or one portion, of the referent and the concept. This practice eliminates, by means of a definition, the other half, that is, the half that is the referent of the notion of sovereignty in the Grotian[22] sense as *independence* from control.[23] Somewhat ironically and in a manner that supports the

argument here, Austin criticizes Grotius for excluding exactly that half of sovereignty, supreme authority, which is the core of Philpott's definition.[24] A similar criticism of Grotius would also point out that the definition of sovereignty as independence from control also excludes another element of the concept and the referent: its *territoriality*, regardless of whether it is interpreted in terms of intra or extra territoriality.

The total sum of such endeavors to render the concept empirical through definitional procedures, and the ensuing proliferation of the concepts of sovereignty, accounts, at least partially, for the quandary that has afflicted the disciplines that study the phenomenon and the necessarily related concepts. The outcome of this mode of analysis and the tendency for conceptual multiplication has been a situation that is analogous to what has become a commonplace example of the consequences of operational definitions: the fact that there are in the discipline of psychology as many concepts of intelligence as there are operations of that concept—that is, intelligence tests. Moreover, the general impact of such a conceptual development in the context of sovereignty can be anything but an increase in the "collective ambiguity" within the related disciplines: "a situation in which (at the limit) each scholar ascribes his own meanings to his key terms."[25]

In the second place, and partially as a result of the first, the application of the method of operationalizations or similar definitional practices in the context of sovereignty may create a tendency to solve the controversies surrounding the concept by definitional fiat, rather than on the basis of rational argument and explication. This point may also be illustrated with an example. In an attempt "to propose a synthetic conceptualization of sovereignty amenable to empirical research," a scholar of international relations, Janice E. Thomson, gives a "working definition" to the concept of sovereignty that, she claims, "follows on the classical international law definition, with the addition of the recognition criterion."[26] Thus, "[s]overeignty" is defined as "the recognition by internal and external actors that the state has the exclusive authority to intervene coercively in activities within its territory." Seen from a methodological point of view, the proposed definition, through presuming an intrinsic and a priori relationship between sovereignty and recognition, eliminates, by means of a mere fiat, the controversy in international law between the constitutive and the declaratory doctrines on the function of recognition—a conflict that has prevailed in that discipline for more than a century by now. As will be seen in chapter 5 of this book, because of this controversy, and the ensuing conflicting notions about the acquisition of sovereign status, it is not possible to

speak of a "classical international law definition of sovereignty" to which "the recognition criterion" can be added.[27]

In conclusion, it has to be stressed that the problems emanating from such operationalizations, or similar definitional procedures related to the concept of sovereignty are not idiosyncratic and are not due to individual sins of omission or commission on the part of scholars, but are structural and inherent to the method employed in the analysis. However, if it is difficult to pinpoint the referent of the concept of sovereignty by means of such methodological devices, it is also impossible to reject altogether the possibility of demarcating that referent in a noncontingent and systematic way. Now, the focus of attention of the analysis may be shifted to this issue.

The Discourses of Sovereignty—Postmodern and Post-Structuralist Approaches

The alternative conceptualizations of sovereignty have been suggested within the broad framework of various lines of argument that have collectively been labeled as "postmodernism" or "post-structuralism."[28] To a certain extent these approaches may be seen as a reaction to the mode of analysis that has been criticized in the preceding section. However, this reaction is philosophical rather than methodological since, in the sphere of epistemology, they adhere, more or less explicitly, to a diametrically opposite standpoint about the nature of knowledge and language, the possibility of applying scientific methods, and the prospects of realizing empirical investigations that employ abstract concepts and generate—more or less—objective knowledge. Consequently, these approaches reject the type of conceptual analysis, conducted in the following chapters, which asserts that the analytical utility of the concept of sovereignty can be determined in a noncontingent way. They are skeptical about the basic assumption of this study that the answer to the question "what is state sovereignty?" can be provided by a method informed by logical deductions and systematic references to an empirical reality that is ontologically independent of the concept of "sovereignty." It is on the basis of such a rejection and skepticism that some postmodern and post-structuralist authors suggest adoption of a historical approach and a necessary shift in the study of sovereignty from the referent of the concept to discourses and discursive practices related to sovereignty. However, as shall be seen in a moment, this type of study paradoxically necessitates adoption of the same type of assumptions about concept formation—including that of sovereignty—which these

approaches reject initially. Consequently, the postmodern and post-structuralist argument related to the concept of sovereignty loses its epistemological nature and collapses in the final analysis into a choice about object of study and about scientific discipline. Moreover, as shall be seen in the last section of this chapter, to the extent that the adopted historical approach comprises *even* the modern era, the postmodern and post-structuralist analyses of the "discourses" of sovereignty become falsifiable on the basis of data produced by an empirically oriented analysis of the type conducted in this study.

The Rejection of the Premises of Empirical Inquiry

A common denominator of postmodern and post-structuralist approaches to the concept of sovereignty is the view that this concept cannot be subjected to the type of analysis, or definitional practice, or explication that is the starting point of *any* kind of empirical investigation, which employs such abstract concepts. For instance, in his work on sovereignty, Jens Bartelson claims that "[t]here is a discursive practice of sovereignty, but sovereignty itself is not amenable to empirical political research, however much essentialist conviction we retain about its power to organize political reality."[29] Despite the general consensus about its pivotal position "in our political vocabulary and understanding, the concept has eluded almost every attempt of rigorous definition and conceptual analysis" and such "vain attempts," it is argued, "have less to do with the inherent ambiguities of the concept, and more to do with the philosophical tools utilized to [*sic*] this purpose."[30] Bartelson traces the origins of such attempts back to "the codes of semantic conduct drawn up by post-Kantian empiricists" and maintains that its underlying assumption is a certain notion of language, which views it as "a transparent medium," a specific view of meaning, which sees it as "interdependent" with "reference," and a special notion of analysis that establishes the "*a priori* meaning of a concept" in terms of "determination of its referent."[31] Thus,

> Applied to sponge concepts such as sovereignty, procedures based upon this essentially *representative* view of language and the world run into considerable difficulties. Conflicting conceptual pressures inherent in the very metavocabulary of conceptual analysis beg the question: does sovereignty refer to the empirical reality of political science, or does it denote a set of juridical rules . . . ? Since there is a strong temptation to get the best out of the two conceptual worlds in order to cover the various usages of

> sovereignty in modern political and legal discourse, definitions and theories of sovereignty are inclined to reproduce this inherited ambiguity by splitting the difference between the conceptual worlds of empirical political science and normative jurisprudence.[32]

A similar criticism, but in a less unambiguous form, is also presented in Cynthia Weber's work on the subject, this time in terms of an attack on the "logic of representation" and "scientific behavioral methods." "According to a logic of representation," writes Weber, deliberately shifting in the process between the epistemological and the political meanings of the word "representation," "language is always tied to some empirical referent, foundation, or ground that is always the basis for speech"—or formulated in the terminology of semiotics, "a signifier (indicator) always refers back to a signified (referent which is represented by the indicator)."[33] In the context of "the transference of authority from a domestic community to a state government," the argument goes, this "logic of representation and semiotics" implies that "domestic community is the signified to which a state government or signifier refers when pointing to the source of its sovereign authority." Without probing into the issue of why there should be a necessary relationship between the epistemological and political meanings of "representation" or signification, Weber rejects the "logic of representation," in both its connotations, on the basis that it excludes questions about the unfixed nature of the boundaries of the domestic community and how these boundaries are determined by speech *about* that community.[34] In the course of her narrative, Weber complements this indirect rejection of empirical methods with a direct one, this time in the context of a discussion about intervention. "Scientific behavioral methods," she argues, "are firmly rooted in the logic of representation" and "[a]ccording to the assumptions of these methods, it is possible to get indications of law-like regularities or patterns through the observation of direct or indirect empirical phenomena."[35] Thus, after reformulating the same argument "in the language of semiotics," and notwithstanding references to "Karl Popper's notion of falsification," Weber singles out an operationalization of "intervention" from the literature as prima facie evidence and targets a rudimentary form of instrumentalism, to which she apparently reduces all kinds of empiricism:

> But where do indicators, signifiers, and operationalizations come from? It is theorists who impose definitions of intervention and propose indicators to capture interventionary behavior, and they do so from outside of

> history. That is, these definitions are not generated by historical conditions or by the cases analyzed themselves; rather, these definitions are decided prior to analysis by theorists.[36]

On other occasions such an epistemological standpoint is intertwined with, or embedded in, a criticism of "modernity." Rob Walker, for instance, defines the main concern of his study, among other things, as an investigation of the ways in which "a privileging of epistemological and methodological prescriptions that simply take historically specific—modern—ontological options as given" has eliminated "the possibility of critical theory of international relations." The notion of a distinction between "an autonomous subject" and an "objective world," Walker maintains, is particularly important as it is in line with those "modernist dichotomies" that have materialized "within claims about state sovereignty and political realism." He argues that "[e]pistemologies that simply affirm these dichotomies are not obviously the most appropriate place from which to investigate a world in which boundaries are so evidently shifting and uncertain."[37] In other words, Walker is concerned with "the extent to which distinctions between fact and value, about the logic of empirical explanation and, above all, about the presumed priority of epistemology over ontology and axiology, have systematically obscured the highly contentious character of claims about sovereignty and political realism."[38] Moreover, in a previous study of the subject, Walker ascribes a constitutive function to language in the context of sovereignty that is not different in its basic assumptions from that attributed to it by Weber.

> [W]ays of speaking about state sovereignty reproduce certain assumptions and resolutions of philosophical and political questions that are constitutive of the principle of state sovereignty itself. To speak about state sovereignty is to engage in forms of political practice, to become caught up in immensely powerful forms of political action that appear to be mere abstractions or ideologies.[39]

The effective argument presented in these excerpts boils down to a philosophical position that consists of a direct or tacit rejection of the representational view of language, the notion of a determinable relationship between a concept and a referent, and the dichotomies that are necessarily related to an enterprise, such as those of object/subject and concept/referent. Because of its epistemological nature, *no* immediate criticism can be derived from these and similar propositions and directed

against the inquiry undertaken in the following chapters. The argument here is one that cannot be countered easily—if it can be countered at all—at a disciplinary level. Seen from such an epistemological or scientific philosophical point of view, the content of the ensuing pages may be regarded as "a vain attempt" at realizing an impossibility, or an expression of a dysfunctional "logic of representation," or an attempt at suppressing the "possibility of critical theory"—or, in the most felicitous case, as a possible object of future genealogical or discourse analysis. However, after these initial philosophical statements these authors introduce two further elements into their analysis: the adoption of *a historical approach* that often also comprises the modern era and yielding the meaning of the concept of sovereignty to *definitional change and variation over time*. And, it has to be emphasized, one should not lose sight of the fact that it is against the above-mentioned background of presumed impossibility of empirical research on sovereignty and the critical view of definitional practices for that purpose that this shift in the focus of attention to historical perspectives and mutations in the meaning of the concept is justified.

For instance, Walker describes the "contemporary debate about the fate of state sovereignty" as, inter alia, moving "from positions that affirm the philosophical codes of modernity, to positions that understand these codes to be subject to critique on the grounds of historical change and the rearticulation of political space . . ."[40] According to Weber, "one must refuse to position oneself outside of history with respect to questions of sovereign statehood and intervention" and also "refuse to 'solve' the question of sovereign statehood and instead pose sovereignty as question," that is, to analyze "definitions produced under specific historical circumstances—particularly at moments of intervention practices," not "by asking if they capture the 'real,' 'true' meaning of sovereignty," but by concentrating on "how these historically specific meanings affect forms of being or states."[41] However, nowhere is such a juxtaposition of historical method and ahistorical conceptual analysis and the unwelcome consequences that follow from such a modus operandi, clearer than in the analogy that Bartelson's draws between "fire" and "sovereignty." With reference to Gaston Bachelard's treatment of the concept, Bartelson writes that

> [S]ince pre-history, fire has been available to human experience as a *datum*. Still, despite the apparent uniformity of the objective phenomenon of fire, it is close to impossible to discern a corresponding uniformity in the accounts of fire since antiquity. From ancient teachings on the

> elements, through medieval alchemy to early-modern phlogiston theory, fire is an object of knowledge, yet the accounts of it vary to the point of incommensurability. More puzzling, when the question of fire is raised today, one is likely to discover that fire no longer is a reality for science; there is a theory of combustion, but whenever the original question is posed, answers are likely to repeat the most ancient and most fanciful explanations. In modern textbooks in physics, it is as if fire did not exist.
>
> Yet if fire does not exist, we still speak and act as if it did. The same goes for sovereignty.[42]

The argument continues

> So perhaps we should do to sovereignty what Gaston Bachelard, . . . did to fire; we should avoid the direct question of what sovereignty is, and instead ask *how* it has been spoken of and known throughout a period of time, and connect the answer to this question with the question of *why* it seems so difficult to speak of and to know sovereignty today. Posed in this way, the question of sovereignty instead becomes a question of the unthought foundations of our political knowledge and how they relate to the concept of sovereignty, when stripped of all predetermined content and opened to definitional change over time.[43]

Thus, Bartelson defines the general approach of his study as "genealogical," which implies, inter alia, that "in so far as genealogy is a historical method, it attempts to be effective history," that is, "a history of the present in terms of its past."[44]

Now, the methodological approach adopted by these authors is paradoxical in two different ways. In the first place, addressing these novel questions requires tackling the old issue of how the domain of the proposed analysis—or narrative—is to be determined in space and time. In Bartelson's inquiry, the question as to "how [sovereignty] has been spoken of and known throughout a period of time" raises two questions: "by whom?" and "which periods or when?" These questions are referred to, but insufficiently resolved by, two further properties of genealogy identified by Bartelson—that genealogy is "episodical" and "*exemplary*"—and the delineation of three historical periods for study—"the Renaissance, the Classical Age, and Modernity."[45] In other words, in terms of space, the relevant question is if—and why—the "definitional change" should or should not include, for instance, De Gaulle's aphorism that decorates the opening page of this book or Jeltsin's joke about "swallowing" sovereignty, the Islamic conceptualizations of *siyadat*

al-Allah and *siyadat al-Sultan*, a poetic eulogy for some sovereign, the British coin that is no longer in circulation or the usage of the word in teenage parlance to refer to successfully arranged social events; in short, a limitless number of different usages, definitions, and meanings, to be found in various languages of an infinite number of people—statesmen and scholars included. As shall be seen in the next sub-section, by overlooking international and constitutional law in his study and by adopting certain readings of some of those political scientists, who have written about his subject matter, Bartelson takes such decisions of exclusion or inclusion and determines the spatial dimensions of his inquiry—albeit often implicitly, by nonlinguistical means.

In terms of time, the issue is nothing other than a set of omissions embedded in the explicit delineation of three periods—the Renaissance, the Classical Age, and Modernity—as the temporal dimension of the narrative and the restriction thus caused, so to speak, on the historicity of the analysis. To put the argument bluntly, to focus exclusively on these periods implies exclusion of *all* other periods, including pre-Antiquity, the Antiquity, and possibly even the postmodern era arguably inaugurated by some contemporary scholars. Such a mode of delineation raises the modernist question of, on what rational or other basis it is done. Similar criticisms may also be mustered against Walker and Weber's delimitations to western Europe and the foreign policy of the United States in terms of space and to early modernity and the last two centuries in terms of time.

In sum, it is through such inescapable delineations in time and space—and the works of Bartelson, Walker, and Weber, just like any other study, are not exempted from such necessity—that the notion and the *fact* of a fixed referent initially rejected on epistemological grounds makes its inevitable entry through the back door. This is mainly due to the fact that demarcations—together with other types of practices such as employment of an interpretation scheme, which will be addressed in a moment—embody a representational view of language where the ensuing narrative refers to the demarcated object. Consequently, the dichotomies previously rejected start to reappear in the narrative, starting with the dichotomy between the *demarcater* and the *demarcated*, which is actually not very different from the object/subject dichotomy of the empiricists. Moreover, the possibility and the feasibility of such demarcations also indicate the existence of *similar or related referents* in the real world, which constitute the foundations of those decisions about such delimitations. Actually, it is nothing other than the existence of

such referents that in the final analysis, renders production of internally (ontologically) coherent narratives, such as those produced by these authors, possible. More importantly, as a quick comparison with the conventional method outlined in the previous section will indicate, this modus operandi is not very different from the one adopted by the empiricists, who *also* demarcate a referent of sovereignty by means of decisions, but this time, in the form of operationalizations or operational definitions—hence the paradoxical nature of the postmodern and post-structuralist approaches to the concept of sovereignty.

Second, if the domain of the analysis—or the narrative—is necessarily to be determined, both spatially and temporally, and if this is not deemed to be problematic epistemologically, why can it not be determined in terms of scientific usage (space) and the contemporary period (time)? In other words, if the domain is to be determined and limited in any case, and if the outcome of that demarcation—that is the fixed *referent*—may be a material object as well as a lingual artifact, there does not seem to be any a priori reason why it cannot be restricted to a search for a conceptual and theoretical development in the context of "sovereignty" that is equivalent to similar advances made in the sphere of natural sciences. This means that—to refer once again to the fire-sovereignty analogy in Bartelson's work—like the physicists, who moved from the "phlogiston theory" to a "theory of combustion" to explain fire, the students of political science could seek a comparable development from "a theory of sovereignty" to "a theory of power" or "of state rights" or "of regulated violence" and so on, whereby just as physics discarded the imprecise concept of "fire," political science may in the process get rid of the nebulous word "sovereignty."[46] Moreover, if the historical period under investigation can be limited to several periods, with the differentiation of *an object analysis* as its consequence, it may as well be limited to one particular period—that of "modernity," with its special concerns about a referent—with *another* object of study as a result. To the extent that periods are "constructed" by the researcher, both approaches, empirical and postmodern, are equally historical—or ahistorical—the difference between them being one of a matter of degree. In short, since it is not possible to reject on a rational basis such an ontological choice, it is also impossible to reject rationally an epistemology with reference to a rejection of that ontological choice. Seen in such a vein, the postmodern or post-structuralist argument about the impossibility of an *external, fixed referent emanating from a representational notion of language* collapses into an argument about *which referent* is to be chosen as an object of the analysis or a subject of the narrative.

Postmodern and Post-Structuralist Statements about the Referent of Sovereignty

It is at the moment of this reintroduction of a fixed referent, or an object of analysis, by means of various delimitations in time and space and readoption of a representational view of language to produce a narrative about this referent that postmodern and post-structuralist approaches to the concept of sovereignty become commensurable with the present inquiry even at a disciplinary level.[47] Thus, in a manner that is but an indication of how an inherent paradox may multiply itself, these studies make statements about an empirical world that is external to their language; they speak about a referent that is often fixed by nondiscursive and nonlinguistical practices, and they generate assertions that may be tested in relation to an empirical, observable world—regardless of whether this observable world consists of texts or material.

Thus, in an often quoted passage, Walker holds that rather than being an "essentially contested" concept such as "democracy, freedom, equality, power or interest," the concept of "state sovereignty . . . seems tame, even tedious" and "[i]ts meaning," he argues, "might be marginally contestable by constitutional lawyers and the connoisseurs of fine lines, but for the most part state sovereignty elicits a commanding silence." However, Walker continues, the concept is essential for "any attempt to reconstruct our understanding of where and what political life can be at this historical juncture."[48] What we have is a resolution of "the competing claims of universality and particularity" at the level of state; a resolution, the "contemporary significance" of which is "to silently define both an account of political community and a division of intellectual labor," that is, the possibility of "speaking about political life at all" and of drawing demarcation lines, especially between the contemporary academic disciplines of "sociology and anthropology and between politics and international relations."[49] Walker maintains that it is in the context of "rearticulation of what we mean by political community" that "the concept of state sovereignty seems both most problematic and yet most indispensable" and the reason why "we cling to it" is that "all other accounts of political community seem so unconvincing."[50] Walker concludes his analysis with the proposition that "questions about the presence or absence of state sovereignty must dissolve into questions about what political community can be now" with the subsequent question of "what democratic participation or political prudence can possibly mean in a world in which the guarantees of a sovereign identity are visibly expiring."[51]

It is possible to make three critical remarks about these propositions. First, sovereignty is not, as Walker suggests, uncontested in the scholarly literature but treated as if it was uncontested in Walker's narrative. If the content of the following pages is testimony to anything, it is that the academic dispute—actual or potential—about sovereignty has taken place not only within disciplines, but also across disciplinary lines with reference to the level of analysis, the descriptive or normative ambitions involved, and the answers given to standard dichotomous questions about its basic traits. Moreover, even where some kind of an agreement may be discerned about "what sovereignty is," there is an omnipresent tendency to continue the debate in terms of a disagreement about who or which kind of entities are, or ought to be, endowed with that agreed upon property. These factors are probably the reason why Walker, notwithstanding his initial assertion, ironically has to delve into the "great debate" between the so-called idealists and realists, that is, "the persistent tendency for claims about the problematic character of state sovereignty to be countered by claims about its continuing vitality."[52] Furthermore, as shall be seen in the following chapters, the meaning of the concept allegedly being "marginally contestable by constitutional lawyers and other connoisseurs of fine lines" belittles the scope of the legal debate about sovereignty raging everywhere. As shall be seen throughout this book, this debate contains anything from the legal and jurisprudential dispute about the basis of the legal supremacy of European Law and the verdicts of the European Court of Justice, to the relationship between the British Parliament and the legislatures of the dominions during the gradual dissolution of the British Empire, to the three conflicting views about acquisition of sovereign status in international relations,[53] to the ongoing contemporary debate about the content and scope of state rights—in short, more or less the whole substance of two broad disciplines: the constitutional law and the international law.

Second, the notion of uncontestedness of sovereignty is partially due to unclear and indeterminate terminology employed in Walker's work. Despite their repeated use, Walker treats his key concepts such as "principle of state sovereignty" as if these were unambiguous, "primitive" terms not in need of any precision. As a result, the meaning of "the principle of state sovereignty" shifts continuously, at one moment referring implicitly to the positive international law definition of state rights, to the extent that "[s]tate sovereignty has been encoded into law" and "[c]ultural diversity has been distributed according to the boundaries of sovereign territoriality";[54] and at another, to the view adopted by the

so-called realist scholars, since "we . . . have a tradition of international relations theory that also takes the principle of state sovereignty as a given but then proceeds to read the consequences negatively, as requiring a concern with the management of order in a system bereft of overarching power or authority."[55] Another dimension of such an indeterminate employment of key concepts is a certain confusion over genus and species in the context of sovereignty. When Walker claims that compared to other terms such as "democracy," "freedom," "equality," "power," or "interest," the term "state sovereignty" is uncontested, he compares species in the context of sovereignty with genus in the context of other terms. Thus, it may be argued that the particular concept "*state* sovereignty" is uncontested as much as—or just as much as—other particular terms that refer to species, such as "*negative* freedom," "*consociational* democracy," "*one-dimensional* power" or "*real* interests," and so on are, taken in isolation, uncontested. In reverse, the generic term "sovereignty," as such, is contested as much as other genus terms such as "freedom," "democracy," "power," and "interests" are contested. To put the argument bluntly, Walker is comparing the stability, and the more or less determinate nature of "apples," with the contingency and indefinite quality of "fruit."

Third, it would probably not be an overinterpretation to suggest that there is a general normative undertone in Walker's study. In general terms, most of his concern about state sovereignty boils down to normative statements about the boundaries of political community as it has been formed historically. As shall be noted in chapter 3, normative theories about sovereignty formulated at the level of states and similar entities do not lie within the scope of the present analysis. However, one certain presumption that underpins Walker's normative approach is particularly relevant for the argument here, since it testifies to one further multiplication of the self-contradiction inherent in the epistemological standpoint adopted by this school of thought. To propose normative statements about state sovereignty—or any other concept for that matter—presupposes the existence of a referent of this concept that is ontologically independent of these statements. Norms presume something exterior to them; something that is not only distinct from these norms but also supposed to be subject to them. Otherwise, there would not be any need for normative statements or theory that per se aims at *changing* or *preserving the status-quo*, which in turn, presumes the existence of *something* external that is to be changed or preserved.

In Bartelson's account on the subject, the central argument is the existence of an intrinsic relationship between sovereignty and knowledge

as they ". . . implicate each other logically and produce each other historically."[56] As such, it is argued, "sovereignty has no essence"; it has the function of a parergon, a frame that constitutes the line of differentiation between various classes of objects of study. While being the prerequisite of these classes, it belongs to none of them, it "is never present."[57] How and where this line of demarcation is drawn varies significantly throughout the history of political ideas and "does so in strict interdependence with changes in knowledge."[58] In its contemporary usage, Bartelson argues, sovereignty performs the role of organizing political reality by differentiating between the ontological assumptions of two fields of knowledge, two empirical discourses: international political theory and macrosociology of state formation. This function of the modern concept of sovereignty is closely related to its inherent duality, that is, its external and internal aspects, as each field of knowledge takes one side of this duality as foundation of its inquiry.[59] Thus, ". . . this duality . . . makes it difficult to speak of sovereignty as something existing outside knowledge, or as something ontologically independent of the political spheres it constitutes as separate within political knowledge."[60]

It is not within the sphere of this book to test the historical validity of these statements. Nevertheless, as far as modern accounts of sovereignty are concerned, Bartelson's thesis is not an accurate description of the contemporary approaches to the concept. It may be argued that one logical and observable implication—observable in the content of scholarly texts and statements about sovereignty—of the argument that sovereignty, just like a parergon, is devoid of essence is that there would *not* be any attempt on the part of scholars to substantiate sovereignty by giving a content to the concept *independently* of disciplinary concerns. In other words, there would not be any disciplinary effort exclusively to come to terms with the question of what sovereignty is, or any direct and orderly attempt, so to speak, to "fill" the parergon itself by transforming assumptions about sovereignty into questions of empirical research and/or jurisprudence. If the parergonality hypothesis was correct, then, *all* the meanings or uses of, and assumptions about, "sovereignty" would be strictly tied to its "inherent duality" with the inevitable consequence of generating only *two* levels of analysis—interstate and intrastate—in the literature that in accordance with the hypothesis, roughly corresponds to the assumptions and concerns of "international political theory" and "macrosociology of state formation." However, as shall be seen in chapter 3, there are, as a matter of fact, *three* levels of analysis in the literature—including an *intermediate* state-level—that partially stems from attempts on the part of scholars and disciplines to make

inquiries into the descriptive and normative questions about acquisition and possession of state sovereignty by collective agents and their ensuing investigations into the content of sovereignty at a medial space that creates the internal-external divide in the first place, by entitling some—but not all—entities to such a divide as a matter of law or fact or both. Moreover, it has to be emphasized here, this book is an attempt to contribute to our understanding of *exactly that intermediate level* of analysis of sovereignty, which according to parergonality thesis is nonexistent and cannot possibly exist.

Seen from such a vantage point, it is not surprising that scholars departing from different assumptions and with non-disciplinary concerns in mind and studying the "parergon" or the demarcation line *as such* by focusing on the issue of what kinds of entities *are* sovereign, are more or less absent from Bartelson's analysis. It is true that Bartelson delves into the "promise" of "theoretical and empirical integration *across*" international political theory and macrosociology held by "structuration theorists" and "scientific realists."[61] However, the hard cases for the parergonality thesis are not the abortive attempts at integration across disciplinary boundaries, which would merely support the thesis, but those successful or unsuccessful attempts at understanding sovereignty *regardless* of the disciplines and their theoretical and empirical concerns. Thus, Bartelson criticizes James, who explains sovereignty or—"the parergon" in Bartelson's terminology—in terms of "constitutional independence" rather than the other way round as is the logical implication of the parergonality argument, for his "circularity" and ahistorical approach,[62] rather than taking account of the implications of James's explanation for his argument: if sovereignty, just like a parergon, has "no essence," how can its essence be "constitutional independence"?

Moreover, the content of and the controversy within a whole discipline, that of positive international law, is absent from Bartelson's work. As shall be seen in chapter 5, neither constitutive nor declaratory views of recognition within this discipline explain sovereignty in terms of its duality or internal/external division, but in terms of emergence as a matter of fact and law of agents with sovereign rights, that is, to formulate it in Bartelson's terminology, with the emergence of a parergon that creates internal/external divide in the first place. Another observable implication of Bartelson's general thesis is the impossibility of formulating an "abandonment thesis" on sovereignty of the above-mentioned type within the confines of disciplines: if sovereignty and knowledge ". . . implicate each other logically and produce each other historically," then how are we to explain the periodic attempts at jettisoning the

former, by the producers of the latter? In other words, the rather insurmountable difficulty here is how the frequent attempts at discarding the concept of sovereignty from the domain of "knowledge"—for the purposes of producing knowledge—is to be reconciled with the argument that the relationship between the two is a logical *necessity* and a historical *fact*.[63] Bartelson does not probe into this issue. Referring to the arguments of Carr and Benn for discarding the concept of sovereignty as "typical of the standard operating procedure for handling conceptual ambiguity and opacity in empirical political science," he argues that "[w]henever, the semantic analysis fails, the recalcitrant concept is banished from empirical discourse, as if the empiricist quest for clarity itself were sovereign,"[64] rather than delving into the implications for his argument of such disciplinary attempts at discarding a concept, which *ex hypothesi* is a prerequisite of that disciplinary activity. These omissions of certain approaches, neglect of significant implications, and adoptions of specific readings indicate the existence of an *interpretation scheme* (that is to say, a nonlinguistical device used to demarcate a certain referent) in Bartelson's study; a cognitive device, by means of which evidence is collected selectively in order to support a certain pre-given argument.

The disciplinary production of knowledge is also one of the main themes in Weber's work. However, here, the domain of inquiry is defined in much broader terms, to the extent that what is in focus, is the question of how "the meaning of sovereignty [is] fixed and stabilized historically via practices of international relations theorists and practices of political intervention" and how "practices of theorists and diplomats stabilize the meaning of sovereignty and, by default, write the state."[65] With a point of departure informed by the works of Foucault and Baudrillard[66] and with a focal point on state sovereignty and intervention in the context of three cases—the Concert of Europe interventions in Spain and Naples, the Wilson Administration actions in the Mexican and Bolshevik revolutions and the U.S. invasions of Grenada and Panama—Weber asks three questions: "what is represented?; how is representation possible?; and what happens when representation fails?"[67] Weber argues that

> The state is a sign without a referent. Most international relations theorists argue otherwise. They suggest that the state has a referent, and this referent is "sovereignty." But, as this study suggests, sovereignty also requires a referent. Various referents have been proposed throughout history, the most powerful of which have been god and the people. Whether regulated by the law of nature or the law of equivalence, an exchange of

> sovereign authority presumably takes place between god and a monarch or the people within a state and their political representatives. In these ways, states acting in international affairs may "refer" to one or another sovereign foundation as the source of their sovereignty and legitimacy.[68]

Moreover, "intervention discourses participate in the production and re-stabilization of concepts like state and sovereignty" and the "justifications" put forward by the intervening states before "a supposed international community" have three effects: the production of "an international community of judgement," that of a "sovereign authority in the target state," and participation "in drawing the sovereignty/intervention boundary" with the consequence of producing, representing, and writing the state.[69] In the case of interventions of the Reagan–Bush administrations in Grenada and Panama, the argument continues, the "logic of representation" has broken down and given way "to logic of simulation," which Weber explains with reference to Baudrillard's work

> In a logic of simulation, . . . power neither repress nor produce truth. Instead, truth is seduced. Its appearance is manipulated. . . . truth appears as simulacrum (a truth effect) but not as a referent or signified.[70]

And,

> In simulation, sovereignty and intervention cease to function as opposed terms—as signifier/signified. They become two signifiers which can be substituted for one another. In other words, the difference between them is erased. They collapse into one term, "sovereigntyintervention."[71]

There are two main objections that may be raised against these propositions. In the first place, the exclusive focus on great or superpowers—the Concert of Europe and the U.S. administrations—at the expense of small and weak states, leaves the question of whether or not the latter are also able to "refer to one or another sovereign foundation" or "simulate sovereignty" in a similar way—and thus, whether or not sovereignty is generally represented or simulated as Weber suggests—unanswered in the inquiry. In such a context, common sense dictates rejection of Weber's notion that the meaning of sovereignty is determined in a contingent way and independently of any fixed, material referent, that is, by means of a "logic of representation" or "a chain of interchangeable signifiers" and to claim that the inability of weak states to create similar effects through speech is due to the existence of some sort of fixed

referent—of sovereignty or not—that these states simply lack: power in terms of finances, gunpowder, and steel and in a rather nonlinguistic form. Such a possible explanation is never tested in Weber's work. This, at the very minimum, sets limits to the generalizations about sovereignty that Weber derives from her analysis and puts into question the external validity of that analysis.

In the second place, although interstate intervention is the subject matter, international law—once again, and in a manner that is starting to indicate a certain disciplinary blindness to be found in this corpus of literature—is absent from Weber's narrative. Thus, the fact that international lawyers may not take into account the shifts in the rhetoric of states about the legitimacy of their actions—and consequently of their references, inter alia, to the basis of sovereignty in the state exposed to intervention—and that they may remain completely unimpressed by such justifications as is indicated by the verdict of the International Court of Justice in the case of military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America)[72] and moreover, the possibility that sovereignty/intervention boundary may therefore *not* be determined by intervening states themselves—in short, all such factors that would come to surface with the introduction of international law into the analysis are simply overlooked by Weber. It may be argued that rather than "sovereignty" being "simulated" and the "truth" being "seduced," as Weber suggests, the matter of fact may be, as simple, mundane, and unaesthetic as that state representatives are finding pretexts for their illegal actions or that they are engaged in outright lies and that the word "sovereignty" is being abused in such contexts.

Another aspect of this disregard for international law is the total neglect of the impact of the conflicting principles of "*de factoism*"[73] and "legitimacy" with regard to the recognition of governments on the behavior of states and state leaders. In this respect, the preponderant state practice has been—including the last two centuries that correspond to the span of Weber's study—to adhere to "the principle of effectiveness," where a "revolutionary government which wields effective power, with a reasonable prospect of permanency, over the whole—or practically the whole—territory of the State is entitled to recognition."[74] Only during two short periods, the aftermath of the French Revolution and that of the First World War, did state behavior deviate from this pattern, in order to adopt and apply the doctrine of legitimacy.[75] This implies that with the possible exception of these two intervals, states and states' representatives did not need to—and probably could not even legally—evoke

"sovereignty" or any other similar internal condition related to legitimacy, to legitimize their own actions from the point of view of international law—to be distinguished from that of internal audiences. However, in Weber's study, precisely these atypical periods are treated as typical to the extent that these aberrations from the general pattern partially coincide with the cases, which she chooses for her study of "logic of representation" and the "constitution of sovereignty/intervention boundary." Thus, at the very minimum, such a selection of an unrepresentative sample from diplomatic history invalidates the sweeping conclusions that Weber draws on the basis of the practices of the Concert of Europe and the Wilson administration. In other words, it is possible to argue that there is also an external validity problem in these parts of Weber's investigation.

In sum, postmodern and post-structuralist approaches to sovereignty usually start their inquiry by reiterating, with varying degrees of emphasis, their rejection of the representational notion of language and the possibility of fixing the referent of sovereignty in a noncontingent way. However, by means of various nonlinguistical devices, such as delimitations and demarcations in time and space, operation within certain disciplines and adoption of certain types of interpretation schemes that filter the empirical information, they end up in a paradoxical situation as regards to their own premises encapsulated in that rejection. Consequently, they produce statements about a world that is ontologically independent from that narrative. Moreover, these statements are commensurable with statements produced within research informed by empiricism, as a result of which the former becomes criticizable and falsifiable on the basis of the latter. Moreover, if what is intended by such approaches to sovereignty is a critique of the disciplinary division of intellectual labor, they often seem to end up being blinded by the disciplines within which they operate, that is, international relations and history of ideas. A corollary of this condition is the neglect or omission of knowledge on sovereignty produced in other disciplines, first and foremost, in constitutional law, international law, and jurisprudence. In conclusion, it may be argued that in spite of the merits that postmodern and post-structuralist approaches to sovereignty have, in the context of increasing the awareness of disciplines about their own presumptions, seen from a methodological point of view, their argument boils down to a practice in "ontological gerrymandering,"[76] that is, according to one interpretation of the term, to "the selective application of skeptical arguments."[77]

The Referent of Sovereignty—Conceptual Investigation and Empirical Research

Against the background of the above-mentioned methodological difficulties that emanate from oversimplified and overproblematized views of social scientific concept formation, it is possible to argue that there are compelling reasons to shift the focus of attention, *once again*, to the relationship between the concept of sovereignty and its referent—if this concept is to be used in empirical statements or investigations. In terms of the philosophy of science, such an approach involves adherence to some kind of conceptual realism. However, in practical terms this implies that despite the epistemological problems involved in such an endeavor, the empirically orientated student of politics and international relations is called upon to return to square one and probe into the "denotation" or "extension" of the concept, which has been interpreted alternatively as "the complete list of all the things to which the word applies" or "the class of all objects to which [the] word correctly applies."[78] The latter interpretation has the obvious advantage of opening up the field for rational inquiry and it will thus be adopted here with one certain modification: the notion of "correct application" will be interpreted loosely as referring to an aspiration rather than a criterion—hence, adherence to a *softer* version of conceptual realism. Seen from such a vantage point, the task of any conceptual investigation becomes one of addressing "the denotational problem" caused by "vagueness" or "undenotativeness" of the concept and an ensuing attempt to achieve "*denotational adequacy*"[79] by solving, as much as possible, the problems caused by "unbounded or fuzzy referents."[80] Though not using the same terminology, chapters 3 and 4 of this book are devoted to an attempt to accomplish this methodological aim in the context of the concept of state sovereignty.

CHAPTER 3

Theories of Sovereignty: Reclaiming the Domain of Empirical Research

Any empirical or legal analysis of state sovereignty must begin by shifting the focus of attention from the concept of sovereignty to the referent that this concept, however vaguely, denotes, and moreover, from epistemological arguments that question the validity of the basic assumptions of empirical science to the stringent application of methodological principles that derive from these assumptions. On the basis of criteria formulated with reference to these two dimensions, that is, *the object of study* and *basic methodological principles of empirical research*, it will be possible to broadly identify those meanings of sovereignty that have relevance to empirical and legal studies, and finally, to demarcate the domain within this set of meanings that constitutes the object of study of this book: the concept, the phenomenon, and the ramifications of *state* sovereignty.

Thus, in this chapter, the concept of sovereignty will be surveyed in two stages. The first step will be to *classify* various theories, component parts of theories, doctrines, and statements about sovereignty with respect to their *unit of analysis* in connection to the general referent of sovereignty—whether they focus on the component parts of states and similar political institutions, on the state as such as an entity or on the relations between states and similar political entities—and with respect to their *nature* with reference to the tenets of empirical research—whether they are *descriptive* and portray how things *are* or whether they are *normative* and prescribe how things *ought* to be. This process will result in what might be called ideal categories of theories of sovereignty,

of which six will be identified—including the category that constitutes the subject matter of the rest of this study.

The second stage of this method aims to redress certain shortcomings of such a classification and the use of ideal types, for these share with operationalizations and operational definitions, though probably in a weaker degree, the tendency to generate isolated notions of sovereignty. As has been argued in the previous chapter, the aggregate of such incommensurable notions leads to a multiplication of the concepts of sovereignty and may reproduce the confusion surrounding the concept of sovereignty. Moreover, as Albert O. Hirschman pointed out, whether the use of such abstractions furthers or hinders our understanding of social phenomena is determined by our "cognitive style," that is, "the kind of paradigms we search out, the way we put them together, and the ambitions we nurture for their powers."[1] Thus, in order to capture the multifarious character of sovereignty once again, but this time in a more systematic fashion, the focus of the survey in this second stage will be shifted to the *linkages* between the ideal categories of sovereignty that were previously identified.

Descriptive Accounts, Normative Theories, Legal Stipulations, and Sovereignty

A categorization of different theories of sovereignty with reference to, inter alia, the nature of their approach to empirical reality poses a certain problem that must be addressed at the very outset. Because of its dichotomous character, a differentiation of theories along normative and descriptive lines will have a built-in tendency to overlook the fact that the concept of sovereignty also has a legal dimension that makes it a subject of study in the disciplines of constitutional and international law, where the term not only depicts a juridical status but also the consequences that follow from such a status. In order to circumvent this propensity, with its undue emphasis on empirical political science and political theory at the expense of jurisprudence and law, it is necessary to probe into the general theoretical question of how legal doctrines are related to normative and descriptive theories. In other words, if justice is to be done to the complexities involved, what must first be considered is how "shall" decrees are to be integrated into a classification of "is" propositions and "ought" propositions.

To begin with, it should be pointed out that legal doctrines, laws, and decrees are neither plain, descriptive accounts nor purely normative theories. On the one hand there is never full congruity between the rules,

provisions, or stipulations of a legal doctrine or law and the actual behavior of individuals and institutions that these are intended to control. To the extent that transgression of law is a corollary of regulation by law, the adjustment of existing conduct to legal rules will always be a relative condition, varying on a scale where perfect or complete compliance is never forthcoming.[2] Moreover, as has been succinctly pointed out, "in cases where conformity between actual and prescribed behaviour can be regarded as a forgone conclusion, there can be no point in having rules at all."[3] Thus, with a few important exceptions, which will be recounted in a moment, these conditions rule out, as a matter of fact, the possibility that laws may ever completely attain those characteristics that are intrinsically shared by descriptive accounts. On the other hand, there is not a complete discrepancy or mutual logical independence between these two types of phenomena such that it would be legitimate to consider legal provisions as *purely* normative propositions. Furthermore, it is possible to argue that a certain amount of uniformity between prescribed and actual behavior is a necessary condition of positive law and legal order. At the most basic level a legal statement that has no bearing upon the actual conduct of individuals or institutions may be the result of an unsuccessful attempt on the part of government authorities to change the behavior of citizens or a remnant from forgotten times in the system of statutes, or a suggestion put forward by a moral philosopher or public opinion that has succeeded in influencing the legislature—but at all events not law so-called properly, that is, positive law integral to the legal system. At another level, however, such a conclusion can also be inferred from conflicting conceptualizations of positive law, such as the Austinian definition that traces its origins to might and power,[4] or the Hartian notion, which relates law also to an "external point of view" of a legal system;[5] from certain basic principles of jurisprudence such as *ex factis jus oritur*;[6] and finally, from "metaphorical applications of the term *law*."[7]

From this perspective, it is possible to assert that legal doctrines, juridical statements, laws, and decrees can be placed in a normative-descriptive spectrum in accordance with the degree of congruity or discrepancy between their prescriptions and the actual behavior of individuals and institutions that those prescriptions are expected to regulate. Such an argument about the general relationship between laws and theories has two implications for the present analysis. First, those components of constitutional law,[8] which bear upon the concept of sovereignty, such as provisions—codified or uncodified—as to the locus of sovereign power or the authority endowed with legal sovereignty, can be regarded as *identical* with descriptive accounts of them.[9] It is probably

safe to claim that this is but a reflection of a more general feature of constitutional law, namely, that any social behavior constituting a breach of one or more of the main provisions of a constitutional law, to the extent that it does not lead to a constitutional crisis and eventually, to the collapse of the constitutional order, becomes—instantly or gradually—an incorporated element of constitutional practice and hence, of constitutional law.[10] This dynamic feature of constitutional law probably accounts not only for its ability to accommodate new conditions, but also for the absence of political crisis or disorder in those situations in which stipulations of a codified constitution may be incongruous with, or directly in contradiction to, constitutional practice. Under such circumstances, where the immediate impact of the principle of *ex factis jus oritur* seems to be uninterrupted by any other legal principle, constitutional law not only comprises prescribed behavior but is also effected by actual behavior—hence conformity between prescribed behavior and actual behavior. In a similar vein, it is also possible to view those rules of positive international law, which have *constitutive effect*, that is, those rules that create the international legal order as a matter of actual fact, as identical with descriptive theories about these facts. Among such stipulations are those that institute the material sources, the subjects and the objects of law—including sovereignty as a specific subject status under law enjoyed by some territorial entities.[11]

Second, those provisions of positive international law that define the consequences that follow from the possession of sovereign legal personality, that is, those legal statements that circumscribe the scope and content of sovereign rights and obligations can be regarded as a system of normative standards. It seems to be widely held that there persists a certain degree of divergence between the behavior prescribed by the rules of positive international law and the actual conduct of sovereign states. In other words, the controversy among scholars does not seem to be about the question of whether or not there exists conformity between these two phenomena—to the extent that prescribed behavior may be said to predict, more or less, the actual behavior—but over the issue of the *degree* of their divergence.[12] It is furthermore even possible to claim that the inconsistency between the provisions of international law and the actual behavior of sovereign states—and hence, the normative character of the former—has increased during the twentieth century as a result of the transformation of the doctrinal outlook of international law from one distinguished by legal positivism to one marked by "solidarist" or natural law views.[13]

Classification of Theories of Sovereignty

Against the background of these considerations it is now possible to classify theories, component parts of theories, doctrines, and statements that explicitly deal with sovereignty or implicitly have a bearing upon the concept, along two dimensions. The first dimension concerns the *unit of analysis* that these accounts focus on. It has already been remarked in the literature on sovereignty that a distinction has to be drawn between "sovereign organ within the state" and "sovereign state," as these are two completely different things.[14] Taking this view as a point of departure, it is suggested here that these two objects of analysis should be augmented by a third one, *relations between sovereign entities*—a unit of analysis that is encapsulated in expressions such as "sovereignty regimes" and "sovereign rights and obligations." The second dimension pertains to the *nature* of such theoretical accounts, that is, whether they are descriptive explanations that depict how things *are* in social reality or whether they are normative statements about how things *ought* to be. The combination of these two dimensions generates six ideal categories, which are schematically depicted in the figure below. In what follows, questions about sovereignty that are related to each of these categories will be specified, and thereafter, various theories that attempt to treat these questions systematically will be enumerated. In view of the massive body of literature relevant to such a process, the ambition in this chapter has been limited to illustrating each class of theories with representative examples, preferably taken from classical or reputable studies.

		Unit of analysis of the theory		
		Intrastate	State	Interstate
Nature of the theory	Descriptive	a	c	e
	Normative	b	d	f

Descriptive Theories of Sovereignty at the Intrastate Level

The theories that fall into this category address two similar, but analytically distinct, questions. Where in the body politic *is* sovereignty

located? And which organ of the state *is* sovereign in relation to all other organs, institutions, and agents?[15]

Three bodies of legal and theoretical writing have considered these questions. In the first place, they have been addressed by *codified constitutions* of states of various kinds, which answer them—directly or indirectly, but almost always ostentatiously—from the vantage point of organizational principles of statehood and political society. Thus, declarations as to the locus of sovereignty and the means by which it is exercised can be found in various constitutions, which proclaim organizational rules for—in some cases—fundamentally incompatible political systems:

> National sovereignty belongs to the people, which shall exercise this sovereignty through its representatives and by means of referendums (1958 Constitution of France; Article 3)
>
> All power in the People's Republic of China belongs to the people. The organs through which the people exercise power are the National People's Congress and the local people's congresses at various levels (1954 Constitution of People's Republic of China; Article 2)
>
> All power in the USSR is vested in the working people of town and country as represented by the Soviets of Working People's Deputies (1936 Constitution of USSR; Article 3)[16]

To the extent that such constitutional provisions faithfully reflect the constitutional practices of the states involved, this would warrant designating the written constitutions that comprise them as "power maps," that is, as "basic map[s] of power organization."[17] In such cases, stipulations of this kind identify the institution that is the locus of sovereign power, or in other words, they specify the governmental organ or the political agent that is the ultimate source of all public power. However, it may also be the case that such declarations are the consequence of, what has been called, " 'extraconstitutional' reasons for drafting constitutions";[18] or have the purpose of paying lip service on the part of an undemocratic political actor to the celebrated moral and political values of the time; or are merely antiquated provisions of constitutional law nullified by subsequent practice. In such instances, the organizational rules proclaimed are unrelated to the political reality of the country in question and irrelevant to its constitutional law: they are simply false statements that at best designate the bearers of nominal sovereignty.

In the second place, a considerable body of literature within *constitutional theory*, which has variously been labeled as the "Austinian school"[19] or "legal theory of sovereignty,"[20] has attempted to come to terms with these questions from the viewpoint of juridical or jurisprudential

considerations. The common denominator of these studies is a conception of sovereignty as "supreme legal authority"—or the usage of sovereignty in, what has been called, "the legal sense" of this term[21]—and the key assumptions underlying this approach can be traced back to John Austin's famous definitions of sovereignty and positive law: on the one hand, sovereignty is characterized as the property of "a *determinate* human superior," which is "*not* in a habit of obedience to a like superior," but which "receives *habitual* obedience from the *bulk* of a given society." On the other hand, "positive law" is differentiated from other types of law by its being "set by a sovereign person, or a sovereign body of persons" to an individual or a group of individuals that are "in a state of subjection" to the former.[22] In what appears to be a further elaboration of this theoretical approach, H. W. R. Wade analyses the "basis of legal sovereignty" and defines "sovereign legislation" as that which "depends for its authority on an 'ultimate legal principle,' " which is merely a political fact insofar as it is determined by the loyalty and conduct of the courts.[23] On the face of it, such a conceptualization of legal sovereignty might be criticized for giving simple categorical answers to complicated legal matters. However, it is also possible to argue that by linking sovereignty and law, such an approach provides analytical power whenever more than one legislature, with overlapping jurisdictions and possibilities of actual or potential legal conflicts, are in operation within a delimited space. This has been the case during the gradual dissolution of the British empire and it is also probably the situation that characterizes the formal integration processes that are taking place within the European Union.[24]

In the third place, another body of literature approaches these same questions from the point of view of *power theory*. Here, the issue under consideration is not the supreme legal authority of certain governmental organs but the supreme power of particular political agents regardless of their formal status. Two versions of this approach are clearly discernible in W. J. Rees's study. The first version uses the term "sovereign" to mean ". . . *a supreme coercive power exercised by a determinate body of persons possessing a monopoly of certain instruments of coercion*."[25] In this sense, sovereignty may be located in an armed corpus within the political society, but it may also be situated in a body of coup-makers or revolutionaries who have successfully seized political power. The second interpretation uses the term to mean *strongest political influence*—or, in Rees's terminology, usage of "sovereignty in the influential sense" of the word. This meaning of the concept refers to the exercise, within the confines of the delimited territory of a state, of "political influence" over the legal or coercive sovereign "to a greater degree than anyone else." Rees merely

notes that this notion of sovereignty has been attributed by scholars to the "popular majority" and to "electors."[26] However, conceived in these terms, sovereignty may also be ascribed to the executive in relation to the legislature, or to a political party in relation to other political organizations, or to the bureaucracy in relation to the representatives of the *demos*. Furthermore, this notion of sovereignty helps to elucidate the extent to which the stipulations of a codified constitution diverge from the constitutional practice reflected in the actual distribution of authority and power within a state. Moreover, such a conceptualization of sovereignty has further general implications for political science, insofar as it raises additional questions such as whether or not sovereignty is located in a certain social class, a specific ethnic group, or a particular gender.

Normative Theories of Sovereignty at the Intrastate Level

This category of theories[27] deals with the normative versions of the two questions referred to at the beginning of the previous section; they may be reformulated as follows. Where in the body politic *ought* sovereignty to be located? And which organ of the state *ought* to be sovereign in relation to all other organs, institutions, and agents?

These questions were addressed, first and foremost, by some of the most celebrated political philosophers of the sixteenth, seventeenth, and eighteenth centuries and it was nothing other than their attempts to give authoritative answers to them that characterized much of the debate about the concept of sovereignty during the first two centuries of its modern history. The discussion was based on more or less similar premises: a contractual conception of the origins of political society, which encompassed the idea of a social contract, or the notion of a contract of rulership between the ruler and the ruled, or both. However, despite this common conceptual ground, and regardless of the nature of the contract underlying the assumption of each theory, the outcome of the controversy crystallized into two distinct and diametrically opposed answers to the normative questions about the location of sovereignty: some political thinkers argued that sovereignty ought to be embodied in the ruler—the idea of *ruler sovereignty*—while others asserted that it cannot be bestowed on anyone or any institution except the people in its entirety—the notion of *popular sovereignty*.[28]

Among the proponents of ruler sovereignty was Jean Bodin, who is considered to be the first political theorist to formulate a systematic theory of sovereignty. Writing against the background of the religious and civil strife of sixteenth-century France, Bodin argued that only an

authority with central and unlimited power, an authority that was superior to positive law, could bring political disorder to an end. The sovereign power of this authority came from God, its exercise was independent of the subjects' consent, and consequently, misrule did not justify disobedience or opposition. It was true that the body politic was composed of both the ruler and the ruled, but in any contractual relationship between them, the powers that were transferred from the ruled to the ruler constituted an irreversible alienation and not merely a concession that could be withdrawn. With such premises as a point of departure, Bodin made a case for monarchical sovereignty, but in order to distinguish it from absolutism, he specified two types of limitations to the power of the sovereign monarch: those restrictions that derived from divine and natural law and those constraints that were imposed by the customary laws of society and by the property rights of its citizens.[29]

Writing against a similar background of political turmoil, this time in seventeenth-century England, Thomas Hobbes arrived at similar conclusions about the location of sovereignty—at least with regard to the practical consequences of his theory. It is true that Hobbes formulated what probably was the first normative theory of sovereignty at the state level. But viewed from the vantage point of the component parts of the body politic—that is, from an intrastate perspective—what followed from Hobbes's conception of sovereignty was an *implicit* vindication of ruler sovereignty. Nowhere is this tension clearer than in his way of reasoning: on the one hand, Hobbes totally abandoned the notion of a contract of rulership between the people and the ruler, by substituting for it the idea of a social contract, by means of which individuals agreed to submit their rights to the state in exchange for security. Thus, sovereignty resided not in the ruler or the people but in the state, which, rather than being a participant in this contract, was the outcome of it. On the other hand, however, Hobbes argued, like the advocates of ruler sovereignty, that the supreme power of legislation ought to lie with the ruler and refused to concede any right to the people. The practical outcome of this theoretical approach to sovereignty, especially during the period in which it was formulated, was a standpoint in favor of ruler sovereignty. The abstract notion of state sovereignty, limited solely by its duty to protect the lives of individuals, could only have one actual manifestation, namely, the concrete sovereignty of the ruler, which was indivisible, unrestricted, and almost omnipotent, and into which the personality of the people was fully merged.[30]

In contrast to these accounts, which explicitly or implicitly argued that sovereignty ought to reside in the ruler, other theorists, notably

Althusius and Jean-Jacques Rousseau, formulated normative theories, which asserted that sovereignty was irrevocably located with the people. Althusius, who was the first to formulate a systematic doctrine of popular sovereignty, based his argument, in a manner not different from that of Bodin, on the notion of the contract of rulership between the people and the ruler. But in contrast to Bodin, Althusius argued that sovereignty inalienably and absolutely resided in the people who held the right to resist any ruler who violated the contract. Moreover, Althusius claimed that this sovereign power, now located in the people as a whole, was limited, not only by natural law—as had been claimed by Bodin as regards the sovereign ruler—but also by positive law.[31]

However, the doctrine of popular sovereignty probably received its most elaborate explication in the writings of Jean-Jacques Rousseau. In a manner similar to that of Hobbes, Rousseau totally eliminated the idea of a contract of rulership between the ruler and the people from his argument and replaced it with the notion of a single contract between the individuals. By means of this social contract, which was based on the free consent of all individuals and which ended the state of nature, each person agreed to submit absolutely and permanently to the state's will. Thus, the state, whose task it was to revive in the body politic the liberty and equality of the state of nature, was endowed with absolute and unlimited sovereignty. However, unlike Hobbes, Rousseau equated the sovereign state with the body politic of the people and reduced the rulership and the government to "a mere commission." Thus, the people continuously exercised the power to dismiss the government, which was "merely the non-sovereign executor of the legislative commands of the sovereign community," and virtually suspended its commission whenever it assembled. Moreover, the sovereignty of the people was not restricted by any constitution or positive law and its exercise could not be transferred to any governmental organ by way of representation.[32] This is probably the doctrine of popular sovereignty in its most radical and pristine form and it has to be noted that as a normative theory of sovereignty, its influence is substantial even in our own time.[33]

Descriptive Theories of Sovereignty at the Interstate Level

Taking the sovereignty of states as a given, the theories that fall into this category focus on the international sphere and concentrate on one general question: what *is* the nature—that is, the basic characteristics—of the relations between sovereign entities?

These theories all contrast the existence of sovereignty at the state level with the lack of any such institution at the interstate level. While the domestic realm is hierarchically ordered, the basic feature of the international domain is the absence of any authority above the states that might regulate relations between them. However, the conclusions that may be drawn from this single premise vary considerably and indicate at least three different answers to the question under consideration.

First, it is possible to regard the relations between sovereign entities as constituting a *sovereignty regime*, which is to a certain extent regulated by norms, rules, and conventions. This is, for instance, the conception of sovereignty presented by some of the proponents of the new-institutionalist theory. In one explication of this approach, Robert H. Jackson makes a distinction between "the old" and "the new sovereignty game." The former is characterized by the "empirical statehood" of the participants, who are "governments which had successfully asserted sovereignty in the past, had never surrendered it or succumbed to another state, and consequently had a strong historical right to play the game." The latter, "the new sovereignty game," which has come to change the nature of interstate relations during the postwar period, embodies rules that "apply to many political entities which have not met traditional tests of empirical statehood and probably would not exist as sovereign states otherwise." Jackson maintains that this new sovereignty game "involves basically two normative innovations: self-determination of ex-colonies, and development entitlements of impoverished countries." Thus, on the one hand, the basic principle of the new sovereignty regime is that of nonintervention, whereby the domestic realm of the decolonized states, which are often empirically weak "quasi-states" and whatever happens in that realm, including abuses of human rights, becomes immune to intervention from other states. On the other hand, within the framework of this regime, these states are conceived to be entitled to aid and material assistance—in Jackson's words "sovereignty plus"—while at the same time the donor countries are impeded by the principle of nonintervention from having any say on the effective use of such aid. As a result, what characterizes the new sovereignty regime is not reciprocity and equal rights, as is the case with the old regime, but "an unprecedented form of international nonreciprocity."[34]

Second, relations between sovereign entities may be regarded as forming what might be called a *sovereignty system*, which is substantially unregulated but by no means merely contingent. The order that these relations display is not due to particular institutional devices, as is the

case with sovereignty regimes, but the result of factors operating at the systemic level. In an elaboration of this theoretical approach from a structuralist standpoint, Kenneth H. Waltz proceeds from the assumption that the component parts of international-political systems are states and he claims that the structure of these systems is molded by the interactions of states.[35] Furthermore, states are considered as "like units" in the sense that "each state is like all other states in being an autonomous political unit," which is "another way of saying that states are sovereign."[36] Thus, the constituent parts of the international-political systems "stand in relations of coordination" and the absence of hierarchy among them explains the "decentralized and anarchic" character of the international systems. Waltz goes on to point out that, insofar as structure is an "organizational concept," such an understanding at once raises the question of how "structure" is to be reconciled with "anarchy" or, in his own words, "the problem is . . . how to conceive of an order without an orderer and of organizational effects where formal organization is lacking." According to Waltz, the solution to this theoretical problem lies in the fact that international-political systems function in a fashion similar to that of markets, whereby the reciprocal actions of self-regarding "like units" create a structure that constrains and affects them all. Thus, order is a function of the action of states in limiting and constraining each other.[37]

Third, relations between sovereign entities might be considered to be determined by a *state of nature* in which disorder is the rule and order the exception. This conception appears to be, for instance, one of the central assumptions of what some scholars have labeled as the "Hobbesian tradition" in international relations, and as a descriptive theory, it may well be regarded as an outdated relic belonging to the history of ideas.[38] Concisely, if somewhat crudely expressed, this approach argues that the relations between sovereign entities are characterized by conflict and rivalry, in which the interests of each state are diametrically opposed to the interests of any other state. Accordingly, what is involved in these relations is a zero–sum game, where the gains of any state are equivalent to the losses of some other state or states. Subsequently, international relations are characterized by continuous struggle, and war persists as the usual form of interaction between states. In this view, peace is nothing other than "a period of recuperation from the last war and preparation for the next."[39] Thus, in the chaotic situation that arises, there is no space for norms, rules, and conventions, which may more or less regulate the relations between sovereign entities; there is no room for "organizational effects" that emanate from structural mechanisms and put limits on the

actions of states. The only rules that may circumscribe the behavior of sovereign entities in their relations with one another are those of caution and expediency, such as preserving the balance of power between them, which are dictated by *raison d'état*.[40]

Normative Theories of Sovereignty at the Interstate Level

Given that the nature of the relations between sovereign entities is as it is, this category of theories[41] shifts the focus of attention to the issue of how these relations may be changed in a fashion that is more congenial to the well-being of societies and individuals. Thus, the question that these theories highlight is, in general terms, what the nature of the relations between sovereign entities *ought* to be.

One way of answering this question is to suggest that these relations ought to be *regulated* by the means of legal rules and juridical principles that determine the content and scope of sovereign rights and obligations. This, for instance, appears to be the basic assumption of public international law, which attempts to monitor the conduct of states through the employment of a body of rules that are considered to have the status of law.[42] However, such an approach immediately raises a crucial question: in the absence of any world authority with legislative functions, how and in what manner are international lawyers supposed to stipulate legal rules and juridical principles? Or, in other words, what are the sources of valid international law? At the risk of oversimplification, it is possible to identify two types of general answers that can be traced back to two different schools of legal thought within the discipline of international law.

The proponents of the positivist school maintain that the only valid source of law is the consent of states, which may be given explicitly by means of international treaties and conventions or implicitly as is the case with international customary law.[43] Moreover, according to this school of legal thought, states are the only subjects of international law, that is, the only agents to which the law confers duties and rights. Taken together, these two tenets imply a restrictive view of international law and suggest a doctrine on the regulation of interstate relations that has a weak normative character: as far as those who determine the substance of rights and obligations and those who are the bearers of them are the same agents, the regulation of interstate relations becomes contingent upon a minimal agreement between states. As a result, the positivist doctrine interprets the content and scope of sovereign rights in broad terms, while it gives a narrower definition to that of sovereign obligations.

In contrast to the positivist view, the advocates of the "solidarist" school argue that the true sources of international law include not only the consent of states but also consensus among the members of international society. Those rules, in relation to which the international opinion has reached a certain degree of consensus, have the status of law, it is argued, even if they are not accepted by some states. Furthermore, the subjects of international law are considered to comprise not only states but other agents such as international organizations and individuals as well.[44] Thus, on the one hand, the rules that are supposed to regulate interstate relations are not considered to be totally dependent on the approval of all states, with the consequence that a state may be required by law to follow a prescribed behavior, to which it has never given its consent. On the other hand, it is supposed that the conduct of states is further circumscribed through legal obligations to observe the rights of other, non-state subjects—for instance, the "human rights" of individuals. What these tenets amount to is a doctrine that is exuberantly normative: it does not stop at regulating relations between sovereign entities but also includes those between sovereign entities and their subjects. It follows from these propositions that "solidarist" doctrine, in contrast to positivist doctrine, tends to interpret the content and scope of sovereign obligations broadly while defining that of sovereign rights more narrowly.

Another way of answering the question of what the nature of relations between sovereign entities ought to be is to propose that these relations should be radically transformed and transcended beyond sovereignty. The starting point of this kind of reasoning is the assumption that the state system is "dysfunctional," in the sense that "it has ceased or is ceasing to be capable of fulfilling the basic ends or goals of man on earth." This, it is argued, is due to the fact that the system of sovereign states is unable to provide peace and security, to accomplish the goals of economic and social justice, or to tackle worldwide ecological problems.[45] The proposals that are, and may be, formulated on the basis of these and similar assumptions display considerable variation and cannot be discussed in full here; nor is there any need to do so. But what has great relevance to the purposes of the present analysis is the tendency of these theories to reject, on normative grounds, the institution of sovereignty as a form of political organization appropriate to the interests of mankind. The basic assumptions of this view can be traced back to what has been labeled as the "Kantian or universalist tradition" in international relations. According to this line of thought, the cardinal feature of international politics is "the transnational social bonds that link the individual

human beings who are the subjects or citizens of states." But, while "the interests of all men are one and the same," the interests of states and the governing elites of states are not. Moreover, the freedom of mankind is incompatible with the absolute freedom of states and in the ensuing conflict between the well-being of "the community of mankind" and the continuing existence of the current state system, the former has moral superiority over the latter. From here it is but a short step to the conclusion that the "moral imperatives in the field of international relations . . . enjoin not coexistence and co-operation among states but rather the overthrow of the system of states and its replacement by a cosmopolitan society."[46]

Normative Theories of Sovereignty at the State Level

This category of theories deals with the normative version of the question that will be the main focus of inquiry in the following chapters. In its purely normative form, the question may be formulated as follows: which types of political—or territorial—entities *ought to be* sovereign?

One answer to this question is to assert that sovereignty should simply be located to the *state*. At face value this is a trivial statement, since, insofar as sovereignty is an attribute of the state, the proposition that sovereignty ought to reside in the state does not say much. But what make this assertion more than an uninteresting tautology are the arguments that are usually presented for its justification. It has already been noted earlier that Hobbes's conception of sovereignty was probably the first normative theory of sovereignty at the state level. The idea that sovereignty ought to reside not in the ruler or the ruled but in the state in its entirety was sustained in Hobbes's theory, by what may be called *the security argument*: on the one hand, sovereignty was necessarily located in the state because of the nature of the single contract through which all individuals agreed to submit to the state, "but in which the state necessarily sovereign, necessarily took no part" and on the other hand, the basic purpose of this contract was nothing but the preservation of the lives of the individuals.[47] Thus, it follows that, if the security of the individuals was to be provided for, they were obliged to enter into a covenant, the inevitable outcome of which was the sovereignty of the state. Furthermore, according to another interpretation of Hobbes, the sovereignty of the state ought to be "self-perpetuating, undivided and ultimately absolute" if the state is to safeguard "*the safety of the people*."[48]

The proposition that sovereignty ought to be located in the state as an entity may also be justified by what might be called *the democracy*

argument. This aspect of sovereignty has been made an important issue as a result of those processes of transgovernmental or supranational integration that have supposedly come to reshape the international sphere in general, and western Europe in particular. On the one hand, the existence of a rightful democratic unit is generally regarded as a prerequisite to a democratic process and one certain criterion for the justification of such a unit is that its "domain and scope can be clearly identified."[49] On the other hand, it is precisely the boundaries and the scope of the democratic unit that are allegedly being undermined by formal supranational integration processes such as that in the European Union. This tension between the criteria for a democratic process and the perceived reality of supranational integration is probably one of the sources of what, in the European Union context, has been labeled the "democratic deficit." The two conflicting solutions that have been presented in this context, that democracy can be preserved and the problem of the "democratic deficit" can be solved by establishing a democratic supra-state (the standpoint of the "federalists") and that this can only be accomplished by abandoning supra-statism (the view of what may be called "the proponents of the nation-state"), ironically have the same assumption as their point of departure: the state—federal or unitary, national or multinational—ought to be sovereign, if democracy is to be realized.[50]

Another answer to the same question is to suggest—often implicitly—that *nations* ought to be sovereign. This, for instance, is usually the underlying assumption of nationalism in general and its doctrinal expression, the principle of national self-determination, in particular. The idea that nations and sovereign states ought to coincide with one another is an intrinsic element of nationalism and is discernible in various definitions given to the concept.[51] In one slight deviation from this general pattern, David Miller observes that "[h]istorically, the sovereign state has been the main vehicle through which claims to national self-determination have been realized, and this is not just an accident." However, he quickly adds that "national self-determination *can* be realized in other ways, and . . . there are cases where it must be realized other than through a sovereign state, precisely to meet the equally good claims of other nationalities."[52] Here, the important point for the present analysis is that, when national self-determination is to be achieved by other means than through the establishment of a sovereign state, the justification for doing so is *not* based on theoretical considerations but on practical necessities, such as the unviability of the proposed state, reproduction of the problem of national self-determination, the existence

of an ambivalent national identity, or some combination of these factors.[53]

Descriptive Theories of Sovereignty at the State Level

The theories that fall in this category focus on states and similar entities and in general, they concentrate their efforts on grappling with one single, broad question: which types of political—or territorial—entities *are*, as a matter of fact, sovereign? Since this question is the main subject matter of the present study, it is sufficient to give just the outlines of the relevant body of literature in this section. The details of this body of literature will be elaborated on in the following chapters.

In general terms, the question about the sovereignty of states and other, state-like entities have been addressed by two separate bodies of theoretical writing that can be differentiated from each other on the basis of their underlying assumptions about the essence of sovereignty. Theories belonging to the first subcategory have a *legal* conception of sovereignty as their common denominator, since they share the presumption that the term merely denotes a juridical status—or a precondition of that status—that may be derived from endogenous or exogenous factors but that almost invariably results in the possession of rights and obligations. Thus, operating within the confines of the main tenets of constitutional law or the constitutive stipulations of public international law, when these theories attempt to distinguish, on an empirical basis, those entities that are sovereign from those that are not, they identify—and in one case simply imply—three different sources of juridical state sovereignty: constitutional independence, empirical attributes of statehood, and recognition as a state. All of these three conceptualizations of de jure state sovereignty will be critically scrutinized in chapter 5.

The common denominator of the second subcategory of theories is a conception of sovereignty, which assumes that the term refers not only to a *legal* status but to an *actual* condition as well. Thus, it is suggested, implicitly or explicitly, that the issue of whether or not an entity is sovereign according to some juridical standard has to be complemented with the question of to which extent—or whether or not—that entity exercises sovereignty in practice. As shall be seen in the following chapters, this body of theoretical reasoning displays considerable terminological differences, such as the distinction between de jure sovereignty and de facto sovereignty, or negative sovereignty and positive sovereignty, or sovereignty of states existing at a normative level and at a factual level,

and so on. However, as it shall be seen in due course, although these theories highlight, from an empirical point of view, a crucial aspect of state sovereignty, they stop short of developing an analytical instrument, by means of which sovereign entities, in the factual sense of this term, can empirically be distinguished from non-sovereign entities.[54]

Linkages between the Classes of Theories of Sovereignty

Theories of sovereignty are seldom clearly demarcated from each other and they are rarely presented in a mode that would eliminate their effects on one another. Moreover, some of the theories that have been referred to in the previous sections are theories of sovereignty only by way of implication: nationalism, for instance, is a doctrine that only presupposes some understanding of sovereignty, while popular sovereignty, to give another example, is much more a theory of democracy than sovereignty. Similar observations can probably be made even about other theories that have been categorized earlier.

Thus, the analytical device, which is the outcome of the classification of theories of sovereignty, is not without some important shortcomings. First, any categorization of things, regardless of whether these things are physical objects or abstract theories, necessarily simplifies reality by emphasizing the *similarities within* the categories. On the one hand, to highlight one or a few aspects of a thing, in accordance with which the category is defined, is to leave *other* aspects in darkness. On the other hand, any attempt to capture these other aspects by further dividing categories into sub-categories inevitably comes to an end after several but nevertheless a finite number of levels. This general deficiency of classifications is probably inevitable and must be accepted. As Waltz eloquently expresses it in a discussion about considering "states" as a category,

> [s]tates are alike, and they are also different. So are corporations, apples, universities, and people. Whenever we put two or more objects in the same category, we are saying that they are alike not in all respects but in some. No two objects in this world are identical, yet they can often be usefully compared and combined.[55]

Second, to the extent that the domain of a categorization does not constitute a subclass of a more general category, any categorization of things also necessarily involves an emphasis on the *dissimilarities between* the categories. To say that "apples are apples and oranges are oranges," is to tone down the possibility that they may also be considered as "fruit." Due to the infinite number of possible higher—or broader—categories,

this shortcoming of categorizations is not epistemologically inevitable and it can be remedied to a certain extent. Thus, in order to redress this type of simplification and to recapture some aspects of the multifarious character of sovereignty, the focus of attention will now be shifted to a brief survey of those linkages that exist between the ideal categories identified earlier.

It is possible to distinguish three such types of linkages between different classes of theories of sovereignty. In the first place, there are what may be called *epistemological linkages* that cut across the normative and descriptive dimensions. These linkages are somewhat trivial but deserve a brief mention. On the one hand, any normative theory about how things ought to be presupposes a descriptive theory about how things actually are. Thus, to say, for instance, that sovereignty ought to be located in the people is to imply that it is in reality located elsewhere; to argue that nations ought to be sovereign is to maintain that some entities other than nations—for example, de facto sovereign political entities—are sovereign in reality. On the other hand, any normative theory that achieves its goals gradually transforms into a descriptive theory, where the expression "ought" loses much of its normative force. For instance, at the time of its explication during the sixteenth century, Bodin's theory of ruler sovereignty was clearly a normative theory, partly due to the fact that it was formulated against the background of civil strife in France and partly owing to the features of the political organization of sixteenth-century Europe, which still had traces of medieval heteronomy. But during the following two centuries, which witnessed the ascendancy of absolute monarchies in Europe, the theory of ruler sovereignty was more or less a description of the political reality then prevailing on the continent; and it could retain its force as a normative theory, only to the extent that it was mobilized against the opponents of absolutism—such as the adherents of popular sovereignty—who challenged the legitimacy of this political reality.

In the second place, as regards the unit of analysis, the descriptive theories that are formulated at one level of analysis tend to presuppose a theory of sovereignty at the next *lower* level. In other words, the descriptive theories of sovereignty that are formulated at the interstate level assume some conception of sovereignty at the state level while those that are formulated at the state level presume some conception of sovereignty at the intrastate level. These connections between the descriptive theories of sovereignty can be summarized as follows:

(i) At the state level, the definition of sovereignty as "constitutional independence" presumes a conception of sovereignty as "supreme legal authority." To say that those political entities are sovereign

that have constitutions that are not subordinate to other constitutions is to assume that *among* the institutions of such an entity, there is one institution with ultimate legal authority that is not subordinate to any other authority[56]—hence the linkage between juridical state sovereignty as a result of constitutional independence and the legal theory of sovereignty.

(ii) In a similar manner, those theories at the state level that consider sovereignty as a factual condition (such as conceptions of de facto sovereignty or positive sovereignty), or as a legal status that follows from a factual condition (such as the empirical attributes of statehood), presuppose at the intrastate level, a conception of sovereignty as "supreme coercive power"—hence the linkage between these theories and Rees's conception of "coercive sovereignty."

(iii) At the interstate level, Jackson's theory of "the new sovereignty regime" is derived explicitly from a distinction at the state level between "positive" and "negative sovereignty," inasmuch as the basic feature of this regime is the fact that it comprises participants that have negative sovereignty but lack positive sovereignty.[57]

(iv) In a similar vein, but much less explicitly, in his structuralist reinterpretation of systemic approaches to the relations between sovereign entities, Waltz presumes a factual conception of sovereignty at the state level where political autonomy is considered to be the hallmark of sovereignty.[58] Such a linkage is also discernible in the Hobbesian conception of these relations, where "the state of nature" that supposedly characterizes the international sphere is the inevitable consequence of the fact that it is composed of entities—that is, states—that are sovereign.

In the third place, as regards the unit of analysis, there are also connections between different normative theories of sovereignty. However, it is perhaps not surprising that, in contrast to the links between descriptive theories, these linkages do not seem to follow any specific pattern and are apparently somewhat contingent. Here, it is possible to point out two such linkages:

(v) There is a discernible linkage between popular sovereignty at the intrastate level on the one hand and nationalism and the doctrine of national self-determination at the state level on the other. To say that sovereignty ought to reside in the people raises

the question of how "the people" is to be defined. This question may be resolved by regarding "the people" and "the nation" as identical entities,[59] whereby the statement that "sovereignty ought to be located in the people" becomes an equivalent to the proposition that "nations ought to be the sovereign entities."

(vi) There seems to be a necessary connection between those normative theories, which assert that sovereignty ought to be located in the state and those, which maintain that state sovereignty should be transcended, since these two kinds of theories logically exclude each other. It is moreover possible to conceive of situations, where this contradiction is reflected in controversy about, or ambiguity of, other concepts, such as the concept of citizenship. Critical theories that attempt to develop alternative, non-state models of citizenship and that view sovereignty as an obstacle in that respect have their logical antithesis in those normative theories that counter this approach by asserting that the concept of citizenship is meaningful only within the framework of a democratic sovereign state.[60]

Against the background of these theoretical considerations about the empirical domain of the *general* concept of sovereignty, it is now possible to delve into the empirical domain of the *specific* concept of *state* sovereignty, conceived of as a descriptive, disciplinary tool of analysis. Thus, the question under consideration is one related to a critical assessment of those descriptive theories formulated at the level of states and similar entities: which types of political—or territorial—entities *are*, as a matter of fact, sovereign?

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CHAPTER 4

Sovereignty of States and Similar Entities: A Conceptual Analysis

What does sovereignty as a descriptive concept *refer* to at the level of states and similar entities? Since, in epistemological terms, *any* concept may refer to *any* phenomenon at *any* level, the first step in the analysis must be a certain modification of this question: what does sovereignty, or more precisely, terms like "state sovereignty," "sovereign statehood," or "sovereignty of states and similar entities"[1] *reasonably* refer to when employed as a nonnormative, analytical tool at the level of states and similar entities? To introduce reason in this fashion opens the way for an attempt to apply a loosely defined set of criteria, such as analytical utility generated by a high degree of precision, logical coherence, consistency with previous usage, and relative imperviousness to rhetorical abuse, to an apparently fruitless discussion. To speak about nonnormative, analytical tools, on the other hand, delimits the analysis to the sources of actual and potential controversies to be found in those scientific disciplines that endeavor to understand the referent of the concept.

At the very outset, two different ways of approaching the issue may be distinguished. First, it is possible to concentrate on the *spatial dimensions* of the definitions or descriptions of the concept of state sovereignty presented in the debate. Hence, the question may be asked whether state sovereignty refers to—in increasing degrees of broadness and as a matter of legal right or actual might or both—independence, supreme authority, possession of a specific status, or consequences that follow from such a status. But such an approach is doomed to run into the problem mentioned in chapter 2: multiplication of the concepts of sovereignty, where

each concept demarcates a different but often overlapping referent. Second, it is also possible to ask *dichotomous* questions about sovereign statehood that bring in sharp relief the presuppositions that precede and the consequences that follow from such accounts. Thus, the issue may be raised as to whether state sovereignty is juridical or factual, qualitative, or quantitative, and divisible or indivisible. This type of analysis has the advantage of distinguishing between those accounts that deplete or weaken the analytical value of the concept both in empirical and logical terms and those that have just the opposite effect. Consequently, in what follows, this mode of analysis will be adopted and the substance of the concept of state sovereignty will be determined with reference to conclusions drawn from a theoretical discussion that concentrates on these binary questions.

As shall be seen, there are compelling reasons to suggest that there are two concepts of state sovereignty—factual state sovereignty and juridical state sovereignty—that refer to an actual phenomenon and a legal status respectively. Moreover, once a distinction is made between a condition and consequences that follow from that condition, it becomes clear that both concepts refer to qualitative, unlimited properties. Questions as to the divisibility of state sovereignty, on the other hand, boil down to existence or not of state sovereignty in particular cases. However, before substantiating these arguments and as a preliminary step in the analysis, account has to be taken of another issue: the relation between the two component parts of the terminology used in this book, that is, between "state" and "sovereignty."

The Concept of "State" and the Concept of "Sovereignty"

One dimension of the difficulties encountered when determining the empirical content of the concept of sovereignty at the level of states and similar entities is related to the unclarified relationship between the concept of "state"—or "statehood"—on the one hand, and that of "sovereignty," on the other. In this context, there is always the potential risk of falling into one of two fallacies. First, resorting to the abstract nature of these two concepts and disregarding the need to provide detailed explications of their substance, it is simply possible *to equate them to each other* and *fix the content of one in terms of the other and vice versa*. For instance, in an elaborate analysis of the structure of international political systems, Kenneth Waltz characterizes states as "like units" in the sense of all of them being "autonomous political unit[s]," which, the argument goes, is "another way of saying that states are sovereign."[2]

Now, this equation may function—indeed, it does function—as a heuristic instrument of analysis at the interstate level. However, at the level of states and similar entities, determination of the substance of statehood in terms of other abstractions such as autonomy and sovereignty, taken together with the fact that nothing is said in the overall analysis about whether other types of units than states may be sovereign, brings the argument dangerously close to circular reasoning.

Second, it is possible to *determine the content of one of these concepts with reference to rudimentary everyday notions existing about the other*. For example, another scholar of international relations, Barry Buzan, regards sovereignty as the "principal defining feature of states,"[3] and after iterating a set of questions that indicates the complexity of the concept, he argues that

> Although conceptually difficult, sovereignty is usually easy to recognise in practice. Social units which claim it must do so openly, and failure to exercise it, or disputes over the right to do so, will usually be fairly evident. Most social units do not claim it, and signify this by subordinating themselves to one of those that does.[4]

It has been pointed out elsewhere that such an approach is inadequate.[5] But, it may also be claimed that the argument is somewhat misleading, since such a conceptualization of sovereignty makes one think of the common sense usage of the word "state" that has its point of departure in a political atlas of the world, where each "state"—and, *ex hypothesi*, "sovereignty"—is easily recognizable because of being depicted by a different color.[6]

Against the background of such considerations, it will be argued that, in the context of empirical investigations, the concept of state and that of sovereignty should be disconnected from each other. In the first place, a correct understanding of the concept of "state" is not a logical prerequisite for an accurate comprehension of the term "sovereignty"—this is the case, at least to the extent that these concepts are not used synonymously and thus tautologically. In analytical terms, it is possible to raise questions about statehood and sovereignty separately and identify states—howsoever defined—and sovereign entities—again, howsoever defined—independently from each other. Then, the analysis may move on to pose a second question whether—or which of—those sovereign entities are states or, inversely, whether—or which of—those states are sovereign entities.

In the second place, the category of collective agents that are relevant to sovereignty at this level of analysis is much broader than the limited

class of states. To the extent that sovereignty at the most basic level—or in its common sense usage—refers to a broad notion of a specific relationship between an agent and a territory, the possibility arises at once that this relationship may be actual, considered *as if* it is actual, or the object of mere aspiration—all these variations depending on the kinds of precision accorded to the term "specific relationship." As a result, the relevant agent may be a state—howsoever this concept is defined—but it may as well be a constituent member of a federal structure, a separatist movement, a criminal organization, a mercenary army, a religious sect or an individual, such as the fictional Robinson Crusoe.

In the third place, the assumption of an intrinsic relationship between statehood and sovereignty obscures the condition of certain categories of territorial entities such as member states of federations, forcefully neutralized states, puppet states, and other types of dominated entities, which for all practical purposes lack independence. This is mainly due to the fact that such a premise implies attribution of sovereignty to entities, such as, for instance, Belgium until 1914, eastern European states during the cold war and Lebanon at the time of writing, which are generally regarded as states, but which are either problematic cases as regards to sovereignty or can hardly be considered as sovereign except in the nominal sense of the term.

In sum, what is needed in order to determine the unit of analysis that is relevant to sovereignty at this level of analysis is *not* a precise conception of state but a concept that has a much *broader* range than "state"; a concept that safeguards the analysis against bias by referring to the entire range of various types of relevant agents without attributing or denying, by fiat, sovereignty to any one of them. Thus, two expressions, *states and similar entities* and *territorial entities*, are coined and used interchangeably in this study in order to refer to this category.

Sovereignty of States and Similar Entities—A Juridical Attribute or a Factual Condition?

The first dichotomous question about state sovereignty is whether this concept refers to a juridical attribute or if it denotes a factual condition. Since these two possibilities do not logically or empirically exclude each other, a corollary of this question is whether state sovereignty is a concept that refers separately to both of these properties in a manner that invalidates such an either-or approach to the subject. In this section, the focus of attention will be directed solely on these issues, for the question of legality or factuality of sovereignty has logical precedence over those

other binary questions that concern its absoluteness or limitedness and divisibility or indivisibility, in the sense that any discussion about, or analysis of the latter presupposes clear-cut answers given to the former.

Both in the available literature that deals explicitly with the concept of state sovereignty and in those studies that touch upon the subject implicitly from the perspective of states and similar entities, one line of argument asserts that the term *only* refers to a *juridical status*—regardless of whatever relations this status may, or may not, have with factual circumstances. This notion has been presented first and foremost by lawyers who take their point of departure in different schools within the discipline of international law. Thus, in a textbook on public international law, for instance, it has been asserted that there is ". . . a degree of uniformity of usage . . ." among international lawyers as regards, inter alia, the concept of sovereignty and that the term denotes ". . . legal shorthand for legal personality of a certain kind, that of statehood . . ."[7] Another lawyer warns that "it is at least imprecise to use sovereignty as a synonym for independence as sovereignty denotes a legal right or status while independence denotes a factual situation."[8] To provide a few more examples from the classical texts of the law of nations, sovereignty has been defined as "the 'totality of international rights and duties recognized by international law' as residing in an independent territorial unit—the State";[9] it has been interpreted as having the meaning that "the state is subject only to international law";[10] it has been depicted as referring, in a particular sense, to "the nature of rights over territory";[11] and it has been portrayed as "supreme authority," the various aspects of which, "[i]ndependence and territorial as well as personal supremacy," are "recognized and therefore protected qualities of States as International Persons."[12]

At this level of analysis a similar juridical conceptualization of sovereignty has also been suggested by several political scientists. However, as it might have been expected, since these scholars are not bound to any specific legal discipline, they have a tendency to trace the origins of the concept back to different juridical systems. For instance, in a comprehensive study on the subject, Alan James defines sovereign statehood as "constitutional independence" in the sense that "a state's constitution is not part of a larger constitutional arrangement."[13] Thus, it follows that ". . . sovereignty is founded on law in as much as a constitution is a set of arrangements which has the force of law," and consequently, ". . . the only kind of constitutional subordination or superordination which one can speak of is the sort which is legal."[14] In contrast to this view, another contemporary political scientist, Paul Taylor, adopts

formulations that implicitly attribute a preponderant role to international law: sovereignty "could [alternatively] be envisaged as having a license from the international community to practice as an independent government in a particular territory."[15]

Without necessarily conflicting with these views, except perhaps for their exclusively legal character, another—though less common—line of argument emphasizes *the factual dimension* of the concept. This is the notion of state sovereignty to be found above all in the works of classical theorists of interstate relations who approach the issue—perhaps somewhat unexpectedly—from an intrastate perspective. Thus, according to Hans Morgenthau, sovereignty "signifies supreme lawgiving and law-enforcing authority"[16] and in a democracy the "ultimate" responsibility for "the exercise of political authority . . . lies dormant in normal times, barely visible through the network of constitutional arrangements and legal rules. . . ."[17] Another scholar, Raymond Aron, reiterates diverse definitions of the concept of sovereignty, definitions that emphasize the factual dimension of the concept without, however, for that purpose excluding or obliterating its juridical aspects. Accordingly, "*sovereign*" may connote "the supreme authority which legislates," "the constitutional organ that, in case of crisis or exceptional circumstances, takes the [necessary] decisions," effective possession of the "supreme power," and "law-enforcing capacity."[18] What is echoed, in at least one of these meanings, is the notion of sovereignty presented by a political philosopher, Carl Schmitt, during the pre-Second World War period; a formula whose general and abstract nature makes it applicable to any chosen level of analysis: "[s]overeign is he who decides on the exception."[19]

It has to be noted in passing that conceptualization of sovereignty in factual terms is also evident in more recent studies in the field of international relations. Moreover, in these studies, the focus of the analysis is much more clearly on the state level. Here it should be sufficient to give two examples: "[t]o say that a state is sovereign means that it decides for itself how it will cope with its internal and external problems"[20] or "[t]he state is sovereign in that it must answer to no higher authority in the international sphere."[21]

There does not seem to be any logical, theoretical, or empirical incompatibility between these two different views of the concept of state sovereignty, and it is possible to argue that the term may reasonably be used to depict two distinct but interrelated phenomena: a juridical condition and a factual state of affairs. The absence of inconsistencies in this respect is reflected in the fact that scholars from various disciplines employ the concept in such a double sense. However, although the

argument is more or less the same, there is a substantial degree of terminological variation in this context: "legal sovereignty" and "political sovereignty";[22] "*de jure* sovereignty" and "*de facto* sovereignty";[23] "negative sovereignty" and "positive sovereignty";[24] existence of sovereignty at "a normative level" and "a factual level";[25] and finally, a distinction between "international legal sovereignty," "domestic sovereignty," "interdependence sovereignty," and "Westphalian sovereignty" that in various ways encapsulate these two dimensions.[26]

Furthermore, besides the sheer existence of a distinction between legal and factual sovereignty in the available literature, there are also three cogent arguments that support such a twofold employment of the term. In the first place, seen from the vantage point of political theory, it is possible to argue that a conception of legal rights, in general terms, necessitates a conception of actual might—or substantial capabilities—that make use of, or correspond to, or simply reflect the materialization of these rights. In this context, the argument may acquire a double form. At one level, the same reasons that necessitate a distinction between juridical and factual dimensions in some fundamental concepts of political philosophy, such as "negative freedom" and "positive freedom" or "nominal citizenship" and "real citizenship," may also equally apply to juridical and factual state sovereignty. At another level, the same factors that give rise to a differentiation between actual and pseudo qualities as regards legal persons and necessitate concepts such as "post box companies," "quasi-states," or "puppet regimes" are present with equal force in the case of sovereignty at the level of states and similar entities and require the concept of "nominal sovereignty."

In the second place, seen from a historical perspective, the existence of factual sovereignty within a delimited piece of territory is antecedent to acquisition of juridical sovereignty over that same territory. As it has been pointed out by Schwarzenberger,

> The historical starting point of titles to territory is pre-legal sovereignty, that is, effective control of a territory by a prince in his own name and with power to defend it. Similarly, under international customary law, a State may extend its sovereignty by the effective *occupation* of territories which are not under the jurisdiction of any other subject of international law. This status of a territory as *res nullius* may be due to the fact that no other international person wishes to appropriate the territory in question or that it has abandoned jurisdiction over it.[27]

To the extent that "[e]ffective occupation" involves "establishment of adequate State machinery and the actual display of State jurisdiction"[28]

these considerations, which do not seem to be controversial in any respect, imply the existence of two distinct but closely related phenomena—and hence, the two specific but clearly associated concepts, juridical and factual sovereignty, that refer to these phenomena.

In the third place, seen from the point of view of international law, a distinction between legal and factual sovereignty may be useful, probably even necessary, for understanding the situation of what may be called *territories with double status*. Writing more than a century ago about "[p]laces under double or ambiguous sovereignty," W. E. Hall pointed out that

> It is possible for a place to possess at the same moment a belligerent and a neutral character. So long, for example, as the sovereignty of Turkey is not extinguished in Cyprus that island is probably capable of being belligerent territory in virtue of English authority, and neutral territory in respect of Turkey, or *vice versa* . . .[29]

This would automatically be the case where the states involved have different legal positions in relation to a third state. And, to this it should be added that the situation would be one of extravagant absurdity if these two states found themselves tied up in a belligerent position in relation to one another, since this would entail the territory in question being technically in war against itself. For instance, Cyprus would acquire such a bizarre legal status if Britain had not annexed the island immediately after the outbreak of the First World War. It has to be noted, furthermore, that the case of Cyprus was by no means an isolated case in this respect; the situations of the German Confederation and Bosnia-Herzegovina have already been mentioned in the same study[30] and, to this, the subsequent case of the Anglo-Egyptian Condominium over Sudan may conveniently be added. In the contemporary era, such awkward situations may arise in the aftermath of effective occupations that fall short of internationally recognized annexations. The argument here is that the elements that constitute such paradoxes fall into clear patterns when a general distinction between juridical and factual sovereignty is introduced into the analysis.

In addition to the previous twofold usage in the literature and the three compelling arguments that justify such a usage, there are also two immediate advantages to be gained from the employment of the concept of state sovereignty both in a juridical and a factual sense. First, such a modus operandi will enable incorporation of de facto entities into the framework of a theoretical approach that addresses the issue of

sovereignty of states and similar entities. Although the archetypal examples of such entities are the cold war cases of Katanga and Biafra, this type of phenomena has become much more widespread after the collapse of the Soviet Union. A long range of territorial entities such as, Chechnya until 1999, Republika Srpska, the Kurdish Autonomous Region in Northern Iraq, Abkhazia; Dnestr-republic, Southern Sudan, Somaliland, and probably even Nogorno-Karabakh, aspire to international juridical personality while controlling a demarcated piece of territory—hence the necessity of employing two concepts of juridical and factual sovereignty to capture this situation.

Second, a double usage of the concept of sovereignty will be helpful in clarifying those ambiguous uses of the word "sovereignty" that is sometimes encountered in political rhetoric. This point can be illustrated with reference to a speech delivered by the former secretary general of the United Nations, Perez de Cuellar, at the end of 1980s. Referring to the relations between the United Nations and the United States, de Cuellar claimed that the Americans were inclined to "see their country's membership in an international organization, as a limitation of the full exercise of its sovereignty" and contrasted this with the view of the great majority of the members of the United Nations for whom "joining the United Nations was the final confirmation of independence, nationhood, and sovereignty."[31] Now, it is possible to assert that what is involved here is usage of the word "sovereignty" in a double sense: while the latter term—the notion ascribed to the majority of the member states—has a rather clear juridical content, the former concept—the view attributed to the United States—denotes, as it may be inferred from the world "exercise," sovereignty in the sense of freedom of action and, consequently, it refers to the factual dimension of the concept of state sovereignty.

To employ the concept of sovereignty in such a double meaning, in order to refer simultaneously to legal and factual circumstances, at once raises questions about the relationship between these two concepts and, accordingly, between the two phenomena that constitute the referents of these concepts. It should be pointed out that to the extent that what is involved here is the precise nature of the links between these two sets of phenomena, such questions are mainly empirical questions that cannot be answered on a purely theoretical basis. However, some general aspects of this relationship and conclusions that may be deduced from them have certain implications for the theoretical analysis undertaken in the next two sections. This necessitates a tentative treatment of the subject.

In general terms, there are at least two common connections between juridical and factual sovereignty—irrespective of how these concepts are defined and rendered precise. In the first place, a territorial entity's possession of juridical sovereignty may have a strengthening effect on its factual sovereignty.[32] For instance, such an entity can form formal military alliances by signing defense treaties in order to protect its factual sovereignty, mobilize international public opinion with reference to international law in case that sovereignty is violated,[33] or receive financial aid that frees resources, which in turn may be used to build up a power apparatus that can be used to control its borders. In the second place, as testified to by the short life span of many de facto entities, the opposite situation also seems to be true. A territorial entity that has acquired factual sovereignty without obtaining its legal counterpart finds itself in a very precarious situation. Since, it cannot count on any sanctuary under international law, except for those rules that accord protection to basic human rights, its factual sovereignty tends to come under physical attack, almost always, on the part of the mother country from which secession is attempted.[34]

However, the existence of such general linkages between juridical and factual sovereignty should not obscure the fact that there is not a *necessary* connection between these two kinds of phenomena in the sense that acquisition of one entails appropriation of the other or vice versa. As shall be seen in the following chapters, many are those entities that possess one form of sovereignty but lack the other or have obtained one form of sovereignty but are problematic cases as regards the other. This general condition has one certain implication for the overall analysis conducted in the rest of this chapter: since two distinct phenomena are involved here—and two different concepts that refer to these phenomena—the dichotomous questions as regards to whether or not sovereignty is limited and whether or not it is divided should be asked separately for each of these phenomena—and thus, for each of these concepts.

Sovereignty of States and Similar Entities—A Qualitative Feature or a Quantitative Property?

One of the most controversial aspects of sovereignty is crystallized in the dichotomous question of whether the concept refers to an absolute—and thus a qualitative—feature that a territorial entity may or may not have or whether it is associated with a limited—and hence a quantitative—property that a territorial entity may possess in varying degrees. In this section, the focus of attention will be shifted to the two logically

incompatible views that have been presented in this context,[35] and an attempt will be made to analyze the premises and consequences involved in each of these notions in the particular settings of juridical and factual sovereignty respectively.

Before probing deeply into these issues, however, some of the minor sources of the confusion surrounding this *problematique* have to be eliminated. Three distinctions are especially important here. First, the question of limitedness or absoluteness of state sovereignty should be differentiated from the issue of its divisibility or indivisibility. In its most relevant and common form, the latter concerns a sectorial, rather than a territorial organization of supreme power and authority and, as such, with one possible exception that will be addressed in due course, it has a neutral relation to the former. Thus, in logical—but not necessarily theoretical—terms, sovereignty may be divided and absolute at the same time, if an agent is, *ex hypothesi*, sovereign within the confines of a particular sector and if that sovereignty over that specific field is not limited by any other factor whatsoever. Inversely, sovereignty may be simultaneously undivided and limited where an agent is—once again, *ex hypothesi*—sovereign over a delimited piece of territory in its entirety and over all sectors of political action concerning that territory but when that sovereignty is presumed to be crippled due to external or internal factors. Second, the descriptive questions as regards absoluteness of sovereignty—or sovereignty as a qualitative feature—should be distinguished from the normative issue of absolutism.[36] At the most basic level, there is an epistemological difference between "is" statements and "ought" propositions, despite the fact that absolutism as a normative proposition about the extent of sovereignty presupposes the possibility of an absolute or qualitative sovereignty as a realizable and, hence, as a descriptive phenomenon. Moreover, there is also a difference in this context with respect to the units of analysis involved: while absolutism has historically focused on the issue of *who* or *which agency* ought to be sovereign and brought about criticism of its possession by a few, absolute sovereignty concerns the issue of the *fundamental features* of sovereignty as such—in a sense disregarding the question of who possesses that sovereignty. Third, in a similar vein, propositions as regards limited sovereignty or "limitation[s] on the exercise of sovereignty" that are imposed by law or that are merely caused by other material factors should be distinguished from assertions about "surrender of sovereignty."[37] The former constitute—in a fashion similar to that of "absolute sovereignty," but in an opposite sense—a general statement about the characteristic features of state sovereignty. The latter, on the

other hand, often simply collapse into a theoretical question about the divisibility of sovereignty. If this is not the case, however, it usually concerns the question—often raised after an important transaction or a decisive incident—of *who* holds sovereignty within a delimited piece of territory.

With these considerations in mind, the focus of attention of the analysis may now be shifted to the main subject of this section: the dichotomous question about the absoluteness or limitedness of state sovereignty. To start with the less controversial aspects of the problem, it is possible to assert that juridical sovereignty at the level of states and similar entities is generally regarded as an absolute and, thus, a qualitative condition. This is clearly the case in those studies where sovereign statehood is defined in terms of constitutional independence or constitutional insularity and, as such, is considered to be a consequence of a territorial entity's internal constitutional law. In what is probably the most elaborate explication of this type of conceptualization of state sovereignty with reference to endogenous factors, James points out that

> There is, . . . a second accepted meaning to the word "absolute" which is not at all esoteric and which can properly and very helpfully be applied to sovereignty. It refers not to the way in which a person or body relates to others but to whether a person or thing possesses a specified attribute or condition. The attribute in question is either present or absent, and if it is present it may be said to represent an absolute condition. Such terminology is appropriate in respect of the formal standing or status which a person, real or notional, has attained.[38]

Thus it follows that

> Whether or not a territorially based entity is constitutionally independent is a matter of fact which in principle can only be answered negatively or positively.[39]

Moreover, a similar line of argument may also be reasonably applied to those approaches that conceive of juridical sovereignty in terms of legal personality of statehood under international law or as possession of sovereign rights by an entity—irrespective of the issue of in which legal order and how these rights originate. As it has been pointed out by the same author,

> There is . . . merit in the claim that sovereign rights may be envisaged as a collective whole, which is often implicit in the argument that they constitute

> a state's sovereignty. For when states and commentators speak of sovereign rights they usually seem to conceive of them as a collective bundle of basic rights which comes, as it were, ready packed and attaches equally to all states. So viewed, a state's sovereign rights are not diminished in any way by their exercise. What a state does when it makes a treaty is to cut down its legal freedom (in all probability) but not its sovereignty. For, as the Permanent Court of International Justice observed in a famous case in the 1920s, treaty-making is an attribute of state sovereignty. It follows that this approach does not give rise to any problems about the calculation of sovereignty. It is simply something—a collection of special rights—which either one has or one does not.[40]

Such a qualitative conception of juridical sovereignty is also supported by the fact that, in general terms, a subject status or a legal personality cannot be defined in quantitative terms. A person, physical or otherwise, may have one or another kind of juridical status according to law, but once that status is clarified and the nature of the legal personality determined—for instance, as a citizen, a company, a state or otherwise—then it is against the principle of equality before law[41] and, hence, against the nature of positive law to assert that this status or personality is something that may, in a rather indeterminate manner, be possessed more or less.

The question of whether juridical sovereignty, specified in terms of legal status or formal standing, can correctly be derived from the constitutional law of a territorial entity or whether it is conferred to that entity in accordance with the stipulations of positive international law is not material to the discussion here. The relationship between juridical sovereignty, on the one hand, and such endogenous and exogenous factors, on the other, will be treated in detail in chapter 5 of this book in a more empirical context. Nevertheless, it has to be noted in this context that the potential inference of the view that juridical sovereignty is an absolute and qualitative condition from such multiple legal sources and systems accords it a degree of generality—in terms of intersubjectivity—that strengthens its validity as a proposition.

However, this does not mean that the issue under consideration is completely uncontroversial. It is indeed the case that juridical sovereignty is sometimes conceptualized in quantitative terms when the word "sovereignty" is perplexingly used in the legal context to designate something *other* than a specific subject status or legal standing, namely, when it is used to refer to the *consequences* that follow from such a condition. This is a mode of usage that seems to be more common among international lawyers than students of other disciplines.[42] For instance, it has been asserted by Ingrid D. De Lupis, in the context of an analysis of

"territorial sovereignty" that

> A state's territorial sovereignty may be restricted in two ways under general international law: there are restrictions which relate to the territory itself, or to the environment—for example, certain rights of transit and a duty to refrain from pollution—and there are restrictions which relate to individuals residing in the territory, for example immunity of state agents and human rights.[43]
>
> The *method* by which territorial sovereignty may be restricted is not merely through the conclusion of treaties: there may be rules of general international law or local custom that impose limitations on the action of a state in its own territory.[44]

Now, to the extent that these or similar statements refer to attempts at regulating, by means of a set of norms, the behavior of states and similar entities at the interstate level, they do not contradict the view proposed earlier that juridical sovereignty, referring as it does to a legal status, is an absolute and qualitative property. In other words, sovereign rights, just as any other kind of rights supervised by law, are limited by law in this specific sense, and this situation is completely congruous with the fact that those entities that enjoy these rights and those that are deprived of them do so in an absolute and qualitative sense. This situation is analogous to the case of citizenship where restrictions on citizen rights in the sense of them being regulated by constitutional law are entirely compatible with the existence of a citizenship law that, by means of a stipulation, answers the question of who is to be regarded as a citizen—in a similar sense of legal status or formal standing—in an either-or fashion and, hence, absolutely and qualitatively.

Nevertheless, it has to be added in passing that, even at the interstate level, the conceptualization of juridical sovereignty as an intrinsically limited property is not without certain problems. There are two types of considerations involved here. In the first place, the proposition downplays the existence of at least *one* qualitative—and hence absolute—right among the bundle of sovereign rights since at least the Second World War, namely, *the principle of sovereign equality*. As a result of the impact of this right, which is enshrined in the United Nations Charter that is enjoyed by *all* states as *a capacity*, it is questionable whether juridical sovereignty is limited even at the interstate level. On the one hand, as a result of this principle, limitations of sovereign rights operate with equal force on *all* states that are endowed with such rights. On the other hand, limitation of sovereign rights in one certain field is generally accompanied by expansion of these rights in another specific field. In both cases,

the scope of sovereign rights remains unchanged across those entities that are endowed with such rights, that is to say, it remains unchanged at least in relative terms. In the second place, the use of the expression "sovereignty is limited" in the context of regulation of state behavior is awkward linguistically if what is meant in reality is nothing other than "sovereign rights are limited." To exemplify this with reference to other types of legal persons, such a usage is semantically in line with expressions such as "citizenship," "statehood," "individuality is limited," "to be an international organization," "to be an international company is restricted," and so on.

If the focus of attention is shifted from the interstate to the state level, it will be clear that statements such as "restricted," "restrictable," and "limited sovereignty" collapse into a usage of the term "sovereignty" as a synonym for "legal freedom" or "reserved domain."[45] As has been argued by James, this conceptualization of juridical sovereignty accentuates

> [T]he freedom which a state retains after all its international legal obligations are taken into account. Sovereignty, in other words, consists of legal freedom, and is restricted by the various legal duties incumbent upon a state in its international capacity. In consequence, a state's sovereignty will vary from time to time in accordance with the extent to which its freedom of action has been limited by international law.[46]
>
> Thus the greater the legal freedom which a state has, the greater is its sovereignty; and any addition to a state's legal duties has the effect of diminishing its sovereignty.[47]

James points out the possibility of interpreting even this notion of sovereignty in qualitative terms, because "states are either in possession of a reserved domain or they are not."[48] However, despite this, there is evidently a strong case for *not* using the word "sovereignty" synonymously with legal freedom or reserved domain. As has been shown convincingly by the same scholar quoted earlier, such an approach presents several problems, two of which are especially pertinent here. First, this view says nothing distinctive about juridical sovereignty as such. Possession of legal freedom or a reserved domain is the common denominator of many, probably *all*, legal persons—such as international organizations, states, companies, individuals, and so on—and not solely of those territorial entities that are endowed with sovereign status under international law. Thus, it is not possible to distinguish, on the basis of this conceptualization, those legal persons that have juridical sovereignty from those which do not.[49] This suggests a reason to confine, as some international lawyers do,[50] the usage of "sovereignty" in the legal sense to designation

of legal personality of *a certain* kind only—howsoever this kind is defined.

Second, insofar as treaty commitments are regarded as a factor that diminishes a state's legal freedom, confines its reserved domain, and hence, *ex hypothesi*, restricts its juridical sovereignty, this approach leads to bizarre conclusions. For instance, it is reasonable to assume that a powerful state will likely be inclined to participate actively in international relations and that it, as a result of this, will have a certain propensity to draw upon itself an increasing amount of treaty commitments. This implies that such a state consequently will have less legal freedom, a more restricted reserved domain and, according to this approach, "less" sovereignty. On the other hand, the opposite will be true for a weak and internationally inactive state. The tendency of any such state to have a low profile on the international scene and its subsequent reluctance to enter into treaty obligations will lead to acquisition of more legal freedom, a less restricted reserved domain and, hence, on this account, "more" sovereignty.[51] In short, other things being equal, the "most" sovereign will be those territorial entities that are "least" powerful and "most" isolated. As it has been put succinctly by James, this "does not accord with the usual conception of things."[52] To this observation, it may be added that such an approach to juridical sovereignty, in the final analysis, conceives of the concept as some sort of a legal counterpart of autarky.

If the conceptualization of juridical sovereignty in such qualitative terms appears to be generally accepted and easily tenable, the opposite is true as regards factual sovereignty. In the available literature, where the term "factual sovereignty" or any equivalent of it is employed or where "sovereignty" is interpreted in such a manner as to denote an actual phenomenon that has to do with power relations, the prevalent tendency is to conceive of these concepts in quantitative terms, that is, as a feature that states or similar entities may have in varying degrees. Sometimes this position is taken categorically, as when Marshall, who interprets sovereignty along such factual lines, extensively criticizes conceptualization of social phenomena in absolute terms:

> For simplicity and clarity, the absolute modifier *absolute* applied to sovereignty can well be disposed of at once. Whatever its relevance in the realm of pure ideas, the term usually serves only to clutter up discussion of actual human affairs. I wonder whether the idea of *absolute*, otherwise than in connection with absolute zero, has utility.[53]

But often, quantitative notions of factual sovereignty are just introduced in passing with no further explanation whatsoever. According to Held,

for instance, "if sovereignty as a concept is to retain its analytical and normative force . . . it has to be conceived as divided among a number of agencies and limited by the very nature of this plurality and the rules and procedures which protect it."[54] For Jackson, "positive sovereignty is a relative and changing rather than an absolute condition . . .," and as such, ". . . it is always a matter of degree."[55] Another scholar, Bull, asserts that sovereignty of states "at the factual level" is the exercise of supremacy and independence "in varying degrees."[56]

In a fashion similar to that of juridical sovereignty, what is involved here is once again a shift of focus from a *condition*, this time an actual or a physical rather than a legal one, to the *consequences* that follow from being in that material condition. To put the same argument differently, these propositions take the existence of a specific actual relationship between an agent—that is, a state or a similar entity—and a delimited piece of territory for granted and, consequently, they regard the coming into existence of such a material situation as unproblematic. They then concentrate on one or more types of activities—anything ranging from effective decision-making capacity to the scope of freedom of action available for a state—that presuppose the existence of such a material condition in the first place. Now, on six accounts, such a quantitative interpretation of factual sovereignty is unconvincing—if not altogether unwarranted.

First, at the *logical* level, this view is incongruous with the classical theory of sovereignty, which has been prevalent since the inception of the concept's modern, post-Westphalian history that still moulds our ideas. This incompatibility is the result of two circumstances. On the one hand, this conventional understanding of sovereignty defines the concept essentially in terms of *authoritative allocation of values*[57] and in relation to the *ultimate authority* that performs this function. This view unquestionably encompasses a qualitative conception of sovereignty that is clearly reflected in those standard definitions given to the concept in different periods, such as, "[s]overeignty is that absolute and perpetual power vested in a commonwealth . . ."[58] or, even more forcefully, "[s]overeign is he who decides on the exception."[59] On the other hand, to the extent that these propositions about the qualitative nature of sovereignty are restricted to or associated with the intrastate level, then account must be taken of the fact that an independent political society, which finds its most common medium of expression in the institution of statehood, is defined in terms of an entity that comprises such a sovereign at the intrastate level.[60] Thus, all this suggests that any quantitative conception of factual sovereignty faces two alternatives: *logical inconsistency* as a result of indifference to the classical and predominant

ideas about sovereignty or accomplishment of a radically different and necessarily systematic *redefinition* of this concept that will dislodge such established views.[61] To the knowledge of the author, no attempt has been made by any scholar, from any discipline, that interprets factual sovereignty in quantitative terms to realize the latter.

Second, at the *conceptual* level, *ad hoc* definitions—or descriptions—of factual sovereignty that conceive of the concept in quantitative terms give an indication of how any such attempt at systematic redefinition may end up. The recurrent occurrence in these definitions of expressions such as "capacity," "capabilities," "exercise," "law enforcement," "superiority," and "autonomy" suggest a certain, but slight, shift of emphasis from the actual condition of factual sovereignty to the prerequisites for and consequences of that actual condition. Taken together with the conceptualization in quantitative terms, this shift of emphasis implies a change in the meaning of factual sovereignty: a switch from the conventional notion of sovereignty to another, well-known, concept of political science, the concept of *power*. This modification occurs, however, and this point is very important, without the term "sovereignty" being clearly differentiated from that of "power." In short, what is involved here is an implicit usage of the term "sovereignty" as a synonym for the concept of power or other concepts that denote power—the so-called power terms.[62] As has been aptly pointed out by James, such a mode of usage seems to be "a superfluous use, for power is a very well accepted term and the idea it conveys is fairly clear."[63]

Third, at the *methodological* level, notwithstanding the increased acceptance of quantitative conceptions of factual sovereignty in the contemporary era, there is a curious lack of quantitative research on factual sovereignty. Thus, writing in the mid-1980s, James has pointed out that "in practice" such measurements of sovereignty

> [A]re not made by those who think of sovereignty in relative terms. Instead, refuge is taken in statements to the effect that as a result of something or other a state has become "more sovereign" or "less" as the case might be. More generally, it is asserted that "sovereignty" in practical international affairs is a relative principle.[64]

In light of the previous argument, it is possible to speculate as to why this may be the case. Insofar as no clear demarcation line is drawn, at the theoretical level, between "factual sovereignty" and the concept of "power," the indicators of the former concept that are identified for the purposes of the quantitative investigation and measurement will confusingly be analogous to—probably, even identical with—those of the latter.

Fourth, at the *empirical* level, what is involved in reality is not a gradual buildup or restriction of factual sovereignty but *an abrupt change* by means of which a territorial entity may *acquire* or *lose* such sovereignty. It is true that such a qualitative transformation may have been foregone by quantitative changes in the power or power base of a territorial entity. But it is neither identical with such changes nor necessarily an outcome of them. A state or similar entity may experience lack of power or a gradual disintegration of its power base but, at the same time, have its factual sovereignty intact. It is, however, a successful attempt on the part of another territorial entity—for instance, a separatist movement or an ambitious regional power—to secede from or to control it that territorially reduces or totally obliterates the factual sovereignty of the first entity. Thus, a peaceful but powerless microstate may possess factual sovereignty while a much more powerful, though strongly challenged, state may lose such sovereignty. In a similar vein, a territorial entity aspiring to gain sovereignty may acquire power or gradually build up a power base, this, nevertheless, without having any implications for its factual sovereignty. It is, however, only a successful attempt on the part of this entity to actually secede from or to control another entity that effects the first entity's factual sovereignty, either by simply creating it or by actually expanding the territory under it. Thus, a poorly organized and weak separatist movement may easily establish its factual sovereignty while a powerful and strongly motivated secessionist organization may fight for decades without any significant achievement in this respect. To express the entire argument in concrete terms, what is directly pertinent to the factual sovereignty of an entity is usually events of a *decisive* nature, such as complete collapse of the state apparatus (such as Somalia after 1991), establishment of territorial control (Chechnya between 1996 and 1999), a *coup d'état* (February 1948, Prague coup in Czechoslovakia), an imposed treaty (Belgium between 1839 and 1914), an invasion (Kuwait 1990–1991), and *not* those episodes that precede or succeed such conclusive events. Naturally, a corollary of this argument is how such decisive events are to be quantified if a quantitative conception of factual sovereignty is adopted and employed in empirical research.

Fifth, at the *juridical* level, it is not possible to reconcile the notion of limited factual sovereignty with the principle of international responsibility that is enjoined by the law of nations. For instance, as regards "neutral responsibility" it has been pointed out in a classical text of international law written by Hall that

> [A]s the theory of neutrality was worked out, it came to be thought that a neutral state is not merely itself bound to refrain from helping either of

> two belligerents, but that it is also bound to take care to a reasonable extent that neither one nor the other shall be prejudiced by acts over which it is supposed to have control. States become affected by the duty of responsibility which is correlative to the fact of sovereignty. Sovereign states being in possession of the sole right to decide what acts shall or shall not be openly done within their territory, all countries are supposed to be jealous of any infringement of that right; and no stranger being able to look behind the fact of sovereignty, they are supposed to be capable of securing that it shall be respected.[65]

Moreover,

> The reasoning which applies to strangers applies also to subjects. As the presumption that a sovereign has control over avowed acts done within his dominions is still stronger in the case of subjects than of foreigners, if any acts are done by them which are in opposition to his declared policy, it is easier to believe the declaration to be false than the power to be inadequate. *Prima facie* everything which they do is permitted by him.[66]

The same logic involved in these propositions on neutrality is probably equally applicable to other principles of positive international law, such as the general principle of nonintervention. Howsoever these principles are distinguished in practice and explicated in detail, they have one certain implication for the present analysis: to the extent that their application and, hence, their existence as rules of positive international law presupposes a minimum of material conditions such as a minimal—but certain—degree of actual territorial control and political independence, they indirectly repudiate the notion of limited factual sovereignty that, per definition, contradicts qualitative features encapsulated in the expression "a minimum." To put it bluntly, if the factual sovereignty of states and similar entities were limited due to external or internal factors or both, then they could not be held accountable for breach of the rules of positive international law, in a fashion similar to that of an individual who, lacking any kind of control over his/her actions owing to mental handicap or psychological disturbances, cannot be held liable to the accusation of crime according to positive municipal law. Seen in this vein, the maxim that "[a] state . . . washes its hands of responsibility at the edge of its territorial waters"[67] would be devoid of any substantial meaning as soon as the notion of limited factual sovereignty is introduced into any legal analysis. A corollary of this situation in everyday political life would be frequent references on the part of states to their "limited" sovereignty whenever they are caught red-handed violating the

rules of international law. For instance, to the knowledge of the author, when Afghanistan and Sudan were held responsible for the activities of non-state actors taking place within their territories—that is, al-Qaida's training camps and massacres of the Janjaweed militia respectively—none of these states attempted to deny international responsibility with reference to their limited state sovereignty.

Sixth, at the *semantical* level, what is sometimes lurking behind the attribution of a limited character to factual sovereignty is nothing other than the interpretation of this concept in terms of pure *omnipotence*. Such a conceptualization is sometimes derived explicitly from the general domain of theology and constitutional theory,[68] and it is at other times specifically contrasted to "limited" sovereignty:

> The limitation of any form of sovereignty to its absolute extreme is as little justified as the attribution of a necessarily absolute character to any other notion. In fact, the very contrast of the sovereignty of God with any form of worldly sovereignty proves sufficiently the necessarily relative character of any type of sovereignty claimed by a temporal authority.[69]

However, more often than not such a view is merely connoted in passing, as when Thomas M. Franck writes that "[t]he U.N. compact . . . limits [state's] sovereignty, their right to behave as if in a state of nature"[70] or when Laski proposes impossibility on the part of the British Parliament to disenfranchise Roman Catholics or to outlaw trade unions as counterarguments against the Austinian, qualitative notion of sovereignty.[71] These views may be countered by invoking the fact that, whatever the mode of expression and whatever the precise content of the conceptualization, the notion of sovereignty—factual or otherwise—as omnipotence implies, per definition, limited sovereignty, because such omnipotence does not exist even in the world of religious revelation. As may be indicated with reference to Jewish-Christian theology, even the prototype of all types of omnipotent agents that are conceivable, God himself, was limited in his sovereignty and omnipotence, as it took him *nothing less than six* days to create the Heaven and the Earth, after which he *rested for a whole day*.[72]

The conceptualization of sovereignty at the level of states and similar entities in terms of a legal and a factual *condition* rather than *consequences that follow from such conditions* is also supported by three general arguments that apply equally to both juridical and factual state sovereignty. In the first place, a distinction between these two sets of concepts—and, of course, their referents—is necessary due to considerations of

concept-building. Broad and diffuse concepts that encompass both properties and their relationships will have limited analytical utility. Furthermore, the notion of "consequences" as such implies causal relationships, the study of which requires different types of methods. In the second place, answers to questions as to the status or possession of status is a prerequisite to the study of questions that deal with ensuing consequences. Thus, there is a logical precedence involved here that cannot be ignored. In the third place, the propositions of "limited or quantitative sovereignty" that is the result of diffuse references to such consequences is prone to rhetorical abuse in a much more extensive fashion in the contemporary era than "absolute or qualitative sovereignty," especially when citizens do not experience any decisive or dramatic events that radically change their everyday life.

Sovereignty of States and Similar Entities—An Indivisible Quality or a Divisible Property?

If the question as to the absoluteness or limitedness of state sovereignty is the most controversial aspect of the subject under investigation, it is probably the third and final dichotomous question concerning the divisibility or indivisibility of state sovereignty that is its most difficult dimension. This is due to the fact that where political authority or power is divided among different agents and in accordance with various fields of political activity, the emergent forms of organization imply three types of issues as regards divisibility of sovereignty, each with its own theoretical and empirical complexities and requiring special methodological strategies for its treatment.

The first issue with respect to divisibility of sovereignty at the level of states and similar entities is raised by *horizontal division of powers* or the doctrine of "separation of powers" formulated within constitutional theory. According to this view,

> [G]ood government is ensured if the functions of legislation, administration and adjudication in a state are not placed in the hands of one body of persons but are distributed to a greater or less degree among distinct or separate bodies of persons.[73]

In those cases where the doctrine is put into practice and moulds, at least to a certain degree, the structure of a state or a similar entity, the emergent situation constitutes the exception mentioned earlier as regards the lack of contingency between the two sets of questions concerning the

absoluteness or limitedness of state sovereignty on the one hand, and its divisibility or indivisibility, on the other. What is involved here is insertion of a new factor into the political reality that deliberately blurs the demarcation line between divisibility and limitedness for purposes of limited government:

> Joint sovereignty implies divided sovereignty, and that implies limited sovereignty. Sovereignty in a constitutional State must, perhaps, be limited in some way. Unlimited sovereignty and limited government do not go together. On the other hand, it does not seem to make any fundamental difference how precisely sovereignty is limited, whether *by dividing up* sovereign authority or by imposing restrictions on its exercise.[74]

It has to be noted immediately that these observations and prescriptions are made at the intrastate level and, as such, they remain outside of the scope of the present analysis. However, such a separation of powers has at least two implications for any examination of sovereignty at the level of states and similar entities. At the empirical level, such considerations, in different ways, raise the question if state sovereignty is existent or absent. Insofar as juridical state sovereignty is concerned—and to the extent that those theories that interpret this concept in terms of constitutional independence take account of constitutional practices or attempt to identify the physical agent that is endowed with such constitutional independence in a particular case—they may, after investigation, come to the conclusion that such constitutional independence and, *ex hypothesi*, juridical state sovereignty is absent as a result of the mutual dependence implied in the principle and practice of separation of powers. As regards factual state sovereignty, the horizontal division of powers invokes the classical question as to the effectiveness of central governments in federal systems and, consequently, constitutes a factor that may have an indirect impact on the factual sovereignty of such systems by contributing to the eradication of its internal or external aspects. At the theoretical level, on the other hand, separation of powers is but another expression of what in this study will be called "the problem of collective agent"—or, by paraphrasing an expression used by Austin, "the problem of sovereign number." Since this issue will be studied in detail in chapter 8 of this book, it should be sufficient to point out here that this problem may arise when the sovereign organ within a territorial entity encompasses more than one individual. In such a situation, an analysis of factual state sovereignty would require that power relations within the

collective concerned is taken into account, since these power relations, together with issues related to collective identity, may render the delineation of the collective agent as such difficult.

The second issue related to divisibility of sovereignty concerns the rule and the fact of *vertical division of powers*—or simply *division of powers*. What is involved here is the idea that—to express it concisely, if somewhat crudely—an agent is *not* sovereign over a certain piece of territory but that different agents are sovereign over different sectors of political activity. It may be recognized that this notion is historically the *antithesis* of sovereignty, since such an organization of political authority and power is the distinctive feature of what is alternatively referred to in the literature as "heteronomy"[75] and " 'heteronomous' institutional framework,"[76] or an impending "new mediaevalism."[77] Notwithstanding the fact that in general terms such a conceptualization constitutes the antipodes of sovereignty, it nevertheless also raises in the contemporary era—and at a completely empirical level—the question of the existence or absence—or the locus—of sovereignty in two distinct ways. First, formal supranational integration processes or membership in international organizations with extensive powers may create structures of political organization that resemble the medieval fragmentation of the locus of power and authority. As a *general* proposition about the state of affairs in the international sphere or as a prescription about how this sphere ought to be organized, this view was criticized more than half a century ago, and there does not seem to be any reason to question today the validity of this criticism:

> [T]he conception of a divisible sovereignty is contrary to logic and politically unfeasible, . . . it is, however, a significant symptom of the discrepancy between the actual and pretended relations which exist between international law and international politics in the modern state system.[78]

But in the context of specific empirical cases where formal but deep supranational integration is a matter of fact within a *delimited* piece of territory, as it is the case within the European Union, such patterns of organization invoke the question as to whether the powers transferred from integrating states to the supranational organization are merely *delegated* or totally *alienated*. Since the solution to any conflict between different legal systems is a political one, this question brings to the fore the issue of the locus of factual state sovereignty. Second, in a manner that is but the mirror image of the first situation, the internal structure of federal systems, such as that of the United States, where the so-called

federal principle[79] is *the* organizational principle, also manifests similar patterns of vertical fragmentation of state power and authority, with similar empirical questions about the locus of sovereignty as a result. As shall be shown in chapter 8 of this book, in the context of both types of circumstances, the empirical answer to the question of the locus of factual state sovereignty can only be provided *just* after—but *not a long period after*—dramatic events such as a civil war, a successful declaration of independence, or a *coup d'état*. Most of the time, the question is simply unanswerable due to, what in this study will be called, "the problem of the counterfactual"[80]—a problem that creates a vast space for speculation but leaves no room for hard empirical evidence.

The third and final issue related to divisibility of sovereignty is what may be called the *spatial division of power or authority*—an issue that captures the potentiality of a discrepancy between the supremacy and independence dimensions of the phenomenon. In general terms, sovereignty is invariably thought to have both an internal and an external aspect. The former means that "the state, or the prince, is the supreme power over subjects in a particular territory"[81] or that "states assert . . . supremacy over all authorities within [a delimited segment of] territory and population."[82] The latter, on the other hand, refers to a situation where a "state enjoys freedom from interference by other states"[83] or where it asserts "independence of outside authorities."[84] Seen from such a vantage point, divisibility of sovereignty refers to the possibility that a state possesses one aspect—or dimension—of sovereignty while lacking the other. Since the issue under consideration is an empirical one, it collapses into the question of existence or absence of these spatial forms of sovereignty in a given case.

Insofar as juridical state sovereignty is concerned, there does not seem to be any controversy as regards the unitary nature of internal and external state sovereignty, as possession of one form is considered to imply, by definition, possession of the other. For instance, an international lawyer holds that the concept of sovereignty encompasses "three important rights of a state under international law: the right of equality, the right of independence and the right of self-determination." Of these, there is "a certain causality" between "the right of equality" and "the right of independence": the former is associated with a state's external relations while the latter concerns both a state's external relations and its power within its territory. The right of "self-determination," in turn, "appears to be part of the rule of independence concerned mainly with the powers within the territory."[85] In this context, whether juridical sovereignty of states and similar entities is derived from international law or

constitutional law does not seem to have any implications. For instance, James, who defines sovereign statehood as "constitutional independence" and considers constitutional law as the sort of law pertinent to the sovereignty of an entity,[86] asserts that sovereignty is "a unitary condition" in the sense that "[a] sovereign state, . . . has two aspects, each of them reflecting, in different ways, central elements of a unitary sovereign statehood."[87] In other words, "[t]he internal and external aspects of sovereignty are bound up with each other. both are a consequence of its condition as a constitutionally independent, or sovereign, entity."[88]

As regards factual state sovereignty, on the other hand, the empirical questions involved appear to be rather complicated. It is true that there seem to be some trivial linkages between factual internal sovereignty and factual external state sovereignty, to the extent that acquisition or loss of one form of sovereignty usually leads to the acquisition or loss of the other. However, the possession of one or the other or both is the outcome of power relations, and at any time it is possible to identify territorial entities that lack either form. Such hypothetical cases may be schematically illustrated as follows:

Factual external sovereignty	Factual internal sovereignty: Yes	Factual internal sovereignty: No
Yes	Norway	Bosnia-Herzogovina 1991–1995
No	Belgium 1839–1914	Somalia Afghanistan 1979–1991

Some of these cases will be analyzed in detail in the following chapters. Therefore, it should be sufficient to refer to them briefly here. Norway is probably a rather clear example of a state that possesses both internal and external factual state sovereignty due to its unitary character and its rejection of European Union membership. Somalia since 1991 and Afghanistan between 1979 and 1991 represent the opposite condition. None of these states had control over their territories and,

hence, they lacked factual internal sovereignty. Nor did they possess factual external sovereignty; in the Somali case because of the absence of a government that could act externally and in the Afghan case due the existence of a puppet regime installed and controlled by the Soviet Union. During the period between 1991 and 1995, Bosnia-Herzegovina was a state that for all practical purposes lacked factual internal state sovereignty as a result of belligerent occupation on the part of Serbian and Croatian paramilitary troops and regular army units. However, it did have factual external state sovereignty and was able to act in the international arena with the aim of mobilizing support. The case of Belgium 1839–1914, on the other hand, represents the opposite situation. Because of imposed neutralization, the Belgian state lacked factual external sovereignty while it exercised supreme authority within its territory and, hence, possessed factual internal sovereignty.

If the reasoning of this chapter is convincing, then the emerging evidence supports two types of approaches—one broad and the other narrow—to the concept of state sovereignty in the context of empirical investigations. At a maximum, it may be argued that there are cogent arguments that support the view that the operational content of the concept should be formed, and the domain of its application should be restricted, along the following lines.

(i) Any analysis of sovereignty at the state level—to be distinguished from the intrastate and the interstate levels—necessitates employment of a broad concept that encapsulates all types of agents that are relevant to the analysis—hence, the terms *states and similar entities* or *territorial entities*.
(ii) The concept of sovereignty at the level of states and similar entities refers to two distinct but interrelated phenomena: one of these is related to juridical systems and the other to material conditions—hence, the employment of the epithets *juridical* and *factual* in connection with state sovereignty.
(iii) Both juridical and factual sovereignty refer to qualitative properties that are absolute in the specific sense that a state or a similar entity either possesses one or both of them or it merely lacks one or both of them rather than to the consequences following from possession of such properties.
(iv) Theoretical questions as to the divisibility of state sovereignty collapse into complicated empirical questions as to the existence or absence of such sovereignty or different spatial dimensions of it.

To the extent that the relationship of state sovereignty to territoriality, independence, authority, and power is not contested, these propositions entail, in accordance with the maximalist approach, the following definitions of the concepts involved:

Juridical state sovereignty refers to a condition in which an agent—a state or a similar entity—according to law is supreme within a certain territory and independent of agents outside of it.

Factual state sovereignty, in turn, accounts for a condition in which an agent—a state or a similar entity—is, as a matter of material circumstances, actually supreme within a certain territory and independent of agents outside of it.

At a minimum, on the other hand, the evidence produced in this chapter indicates the need of methodological awareness on the part of scholars engaged in empirical research and employing the concept of state sovereignty about the problematic consequences—such as confusing synonyms, rhetorical connotations, logical contradiction, analytical imprecision, and disciplinary incompatibility—that may follow from attributing each or several of the above-mentioned properties to this concept.

Against the background of these considerations, it is now possible to shift the focus of attention from what state sovereignty *is* to the corollary of this question: what kinds of entities *are endowed* with state sovereignty and what *type of problems* emerge when identifying such entities. The following four chapters are an attempt to address these issues.

CHAPTER 5

Juridical State Sovereignty: A Futile Search for Regular or Regulated State Behavior

In the sphere of international relations, some political entities are endowed with specific prerogatives and responsibilities that are connected to juridical sovereignty,[1] while such a position is denied to others, sometimes even after decades of intense, more or less successful struggles. What is the immediate factor that distinguishes these two groups of entities, that draws, as a matter of actual legal fact rather than of pure normative right, the demarcation line between the privileged and the debarred, the member and the outsider, the enfranchised and the disentitled? In the writings of international lawyers and political scientists it is possible to identify three types of answers to this question: two of these refer to endogenous features, to *constitutional independence* and *empirical attributes of statehood*, respectively, while the third points to an exogenous factor, namely, *recognition as a state by other states*, as the determinant of sovereign legal status. In what follows, these explanations will be explored in some detail and with reference to classic monographs, contemporary studies, and modern textbooks. As it shall be seen in due course, apart from a sheer correlation between recognition as a state and sovereign legal status, none of these explanations provide a satisfactory answer to the question under investigation. In the sphere of international relations, it is not possible to identify any regular or regulated state practice that would warrant the claim that any of these factors causes acquisition of juridical state sovereignty.

Juridical State Sovereignty and Constitutional Independence

The first of the endogenous explanations has been suggested by a political scientist, Alan James, who asserts, in what is probably the most comprehensive study of state sovereignty up to now, that enjoyment of sovereign rights is the consequence of a specific internal legal quality that some territorial entities actually possess. Thus, after asking the question "on what criterion . . . sovereign rights" are "attributed to territorial entities," James asserts:

> The answer, practice shows, is that sovereign rights are enjoyed by entities which are in a certain internal condition, the condition of having constitutions which are independent of other constitutions. In other words, sovereign rights are ascribed to sovereign entities—those which are sovereign in the sense of being constitutionally independent. It is the position of a state in terms of its own constitutional law, therefore, which determines whether or not it is to be given sovereign rights, for this is the determinant of sovereignty in its most basic sense.[2]

For two reasons, one conceptual and the other empirical, these statements about the sources of sovereign rights are unconvincing. In the first place, James adopts a formalistic view of the concept of "constitutional independence" in terms of which he defines another concept, that of "sovereignty." Elsewhere in his study he argues that the "test of constitutional independence is easy to apply in virtually all circumstances" and that "[a]t any one time it is generally possible to look around the world and identify without difficulty all the territorial entities which are in this condition." What is needed is an examination of the constitution of the state in question or the constitution of the state to which the first state is suspected of being constitutionally subordinated to. And in any case, as the argument goes, the state's "constitutional practices together with the attitude of other states towards it will make the matter entirely plain." Nowhere in his analysis does James probe into constitutional law or constitutional theory in order to explicate what precisely he means by the expression "constitutional practice."[3] On one level, such an approach implies answering, by means of a postulate, the question that has been the main subject of a long research tradition, especially during the first half of the twentieth century, that is, what has variously been labeled the "Austinian school"[4] or the "legal theory of sovereignty."[5] But, on another level, and more seriously, such an understanding of constitutional independence, which incorporates an ambiguous notion of "constitutional

practice," introduces a tension—if not outright inconsistency—into the empirical parts of James's analysis. Discussing the sovereignty of Australia and Canada up until 1982 he writes:

> Strictly speaking, . . . it might appear that until 1982 the constitution of Canada was not fully independent and that, accordingly, Canada was lacking in sovereignty, with Australia still in that condition. But this would be an unreal conclusion. The limitations on the power of these two states to amend their constitutions were and are purely nominal.[6]

What is involved here is a certain, but implicit, notion of "constitutional practice," a notion that disappears from the analysis when James discusses the sovereignty of "puppet states":

> [T]he fact of the matter is that, by definition, a puppet state has *not* been formally incorporated into another's territory. Accordingly, as well as demarcated territory, subjects and a government, it will have an *independent constitution*. It is therefore far more satisfactory to classify puppet states as sovereign.[7]

This mode of analysis entails two interrelated problems: if a state or similar entity is regarded as *sovereign* because its constitutional *dependence is nominal*, then it follows that a state or similar entity should be considered *non-sovereign* if its constitutional *independence is nominal*; and insofar as the sovereignty of a territorial entity is contingent on whether its constitutional independence or dependence is nominal or not, it is not possible to employ "constitutional independence" as *the* criterion—at least not as the *only* criterion—for sovereignty and, by way of implication, for possession of sovereign rights.[8]

In the second place, the thesis that there is a certain amount of consistency in the practice of states as regards sovereignty and attribution of sovereign rights and that they regard constitutionally independent entities as sovereign and, hence, eligible to participate in interstate relations[9] is *not* empirically tenable. This is discernable even in James's own analysis. Some of those territorial entities that are, in accordance with the criterion of "constitutional independence," regarded as sovereign, such as Rhodesia between 1965 and 1979 and Homelands in South Africa,[10] have not been considered as such by the society of states, with the consequence that these entities have not enjoyed sovereign rights in their relations with other states. At the same time, the opposite has been true for some territorial entities, such as eastern European countries and Mongolia during the cold war period, whose constitutional independence

was in serious doubt. As has been observed earlier, James explains away conditions similar to the latter situation by resorting to a formalistic conception of "constitutional independence," a conception that generally disregards but sometimes selectively resorts to constitutional practice. As regards the former situation, James claims that sovereignty is a necessary but not sufficient condition for membership in the international community without any discussion of what this sufficient condition might be.[11] However, to the extent that endogenous circumstances are conceived of having leverage on the process of acquiring membership, there seems to be substantial empirical evidence to suggest that factors other than constitutional independence, most prominent among them the principle of *uti possidetis juris*[12] and even the consent of the mother state from which secession is attempted,[13] determine whether or not a territorial entity is granted sovereign rights. In the two great waves of state-building that have swept over the world since the Second World War, those territorial entities whose boundaries have coincided with those of colonies during the first wave[14] and those of member states of certain federal states during the second[15] have been more or less automatically admitted to the international community. This probably explains why the constitutionally independent entities of, among others, Biafra and Katanga during the postwar period and those of the Republic of Dnjestr, Abkhazia and the "Republika Srpska" during the post–cold war era were denied membership in the international community of states. Moreover, during the same period, consent of the mother state from which secession is attempted has apparently been another powerful factor determining admittance to the international community.[16] This is clearly the reason why admission of the constitutionally independent Eritrea to the international community was deferred for decades and may even account for the extensive delay that occurred in the emancipation of Algeria and, more conspicuously, of the Portuguese colonies of Angola and Mozambique.

Juridical State Sovereignty and Legal Criteria of Statehood

The second endogenous explanation, which has been provided exclusively by international lawyers, maintains implicitly that sovereign rights and obligations are possessed by those territorial entities that manifest empirical attributes of statehood. The circuitous nature of this proposition is due to the fact that these two sets of properties are related to a third—legal personality of statehood—that constitutes the intermediate link tying them together.

In contemporary literature, it is possible, for instance, to infer such a notion of juridical sovereignty from the analysis that Brownlie presents in his comprehensive study of public international law. First, Brownlie establishes from the outset a certain relationship between possession of rights and obligations, on the one hand, and possession of legal personality, on the other.[17] Second, against this background, possession of those *specific* rights and obligations that are generally associated with sovereignty is interlinked in the analysis with possession of a *specific* legal personality, that is, the legal personality of statehood. This proposition is related to two separate statements. In the first place, it is maintained that there is "a degree of uniformity of usage" among international lawyers as regards the concept of sovereignty and that the term as such "is legal shorthand for legal personality of a certain kind, that of statehood."[18] In the second place, "sovereignty and equality of states" are conceived of as generating certain prerogatives and responsibilities, such as jurisdiction, nonintervention, and obligations arising from customary law and treaties that are normally considered by international lawyers as principal elements of sovereign rights and obligations.[19]

Thus, taken together, these statements amount to an assumption of a relationship between legal personality of statehood, on the one hand, and possession of sovereign rights and obligations, on the other, a relationship where the latter is presumed to follow from the former. Seen from the vantage point of the present analysis, such a notion at once raises the question of what sorts of entities actually possess the legal personality of statehood and how these legal persons are to be distinguished from others. In this context, Brownlie claims that "[t]he criteria of statehood are laid down by the law" and that as such they do not constitute any source of controversy, for in "practice disputes concern facts rather than the applicable legal criteria."[20] It is against the backdrop of these considerations that Brownlie identifies the "legal criteria of statehood," which he traces back to Article 1 of the 1933 Montevideo Convention on Rights and Duties of States:

> The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states.[21]

Furthermore, Brownlie points out that the third and the fourth criteria, "government" and "capacity to enter into relations with other states," are generally interpreted as "effective government" and "independence," respectively.[22] In sum, what is involved here is an assertion of a relationship

between possession of sovereign rights and empirical attributes of statehood, which is due to the fact that the former is interlinked with the legal personality of statehood, which, in turn, is defined in terms of the latter—that is, empirical attributes.

The idea of such an indirect relationship between possession of observable properties of statehood and sovereign rights and obligations is also evident in the analysis that an earlier lawyer, William E. Hall, frames in his classical study on international law. To the extent that this relationship is not established in a more direct manner, even here possession of a specific subject status under law constitutes the intermediate link between conditions of empirical facts and acquisition of legal rights. In an often quoted passage, Hall maintains:

> States being the persons governed by international law, communities are subjected to law, . . . from the moment, and from the moment only, at which they acquire the marks of a state.[23]

From here, two different steps taken in two different directions give rise to a certain linkage in Hall's treatise between possession of empirical indicators of statehood and juridical sovereignty. On the one hand, writing long before the signing of the Montevideo Convention, Hall identifies what he labels "marks of statehood" in a similar, though slightly less precise, mode as the convention:

> The marks of an independent state are, that the community constituting it is permanently established for a political end, that it possess a defined territory, and that it is independent of external control.[24]

On the other hand, "rights of sovereignty" are related to one aspect of the state so defined, namely, to its independence. In a broad sense, "right of independence" includes all those rights that are related to the maintenance and development of the existence of the state as such. But in a narrow sense, which denotes enjoyment of a certain legal status, it comprises only those rights that a state possesses ". . . in a more limited aspect as a being exercising its will with direct reference either to other states or to persons and things within the sphere of its legitimate control." It is this "second branch" that comprises ". . . a group of rights which go by the name of rights of sovereignty."[25] From here it is but a short step to specification of privileges that are usually regarded as the principal elements of sovereign rights, such as equality with other states, principles of nonintervention and jurisdiction. Thus, the sum of these

statements logically amounts to the proposition that certain empirical facts give rise to a specific legal status, one consequence of which is enjoyment of "rights of sovereignty."

A certain connection between empirical attributes of statehood and possession of sovereign rights is discernable even in the writings of an international lawyer who otherwise is skeptical of the usage of the word "sovereignty." Thus, James L. Brierly, in his introduction to international law, suggests that the word "sovereignty" in a specific sense refers to "the nature of rights over territory" and that ". . . in the absence of any better word it is a convenient way of contrasting the fullest rights over territory known to the law with the minor territorial rights. . . ."[26] Brierly never specifically probes the question of whether states hold such "fullest rights" as a result of their possession of a certain subject status under law. But he does assert that the idea of a world divided into states, each exercising jurisdiction over a definite territory to the exclusion of others—traditionally described as sovereignty of a state over that territory—is an underlying assumption of international law and that international law basically—though not exclusively—monitors the relations between independent states.[27] On the other hand, if the "fullest rights"—or "sovereignty"—are possessed by states, then the states are defined in terms of empirical qualities. In the context of a discussion of the coming into existence of new states, Brierly specifies "the essential characteristics of a state"—in a manner similar to that of Hall, and with a phraseology heralding the wording of the Montevideo Convention—as ". . . an organized government, a defined territory, and such a degree of independence of control by any other state as to be capable of conducting its own international relations."[28]

It may well be the case that the notion of sovereign legal status as a corollary of empirical attributes of statehood has some normative or legal function within the framework of international law. However, it can hardly be accepted as an accurate description of the actual state of affairs. At a theoretical level, it is possible to raise two counterarguments that even have some—though limited—empirical value. In the first place, it is conceivable that a territorial entity may possess such observable traits of statehood but nonetheless unequivocally refuse to regard itself as an independent state with specific legal personality[29] or at least reject being accorded—and not being accorded by others states—sovereign rights *within* the physical limits set by such empirical properties. The phenomenon of rival governments, where the termination of rivalry does not seem to be imminent, is a case in point. For instance, at the present time the former governments of China[30] and Afghanistan

have displayed empirical attributes of statehood in those parts of the territories of these states that are under their actual control for three decades and for three years, respectively. At the same time, they are neither aspiring to separate statehood nor officially showing any intention of seceding from those states that they are unable to totally govern. In the second place, it is also possible to envisage a situation where an agent may lack one or all of the observable traits of statehood and may not, at least at that moment, have the intention of becoming a state but nevertheless be compelled into such statehood and sovereign legal status by another territorial entity or merely by the sheer force of circumstances. This argument is mainly theoretical, but since it is possible to identify at least one case and one attempt in the actual world, it is by no means merely speculative. The case is that of Singapore, which was expelled from the Federation of Malaysia in August 1965 and forced into independence despite the reluctance of its leaders.[31] The attempt is a proposal put forward in March 1993 by the left-wing liberal Meretz Party in Israel that called for an immediate and unilateral Israeli withdrawal from the unruly Gaza Strip without waiting for a peace settlement. Besides being the official policy of the Meretz Party, which was then participating in the coalition government, at least one minister from the ruling Labour Party supported the proposal, which was nevertheless—and somewhat perplexingly—rejected by a preeminent PLO representative.[32] The pivotal point here is that if the Meretz Party's proposal had materialized despite Palestinian opposition, a situation resembling that of Singapore would probably have come into existence in the Middle East.

Whatever cogency these arguments may have, the most powerful evidence that may be mustered against the idea of juridical sovereignty as an outcome of manifest traits of statehood is exclusively of an empirical nature. It may well be the case that such an understanding of sovereign legal status would have been an accurate description of the state of affairs that characterized the pre-Second World War period, during which the Montevideo Convention was signed and Hall and Brierly published their time-honored monographs for the first time. Such a conclusion would be due to the fact that during this era most—if not all—of the existing states in the world would probably have fulfilled some empirical criteria of statehood. But, applied to postwar circumstances, the proposition is at best anachronistic, for it takes insufficient account of the transformation of the international scene that has resulted from the processes of decolonization. As has been pointed out by Robert H. Jackson, in "classical international law government effectiveness was a central ground of

sovereign statehood" and states "historically were empirical realities before they were legal personalities." However, today

> [R]ulers can acquire independence solely in virtue of being successors of colonial governments: the negative sovereignty of many more or less nominal Third World states. The states of sub-Saharan Africa did not as a rule become free of the European empires and later claim independence. On the contrary, they were granted independence by those empires regardless of their empirical conditions and they exist today more by their universal right of independence than by their demonstrable reality."[33]

Moreover, in a previous study on African states that departs from Brownlie's "legal criteria of statehood," Jackson, together with Carl G. Rosberg, points out that with ". . . some notable exceptions," these states are "empirically weak or underdeveloped."[34] However, this situation notwithstanding, there does not seem to exist any valid reason to assume that they are devoid of sovereign legal status and of the ensuing rights and obligations.

Furthermore, if there are many juridical sovereigns that do not have the suggested empirical attributes, the opposite is also true: many are those territorial entities that acquire qualities of statehood after years of warfare, and sometimes at a cost of intolerable human devastation, while possession of sovereign rights remains an unattainable status for them. The constitutionally independent entities of Biafra, Katanga, the Republic of Dnjestr, Abkhazia and "Republika Srpska," which have been referred to in the previous section, are also illustrative in this connection since many—if not all—of them also manifest other empirical attributes of statehood besides the property of independence.

However, nowhere is the implausibility of the presumed connection between observable qualifications of statehood and possession of sovereign rights more obvious than in the contemporary cases of Bosnia-Herzegovina and Chechnya 1991–1999, as a brief comparison between them will clearly reveal. In four respects there were evident similarities between these entities: both Bosnia-Herzegovina and Chechnya—or, more accurately, Chechen-Ingushetia at that time—were clearly delimited administrative units within larger, federal states;[35] they declared independence from their mother states at the beginning of the 1990s;[36] their efforts at secession encountered the covert and overt resistance of the mother states;[37] and nothing indicated that they were not independent in the sense of being puppets in the hands of foreign states. These similarities in initial conditions notwithstanding, the independence struggles of these entities followed completely different courses.

After the declaration of independence, Bosnia-Herzegovina was unable to procure empirical properties of statehood. First of all, it did not have an effective government: part of its territory was under the control of Serbian and Croatian paramilitary groups; its capital city Sarajevo was under a ferocious siege; and many detachments of its army were trapped in militarily indefensible enclaves in the eastern and western parts of the country.[38] Neither did it ever have a defined territory, since the demarcation of its internal borders and the status of its external frontiers were disputed and subject to negotiations during the entire span of the war.[39] Moreover, the final settlement of the conflict not only entailed a de facto partition of the territory of Bosnia-Herzegovina into different autonomous subunits but also left the nature of the relations between these subunits and the neighboring foreign states of Croatia and Yugoslavia more or less undefined.[40] And last, the nascent state of Bosnia-Herzegovina did not have a permanent population. This was partly due to the fact that it lacked a defined territory, though primarily a consequence of the dispersion of its population. Exposed to ethnic cleansing, most of the Bosnians who survived the massacres fled from the territories of Bosnia-Herzegovina to foreign, mostly European, countries.[41]

If Bosnia-Herzegovina lacked empirical attributes of statehood, the opposite has been true for Chechnya during the period that lapsed between the declaration of independence in 1991 and the beginning of the second Chechen war in 1999. Notwithstanding the weakness of the existing state apparatus with the ensuing deterioration of law and order,[42] the government of Chechnya was effective enough to expel, after fierce fighting, the armed forces of the Russian Federation during the later stages of the first Chechen war, 1994–1996.[43] Chechnya can also be said to have had a defined territory after November 11, 1992, whence its provisional border with Ingushetia was demarcated in the aftermath of the intervention of the Russian federal troops in the Ossetian-Ingush conflict, an intervention that practically terminated the short-lived independence of Ingushetia.[44] Chechnya also had a permanent population between 1991 and 1999. It is true that almost half of its population was displaced during the first war but, in a manner that contrasted with the situation in Bosnia-Herzegovina, only a minority of the Chechen refugees left the territory of Chechnya.[45]

Now, according to the proposition that derives enjoyment of sovereign rights from possession of empirical attributes of statehood, the status of juridical sovereignty would have been accorded to Chechnya while being denied to Bosnia-Herzegovina. But, as is well known, the

opposite has been the case: while Bosnia-Herzegovina has been granted sovereign legal status, the issue of Chechnya, during the period under consideration, has generally been regarded as an internal affair of the Russian Federation.

Juridical State Sovereignty and Recognition as a State

The only exogenous explanation to be found in the available literature holds that sovereign rights are possessed by those territorial entities that have a certain external quality, namely, recognition as a state by the international community of states. In general terms,[46] it is possible to argue that this is the notion of juridical sovereignty that permeates the discipline of political science, and such an understanding is discernable in several definitions given to the concept of sovereignty within this discipline. Janice E. Thomson, for instance, delineates "a working definition of sovereignty" that, she claims, "follows on the classical international law definition, with the addition of the recognition criterion":

> Sovereignty is the recognition by internal and external actors that the state has the exclusive authority to intervene coercively in activities within its territory.[47]

To give another example, Richard K. Ashley maintains that

> [T]he modern concept of sovereignty designates the collectively recognized competence of entities subject to international law and superior to municipal law. It thus involves not only the possession of self and the exclusion of others but also the limitation of self in the respect of others, for its authority presupposes the recognition of others who, per force of their recognition, agree to be so excluded.[48]

However, more often, this conceptualization is adopted in passing. Writing about "juridical statehood" in sub-Saharan Africa, Robert H. Jackson maintains that establishing de facto control over pieces of territory is not enough for acquisition of sovereignty under present international law, since the entity in question first has to be recognized.[49] In a somewhat more express manner, a similar idea of juridical sovereignty is also suggested by—to give a final example—Murray Forsyth:

> After recognition a state possesses sovereignty on the one hand as the right to rule, command, and possess within a given territorial boundary, and on

> the other as the right to be respected as independent in its dealings across and beyond that boundary.[50]

Although all these statements are essentially political science statements, their underlying assumptions can be traced back to the discipline of international law, or, to put it more precisely, to the "constitutivist" doctrine of recognition that has been formulated within this discipline. Once again, and in a manner similar to that of the preceding explanation, the connection between possession of sovereign rights and the factor that engenders this condition, in this case recognition as a state, is implied rather than expressed. According to Lassa Oppenheim, to quote a classical opinion on the subject, sovereignty, defined as supreme authority, is one of the conditions of statehood and as such it has three aspects: independence, territorial sovereignty, and personal supremacy. Although Oppenheim explicitly refuses to view these attributes as rights, he nonetheless describes them, in a fashion that makes them undistinguishable from rights, as ". . . recognized and therefore protected qualities of States as International Persons."[51] Disregarding the terminological confusion involved here, what is important for the present analysis is the role assigned to recognition in relation to rights—or, for that matter, "qualities"—of a state that are related to its sovereignty. Elsewhere in Oppenheim's treatise this specific constitutive function of recognition is formulated emphatically:

> Through recognition only and exclusively a State becomes an International Person and subject of International Law.[52]

In a monograph from a later date that adopts an identical point of view as regards the constitutive character of the act of recognition, Georg Schwarzenberger defines the concept of "*legal* sovereignty" as "equality in, and before international law" and he describes its derivative, "the principle of legal sovereignty," as an abstraction from a set of rules that regulates an array of basic rights and obligations. In a more general sense, Schwarzenberger views the rule of sovereignty as one of the fundamental principles of international law. If juridical sovereignty is in this way related to rights and obligations under international law, the field of application of that law—and, hence, accession to these rights and obligations—is determined by the act of recognition. This is due to the fact that Schwarzenberger regards recognition as the standard form of according international personality,[53] or, to express it differently, as the common procedure by means of which inclusion of new entities into the

domain of international law is accomplished. In this context, Schwarzenberger chooses formulations that come very close to the descriptive approach adopted by students of political science:

> The growth of international law is best understood as an expanding process from a nucleus of entities which have accepted one another's negative sovereignty and, on a basis of consent, are prepared to maintain and possibly extend the scope of their legal relations. Like most clubs, the society of sovereign States is based on the principle of co-option. In exercising this prerogative, the existing subjects of international law employ the device of Recognition.[54]

A certain relationship between sovereign legal status and recognition as a state is also evident in the writings of a third international lawyer, who otherwise has certain reservations about the concept of sovereignty. For Hans Kelsen, sovereignty is "an essential quality of the state . . . a condition under which a community is a state and has the rights of a state under international law." Moreover, "sovereignty of the state" is compatible with international law only if "sovereignty" means "that a state in the sense of international law is legally subjected only to international law . . . and not to the national law of another state."[55] Now, if sovereignty is a legal condition of statehood in the sense of being subjected to international law and possessing rights of a state under that law, it is nothing other than the act of recognition that brings about the existence of this legal condition. Thus, in an elaborate explication of the constitutivist view, Kelsen argues:

> As soon as a state, through its government, has certified that a community is a state in the sense of international law, that is, as soon as a state has recognized the community as a state, the recognizing state has toward the recognized community all the obligations and all the rights that are stipulated by general international law, and vice versa.[56]

There are two strong arguments in favor of a conceptualization of sovereign rights as an effect of being recognized as a state. In the first place, this notion is impervious to empirical counterarguments of the type that have been raised against the two previous conceptions of juridical sovereignty. It is probably not an exaggeration to assert that, since the advent of the modern era, any entity that has, in different contexts, asserted its formal sovereignty by protesting against infringements on its rights—and that has been protested against for not fulfilling its international obligations—has also been an entity that has been recognized as

a state by other states. In other words, those territorial entities that assert formal jurisdiction over a well-defined piece of territory, that denounce intervention into their internal affairs, that withhold consent as a means of retaining freedom of action, that resort to violence with reference to the right of self-defense and that are required to assume their responsibilities and fulfill their commitments—in short, those territorial entities that are in possession of sovereign prerogatives and duties—are also the same entities that are recognized as states by the international community of sovereign states. It is true that this notion as a general description of legal facts—and like any descriptive account—is prone to present difficulties as regards the assessment of each particular case and it is, moreover, likely to encounter a number of anomalies that it simply cannot explain, but these complexities do not effect the gist of the proposition.

In the second place, it is difficult to maintain that recognition is devoid of constitutive effects if it is precisely that type of action that is withheld by states with the expressed purpose of preventing such effects from coming into existence. In other words, the assertion that recognition has the effect of constituting rights—sovereign or otherwise—is inherent in the proposition that the collective act of nonrecognition has the effect of preventing such rights from being acquired. Such prevention is exactly what happens when states, acting in concert, follow a policy of nonrecognition of an international delict in order not to validate this otherwise invalid act, or in the words of an international lawyer, in order to thwart ". . . any law-creating effect of prescription."[57] Such a policy of nonrecognition may be voluntarily assumed by a state by means of a declaration of policy or be imposed on it through a decision of the central organ of a universal international organization, of which the state in question is a member. Moreover, the breach of law for which recognition is denied may vary from attempts at establishing puppet states or illegal regimes in the form of newly created states to military occupations followed by the annexation of the territory of the previously recognized states—thus, they concern acts that are closely related to assertion of sovereign rights in relation to a certain piece of territory.

Notwithstanding such cogent arguments that can be derived from state practice, adherence to the notion of possession of sovereign rights as an outcome of recognition as a state is not without difficulties. Two kinds of issues are involved here. The first problem, seen from the vantage point of descriptive political science, lies in those methodological difficulties that may be encountered in determining whether or not recognition as a state, and hence possession of sovereign rights, is existent in specific empirical cases. The issues involved here have to be

distinguished from those related to statements, in each particular case, of legal opinion on the part of international lawyers, to the extent that they have to do with identification of correlations between problematic aspects of recognition and possession of sovereign rights, respectively. This issue will be addressed in chapter 6. The second problem, seen from the perspective of international law, is the doctrinal dispute that surrounds the question of the legal effects of recognition. This issue will be addressed in the next section.

Recognition as a State and the Doctrinal Issue

Since its earliest formulations, and in a manner that has prompted a prominent jurist to label it "the great debate,"[58] the constitutive theory of recognition has been challenged at a doctrinal level by what has been called the "declaratory" view of this act. According to the proponents of this latter theory,

> [T]he legal effects of recognition are limited, since recognition is a mere declaration or acknowledgement of an existing state of law and fact, legal personality having been conferred previously by operation of law.[59]

Or to quote another opinion,

> [W]henever a State in fact exists, it is at once subject to international law, independently of the wills or actions of other States. The act of recognition declares the existence of that fact and does not constitute the legal personality of the State.[60]

Seen from the vantage point of empirical political science, the controversy thus engendered[61] has the particular merit of uncovering some weaknesses to be found in the reasoning of each of these schools of legal thought, which, taken together, amounts to an important flaw in the overall structure of positive international law.

To start with the constitutive doctrine on recognition, despite the general strength of its basic propositions, this view has been unable to provide satisfactory answers to two crucial problems. The first of these is the compelling issue of how arbitrariness in the procedures of determining the subjects of international law is to be avoided if such a fundamental function is left to the often capricious will of other subjects of the international legal system. In this context, inability to lay down a general legal principle that would regulate this aspect of positive

international law inevitably creates a precarious situation that is detrimental to, if not simply the antithesis of, *any* idea of a legal system. It is probably this problem that is the cause of some of the more powerful attacks launched by declaratory writers. According to Chen, the "constitutive theory . . . indulges in the illusion that the rights of a Power, as long as it is not recognised, may be infringed with impunity" and thus it "is highly detrimental to international harmony and would defeat the purpose of international law."[62] Brownlie, in turn, holds the view that "in its extreme form" the constitutive view maintains that "the very personality of a state depends on the political decision of other states." He argues that it is not possible "as a matter of principle" to accept such a consequence for "it is clearly established that states cannot by their independent judgment establish any competence of other states. . . ."[63]

However, proponents of the constitutive view have grappled with this issue. One way of solving the problem—indeed the only way proposed by them—is to stipulate with varying degrees of emphasis a *duty of recognition* in those cases where the entity claiming recognition fulfills certain legal criteria.[64] However, there are two implications that follow from such a proposition. On the one hand, as was asserted almost half a century ago—and there does not seem to be any valid reason to question the validity of this assertion in the contemporary era—duty of recognition does not have any discernable impact on the practice of states.[65] On the other hand, if these statements have the merit of solving on a theoretical level the problem of haphazardness as to the subject status under international law, they have nonetheless, as the lawyers of the declaratory school were quick to point out, the unwelcome effect of introducing logical inconsistency into the general argument of the constitutive theory. If recognition is constitutive of legal personality and thus is the origin of rights under international law, and if an entity does not have any such personality prior to such recognition, then it is a contradiction to assert that there is a duty of recognition since such a duty would imply the existence of a right (i.e., the *right to* recognition) and thereby of legal personality *prior* to recognition. As has been rightly pointed out by Brownlie, such reasoning "postulates personality on an objective basis"[66] and is, therefore, incompatible with the initial argument that postulates that same personality on a subjective basis of recognition. It is true that Lauterpacht attempts to circumvent this problem by claiming that "as the established States act in this matter on behalf of the international community, they may be deemed to owe *to that community* a duty of recognition notwithstanding the fact the substantive right is not yet fully vested in the beneficiary directly

concerned."[67] However, this does not solve the initial contradiction caused by the mere fact that an entity, which, *ex hypothesi*, is *legally nonexistent*, is at the same time also being treated as having the *legal consequence* of creating a duty—regardless of whom that duty is due.[68]

The second serious problem is how, seen from the vantage point of the constitutive doctrine, the view of recognition as a constitutive act is to be reconciled with some anomalous aspects of state practice as regards that act. This is a problem that tends to appear especially in connection with the legal decisions of the courts of the recognizing state(s). While in cases of nonrecognition, the operations of at least the courts in Anglo-Saxon countries—and at least until the period immediately following the Second World War—have been in line with the constitutive doctrine to the extent that they apply the principle of "judicial self-limitation" and refrain from taking notice of the actions of the states and governments not recognized by the executive of their states,[69] the same cannot be said of the general practice of courts as regards the opposite situation. In most, if not all, countries, once recognition is granted, courts tend to regard all acts brought about by the authority so recognized, even those actions performed *before* the recognition, as legally valid acts. This is what has been designated in international law as the *retroactivity of recognition* and, notwithstanding its detrimental consequences to the overall constitutive theory, it has been adopted by international lawyers of this school with reference to the general practice of states and their courts.[70]

In this context, it is possible to argue that such a notion of retroactivity of recognition is incompatible with the constitutive view of this act since, in a fashion similar to that of the duty of recognition, it introduces tension, if not altogether logical incoherence, into the edifice of the constitutive theory. If legal existence commences with recognition and if, in the absence of such recognition, the activities of entities are legal nullities that do not engender any rights or obligations whatsoever, then it is a contradiction in terms to assign legal consequences to acts undertaken by entities prior to such recognition and, hence, *ex hypothesi* prior to legal existence. What the retroactivity of recognition causes in this context is the postulating of a legal existence that precedes recognition and starts with, for instance, actual "commencement of the activities of the authority" that is recognized. Among constitutivist writers, Lauterpacht seems to be aware of this problem when he points out that "the principle of retroactivity" is apparently "incompatible with the constitutive view." Nevertheless, he claims that "retroactivity may still be conceived as an exception to the constitutive doctrine—an exception adopted for the purposes of convenience and stability. . . ."[71] But it is possible to counter

this view by pointing out the logical implications of making such exceptions in theory building and explanation.

If the constitutive doctrine as a legal theory sooner or later falls into a state of inconsistency, other, but equally grave, logical and empirical problems also permeate the declaratory theory. In the first place, as has been noted earlier, international lawyers that adhere to this view of recognition have a tendency to stipulate legal personality and subject status under international law on an objective basis with reference to empirical attributes of statehood. It has been demonstrated in a previous section that such an understanding is susceptible to empirical counterarguments that indicate a significant discrepancy between the tenets of this theory and the practice of states. In the second place, lawyers of the declaratory view are also unable to resolve appropriately the crucial theoretical problem of how, in the absence of a central judicial organ competent to administer the application of positive international law, the existence or absence of attributes of statehood and, hence, the fulfillment of the criteria for legal personality, is to be authoritatively determined. In their attempts at providing an answer to this question, these lawyers reintroduce recognition into their analysis in two different ways, with the inevitable result of weakening the logical coherency of the doctrine.

One way of reattributing a decisive role to recognition is by means of stipulating one or more of the legal criteria of statehood in such a manner that it necessarily presupposes recognition as a state. For instance, notwithstanding his tacit adherence to the declaratory theory, Brownlie establishes "capacity to enter into relations with other States"—the formulation of the Montevideo Convention—as one of the legal criteria of statehood.[72] However, since an entity that is not generally recognized as a state by other states lacks the ability to establish relations with those states, it is possible to regard recognition as constitutive—both legally and materially—of that specific capacity and, hence, of that particular legal criterion.[73] Thus, to the extent that recognition is one of the necessary conditions of an element of the legal criteria of statehood, it is possible to maintain that this criterion accordingly presumes and incorporates recognition as a state. Seen from such a vantage point, the declaratory view of recognition, by embracing such legal criteria of statehood, inserts inconsistency into its overall theoretical edifice; since, in the final analysis, it implicitly presupposes what it explicitly rejects in its dispute with the constitutive view.

The other, more common mode of attributing a decisive role to recognition within the framework of the declaratory doctrine is performed by

means of considering the act of recognition as the conclusive indicator of the existence of empirical attributes of statehood and, hence, of fulfillment of the relevant legal criteria.[74] Such a modus operandi at once raises the question of how, in the absence of such recognition and lack of such conclusive evidence, the existence of a state is to be ascertained. The declaratory writers usually avoid this theoretical issue insofar as their analysis never goes beyond some occasional statements that range from, in Lauterpacht's words, "the tautologous" or "the automatic test of existence"[75] to some obscure references made in passing to some "ordinary method of evidence."[76] This brings the declaratory view back into the sway of logical tensions that arise from the fact of refusing to consider a certain factor as the *cause* of a phenomenon while at the same time regarding this factor as the conclusive *indicator* of that same phenomenon, and all this without identifying any other indicator of the actual cause that allegedly lies behind that phenomenon. Thus, it is possible to assert that the reasoning of the declaratory writers is hereby on the brink of running into logical inconsistency since the statement that a factor is not the cause *but merely* the token of an existence presupposes some knowledge as to what the actual cause of that existence is—or at least some conclusive knowledge about how the indicator *only* indicates the existence without actually causing it. In the absence of such knowledge, it becomes virtually impossible to distinguish the declaratory doctrine from the opposite constitutive doctrine that it so vigorously attempts to negate, since what would potentially enable such a distinction is placed beyond and behind the phenomenon of recognition and, indeed, belongs to the domain of metaphysics.

In conclusion, it is possible to maintain that if the analysis conducted in this chapter is convincing, then this would indicate that international law does not have a logically consistent legal doctrine—or, for that purpose, a coherent juridical stipulation—as regards the subjects under law and, consequently, that it is unable to unambiguously determine those legal persons that are endowed with sovereign rights and obligations. This quandary may well be due to the efforts of international lawyers to offer a legal explanation for a situation that has never been legally regulated. Problematic though this may be for the discipline of international law, it does not have any important implications for the student of empirical political science—except, perhaps, for the support that it generates for some of the basic assumptions of the so-called realist school within this discipline. Contrary to some propositions to that effect, neither is it possible to identify juridically sovereign entities on the basis of their constitutional design or their constitutional law. These conclusions

are in line with the results of recent research, which conceptualizes pertinent state practice in terms of "organised hypocrisy" where the "logic of consequences," more often than not, prevails over the "logic of appropriateness."[77]

Thus, against the background of the analysis undertaken in this chapter, this study adopts what may be called a softer version of the constitutive theory on recognition that asserts the existence of a correlation between recognition as a state and possession of juridical state sovereignty but stops short of asserting that there is a causal relation between them in the sense of the latter being the effect of the former. Such a conclusion is in line with the constitutive view to the extent that causation presupposes existence of a correlation under certain, controlled circumstances; but it is also compatible with the declaratory view since it is indeed this correlation that is regarded by this theory as the decisive evidence of the existence of statehood—and, hence, *ex hypothesi* of possession of specific rights and liability to specific obligations that are related to juridical state sovereignty. Against the background of these considerations, it is now possible to shift the focus of attention to problematic cases of juridical state sovereignty.

CHAPTER 6

The Problem of Juridical State Sovereignty

In the sphere of international relations, some political entities occupy a no man's land on the demarcation line that divides those states and similar entities that are endowed with de jure sovereign status with ensuing possession of specific rights and liability to special obligations and those that lack such status. Belonging to no single category of juridically sovereign or non-sovereign entities, but having features of both, such entities constitute anomalies as regards juridical sovereignty: on the one hand they are not clear-cut subjects of international law in a manner that would enable them to display the usual traits of membership in the international society of states, on the other hand, they are not regarded as "an internal affair" of some other juridically sovereign entity, or simply "a source of concern" due to refugee flows or human rights violations in a fashion that would indicate their disentitlement to such membership. Thus, occupying an obscure position at the fringes of the international legal order, these territorial entities show symptoms of what may be called "the problem of juridical sovereignty": they have a legal status that is uncertain, an international standing that is indefinite, a legal existence that is often relative, and a security situation that is at times precarious. As shall been seen in this chapter, such territorial entities are identical to those that have a dubious position also with respect to recognition as states. Problematic cases of juridical state sovereignty, such as fragmented, relative, or uncertain legal personality, emerge when there are divergences from an ideal type of recognition as a state, that is, a situation where the facts related to statehood are not recognized for what they are. In other words, such problematic cases occur when there are discrepancies

between the features of a de facto entity on the one hand and the degree or the form of recognition accorded to that entity or the number of states recognizing it, on the other.

The Problem of Juridical Sovereignty and the Problem of Recognition

The problem of juridical sovereignty has at least three interlinked dimensions. In one frequent emergence of this problem, the indefinite legal status of a territorial entity manifests itself in possessing *only some* of the sovereign rights and being liable to *only some* of the obligations that are ordinarily attributed to juridically sovereign entities. In such cases of what may be called *fragmented legal personality*, the entity in question is legally permitted to take part in and legally obligated to abstain from certain types of actions that implicate juridical sovereignty *but not* other kinds of actions that are specifically the corollary of such sovereignty.

It is possible to find a slight expression of this enigma in the case of China: being one of the original members of the United Nations,[1] the Republic of China includes the island of Formosa (Taiwan) and Pescadores Islands, according to at least one judicial opinion on the subject,[2] since the Peace Treaty of 1951. Furthermore, it is generally represented in international forums by the Beijing government since the admission of this government to the United Nations in 1971.[3] Under normal circumstances these facts would indicate, in the common parlance of international lawyers, territorial sovereignty of the Beijing government over Taiwan, Pescadores, and the straits that separate these islands from the mainland and enjoyment of rights of territorial inviolability and nonintervention in relation to these territories. However, as it can be inferred from the incidents of the March 1996 crisis and the attitude of some foreign powers toward the authorities that actually control these islands, the Beijing government, notwithstanding its "sovereign equality" implied by its United Nations membership, apparently does not enjoy these rights.

The fact that this situation cannot be dismissed as an isolated case of violation of international law by other states is due to the equally fragmented legal personality of the pieces of territory in question. Since its expulsion from the United Nations in 1971, the Taipei government, which in fact controls these territories, has been able to preserve some of those prerogatives and duties that are normally associated with juridical sovereignty: for all purposes Taiwan seems to have some capacity to enter

into treaties with other states without the consent of, or any delegation of power from, any other authority.[4] In a similar vein, it is ". . . a party to various conventions binding its own territory."[5] Furthermore, Taiwan apparently enjoys jurisdiction and sovereign—or state—immunity to the extent that "[c]ourts faced with specific issues concerning its status may treat it on a *de facto* basis as a 'well defined geographical, social, and political entity [with] . . . a Government which has undisputed control of the island.' "[6] Moreover, in a spectacular manner, the Taipei government also enjoys the right of self-defense—a right that is usually related to a wider conception of sovereign rights. The Mutual Defence Treaty of 1954 between the Taipei government as the representative of the Republic of China and the U.S. administration has been in effect even after Taiwan lost its international standing.[7] Less than a year before the termination of this treaty, and in what may be regarded as the invention of a functional substitute for it, the U.S. Congress passed the Taiwan Relations Act in 1979, which inter alia contained a defense provision that gave Taiwan extensive security guarantees.[8] However, possession of such specific rights and obligations notwithstanding, Taiwan is not regarded as a sovereign equal by other states and, accordingly, as an associate of the international society of sovereign states: its initial policy aiming at reestablishing the status quo ante 1971 has been ineffectual; its original aim to represent the whole of China in international organizations, and above all in the United Nations, has proved to be unattainable; and its subsequent policy of "dual recognition" and intensive campaigns to receive general admission to different institutions of the international community has only led to meager results.[9]

A much more dramatic manifestation of the phenomenon of fragmented legal personality can be found in the case of Afghanistan until the collapse of the previous Taliban regime, where express liability to obligations was paradoxically combined with explicit denial of rights. After decades of war and years of military stalemate, a nascent military movement, the so-called Talibans, was able to capture the capital city Kabul in September 1996[10] and the last important urban settlement in the country, Mazhar-i-Sharif, in August 1998.[11] As a result of these successes on the battlefield, the newly installed Taliban government in Kabul, an interim Council of Ministers, was able to establish its rule over nearly 90 percent of the territory of the state of Afghanistan.[12] Thus, it was possible to regard the Taliban government as a de facto government[13] that was legally capable of jurisdiction over the territory under its control and, consequently, liable to international responsibility for activities that took place in, or emanate from, that territory. This latter

condition was clearly demonstrated by UN Security Council Resolution 1267 (1999), which imposed sanctions on the Taliban government on the basis that the territory under the effective control of this government was utilized for terrorist operations[14] and on the assumption that this government was legally obligated—and actually had the capacity—to put an end to this situation. However, despite the exercise of jurisdiction and the requirement of international responsibility—and, hence, the implications of juridical sovereignty—the Taliban government, or "the Islamic Emirate of Afghanistan" was never regarded as legally qualified to represent the state of Afghanistan in international forums. It was not allowed, for instance, to occupy the seat of Afghanistan during the meeting of the foreign ministers of the Organization of the Islamic Conference in Jakarta in December 1996 and at the extraordinary summit of this same organization in Islamabad in March 1997.[15] Moreover, during that period the state of Afghanistan was represented at the United Nations by the rival government of Burhanuddin Rabbani, which controlled only an insignificant portion of the territory of that state. Thus, what was in the process of emerging was probably a situation that was reminiscent of the two competing governments of China and that could have led, in a similar fashion, to conflicting consequences as regards the juridical sovereignty of the two de facto territorial entities that in fact constituted Afghanistan, with somewhat unclear implications for the juridical sovereignty of the state of Afghanistan in its entirety. However, as it is well known, the American military intervention in 2001 put an end to this situation of one state and two governments.

In another occurrence of the problem of juridical sovereignty, the indeterminate legal status of a territorial entity is reflected in a substantial degree of obscurity as regards the possession of those rights and obligations that are connected to juridical sovereignty. In such cases of *uncertain legal personality*, the issue of whether or not an entity is revested with sovereign privileges and duties is either immersed in deep ambiguity or subject to potential or actual dispute among international lawyers.

In some rare instances, the unclarity of the status is due to the fact that the emergence of a new political entity on the international scene is accompanied by a novel and unpredictable legal situation. The initial years of the turbulent history of Taiwan are probably a case in point: after more than half a century, Japanese rule on Formosa and Pescadores came to an end, first militarily by means of the Instrument of Surrender of September 2, 1945 and then juridically through the Peace Treaty of July 8, 1951 between Japan and the Allied Powers, with the exception of

the Soviet Union and China.[16] In accordance with Article 2(b) of the latter, Japan abandoned ". . . all right, title and claim to Formosa and the Pescedores . . ."[17] However, due to the political complexities and sensitivities of the immediate postwar period, no stipulation was made in the treaty concerning the question of the state or authority to which the rights and the title to territory so abandoned were to be transferred.[18] This curious situation, combined with the withdrawal of the Republic of China's troops from the mainland to these islands in 1949 and their subsequent establishment of a provisional capital there, led to an inconclusive condition as far as the legal status of these territories was concerned. During the ensuing debate of the early 1950s on this issue, four legal opinions have been put forward: that the immediate consequence of the Instrument of Surrender has been the establishment of Chinese sovereignty over the territories in question; that the Instrument has led to UN sovereignty over these areas; that the Peace Treaty has resulted in a condominium of Allied Powers; and that the effect of this treaty has been the institution of Chinese sovereignty over these islands.[19]

Sometimes, the uncertain legal personality of a territorial entity is directly related to its dubious or insufficient degree of relationship with its environment. Two cases of such inadequate amount of interaction of an entity with its milieu, Tibet and Outer Mongolia, have been noted in the literature. In the words of an international jurist, "[c]ontact with such remote countries . . . has been so slight that few governments have felt themselves compelled to determine their status."[20] To this observation it could be added that when the need for such judicial determination was ultimately aroused by different—and sometimes severe—circumstances, the legal opinion was nothing other than a non-opinion of pointing out the unclear legal status of the entity in question. In the case of Tibet, the issue was raised by the Tibetan appeals to the United Nations during and in the aftermath of the Chinese invasion of 1950. On the suggestion of several member states, among them the United Kingdom and India, which despite their treaty relations with the state of Tibet invoked the opinion that the legal status of the country was uncertain, the debate on the issue was postponed.[21] In 1959, when the UN General Assembly finally adopted a resolution that condemned the Chinese military intervention in Tibet, there were 26 abstentions, most of them on the basis that the nature of the relationship between Tibet and China was unclear.[22] In the case of Mongolia the question of legal status was raised in the context of this state's recurrent attempts at gaining UN membership. At least during the early postwar period, Mongolia had

developed connections of a dubious nature with the Soviet Union that have been characterized as a "satellite relationship." Moreover, the country was, in the words of one observer, "sealed off from the outside world" to such an extent that ". . . those countries which maintained that not enough was known about Mongolia to judge whether she had the capacity for independent foreign relations had a great deal of reason on their side."[23] At least partly due to such considerations, Mongolia did not attain UN membership until 1961.[24]

In certain cases, the ambiguousness of legal status is a direct product of the uncertain number of de jure sovereigns that exist on a given, legally defined, piece of territory. This obscurity, and the ensuing legal controversy, unavoidably leads to contradictory inferences insofar as questions of the coming into existence of sovereign rights, possible violations of international law, and assumption of international responsibilities are concerned. Such a legal situation has probably characterized many, if not all, of the so-called divided states during the cold war period, and the case of Vietnam is particularly illustrative in this respect. During the period between the Geneva Agreements in 1954 and the North Vietnamese victory in 1975, different legal arguments could be raised to support both the opinion that there was one de jure sovereign, the "State of Vietnam,"[25] and the view that what was involved was two de jure sovereigns, the Democratic Republic of Vietnam in the North and the Republic of Vietnam in the South.[26] As has been noted elsewhere, the judicial judgments with respect to the Vietnam War that can be inferred from these two different interpretations have been threefold: according to the view that only one juridically sovereign entity was in existence, the Vietnam War was basically a civil war between north and south followed by the intervention of the United States; according to the opinion that there were two de jure sovereign entities, what was involved was intervention by North Vietnam and the United States in a civil war that had been raging within the de jure sovereign entity of South Vietnam between the government forces and the National Liberation Front (Vietcong); or, alternatively, the official stance of the United States that as a result of the North Vietnamese covert and overt armed attack on the independent state of South Vietnam, the United States was under treaty obligations to provide assistance to that state.[27]

The uncertainty of the legal status of a territorial entity is sometimes aggravated by the statements and actions of other states. This can be exemplified by the approach of the UK authorities to the issue of German states during the cold war era. The English courts, for instance,

developed during this period the praxis of accepting the rulings passed by German Democratic Republic authorities "as valid as being in effect based on the authority of the Soviet Union as sole authority in Eastern Germany,"[28] a modus operandi that probably obscures not only the number of de jure sovereigns involved but also confuses the political with the legal situation. Moreover, nearly seven years after the admission of both the Federal Republic of Germany and the German Democratic Republic to the membership of the United Nations, and shortly before the reunification of these two states, the British Foreign and Commonwealth Office pointed out in a memorandum in March 1990 that "Her Majesty's Government recognizes" both states "*as having the full authority of sovereign States* [but not as sovereign States] over their external and internal affairs . . . Germany as a whole continues to exist as a State in international law."[29]

In a third—and final—disclosure of the problem of juridical sovereignty, the undetermined legal status of a territorial entity takes the form of possession of sovereign rights and duties *only* in respect to some states and similar entities but *not* in relation to others. In such cases of what may be called *relative legal personality*, the territorial entity in question unambiguously enjoys de jure sovereign status in a certain substructure of the international legal order, while its legal personality is nonexistent, or at best obscure, in some other substructure of that same legal order.

This aspect of the problem of juridical sovereignty was manifested to some extent in the case of Israel, which, during at least most of the time of its factual existence as a state, did not have any legal existence as a juridically sovereign entity in the opinion of the Arab states. Acting in concert through the agency of the League of Arab States, they adopted the legal position that Israel was "occupied Arab territory"[30] or "Zionist-occupied Palestine";[31] that a state of belligerency continued since the 1948 Arab-Israeli War; that the present boundaries were consequently provisional under the terms of 1949 UN armistice agreements;[32] and that formal relations between the member states of the League and Israel were prohibited.[33] This position of rejection of the juridical sovereignty of Israel was complemented by the acknowledgment of the de jure sovereignty of another political entity over the territory in question, that of Palestine. In a fashion that is reminiscent of the recognition of governments in exile—but before the emergence of the Palestine Liberation Organization as an independent force—a seat was allocated in the League Council to the Palestinian representative and the council was at least nominally supervising the Gaza Strip and the West Bank,[34] which were then under Egyptian and Jordanian control, respectively.

If these propositions about the juridical sovereignty of Israel are obviously implausible, this is probably due to the fact that the state of Israel has been enjoying such sovereignty in relation to an overwhelming majority of the states in the world—hence the above-mentioned manifestation to some extent of the problem—and, significantly, in respect to major powers such as the United States, the Soviet Union (later the Russian Federation), the United Kingdom, France, China, Japan, and Germany. The transformation of the above-mentioned legal nonexistence at the regional level into relative legal existence at the global level is also reflected in the fact that, the stance of the Arab states notwithstanding, Israel has been a member of the United Nations since 1949.[35]

Such relative legal existence of states and similar entities was probably a much more common phenomenon during the cold war period, as the antagonism between the two super power blocks led, at least in practical terms, to the emergence of what may be regarded as two parallel substructures within the international legal order. Sometimes the situation of such entities was clearly reflected in their patterns of membership in various intergovernmental organizations. The cases of the German Democratic Republic and the Republic of Korea (South Korea) are particularly illustrative in this context: during most of the time of their factual existence, and in contrast to the case of Israel, both entities were denied membership in the United Nations;[36] a universal organization which ". . . is based on the principle of the sovereign equality of all its Members"[37] and whose membership ". . . is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgement of the Organization, are able and willing to carry out these obligations."[38] However, during the same time span, these states were paradoxically members of regional or functional organizations that required *more* than just juridical sovereignty—with or without the epithet of "peace-loving"—for admittance. The German Democratic Republic was, for instance, a member of the Warsaw Treaty Organization and the Council for Mutual Economic Assistance (CMEA),[39] while the Republic of Korea had been admitted to as many as 41 intergovernmental organizations by 1989, among them important IGOs such as GATT, IBRD, and IMF.[40]

The list of anomalies as regards juridical sovereignty can probably be made much longer, especially if the time span of the survey is extended to the period before the Second World War. However, what concerns the present analysis is the more theoretical issue of what kinds of factors accompany the problem of juridical sovereignty. Any attempt to probe into this question reproduces the correlation, identified in chapter 5 of

this volume, between possession of this type of sovereignty and recognition as a state—albeit, in a negative form: those territorial entities that have an uncertain status as regards juridical sovereignty appear to be the same entities that have an indefinite situation as regards recognition as a state. In other words, the problem of de jure sovereignty, or, to put it differently, the occurrence of fragmented, uncertain, or relative legal personality in the context of juridical sovereignty, can be traced back to those problems that occasionally occur in the context of recognition as a state.

In what follows, an attempt shall be made to approach these problematic aspects of the institution of recognition by means of a method that takes its point of departure in an "ideal type," where the act of recognition is unambiguous, universal, and accurately corresponding to the actual state of affairs. Then, against the backdrop of such an ideal type, the perplexing aspects of recognition and, more specifically, those of recognition as a state will be mapped out.

The Problem of Juridical Sovereignty and the Degree of Recognition

In the ideal state of affairs, the emergence of a territorial entity that aspires to statehood and its recognition as a state by other states would be a gradual process. Every phase in the development of the entity as a *fact* would coincide with a new step in the *kind of recognition* that it receives from other states. This would be due to the existence of direct linkages between the constituent parts of the two parallel processes of empirical statehood and recognition as a state. To put it somewhat more specifically, the process of initiation of an uprising, subsequent participation in a civil war, establishment of an effective government, and proclamation of statehood, which often characterizes the establishment of a new state as a fact, would correspond exactly with its juridical counterparts. To the extent that entities would be recognized for what they actually are, such a perfect correspondence between factual conditions and juridical status would inhibit anomalies of different sorts from arising.

The main components of this ideal type of "recognition as a state" can be derived directly from those typologies of recognition that are conventionally made by international lawyers of different schools. It is clearly indicated by one of these classifications, which has the features of the recognized entities as its determinant factor, that states are not legally indifferent to the emergence of new political entities on each other's

territories. Hence, under conditions determined by law, they are permitted or, in the opinion of some jurists, legally obligated to recognize them as insurgents, belligerents, governments, and states respectively.[41] For the purposes of the present study, there is no need to probe into the complex details of this fourfold distinction, which has been explicated extensively in numerous monographs by generations of international lawyers.[42] What is of particular relevance here, however, is the tendency of at least some jurists to conceive of the relationship between these four categories as what may be called a "ladder of recognition"[43] that corresponds to different phases in the development of a territorial entity from nascent secessionist movement to full-fledged factual state. In other words, the sequence of uprising, civil war, effective government, and statehood that often distinguishes the appearance of an empirical state in the sphere of international relations has its counterpart in international law in the form of the general categories of recognition of insurgency, belligerency, government, and statehood, respectively. It is against this background that the ideal type of "recognition as a state" is identified as a perfect correspondence between facts and law.

In the actual state of affairs, however, the flawless overlap between the factual and the juridical processes that is to be found in the ideal type is susceptible to what may be conveniently likened to "frictions" in the Clausewitzian sense of this word. Thus, there are often deviations—and, at times, problematic discrepancies—between the gradual evolution of a territorial entity as a factual state and its step-by-step ascent on the "ladder of recognition." The proposition here is that one dimension of the problem of recognition as a state—and hence, that of juridical sovereignty—should be sought in such divergences that exist between the actual and the juridical processes involved. Moreover, to the extent that conferring recognition as a state to entities that lack factual attributes of statehood do not, as it has been shown in chapter 5, constitute any problem as regards juridical sovereignty, the focus of attention should be shifted to those sorts of deviations where, despite the gradual development of a factual state, the relevant forms of recognition are not forthcoming—that is, to cases where the granting of legal status lags behind the occurrence of facts rather than the reverse situation.

Seen from such a vantage point, two types of divergences are especially pertinent to the problem of juridical sovereignty. The first of these concerns the current status in state praxis of recognition of insurgency and belligerency. Both of these limited forms of recognition can be reasonably depicted as methods employed for the purpose of identifying possible candidates of future juridical sovereignty. The first of these,

recognition of insurgency, is a unilateral act by means of which the political character of the disturbances that take place in a given state is established. It is the earliest sign that a new territorial entity, whose ultimate aim may or may not be acquisition of juridical sovereignty, is in the process of formation. Although recognition of insurgency is not a definite legal status conferring fixed legal rights upon rebels,[44] it is nonetheless a clear undertaking on the part of the recognizing state not to treat them as law-breakers or simple criminals.[45] The other form, recognition of belligerency, entails a much more definite legal status and is accorded when the initial uprising and ensuing hostilities turn out to be more permanent and develop into full-fledged civil war that is fought between centrally organized armies. By means of such recognition, the parties to an internal armed conflict become qualified for those same rights and duties that are granted to states that are engaged in international wars.[46]

Although recognition of insurgency and belligerency are fixed points of references in many monographs on international law, they have disappeared completely from the practice of states. It has been pointed out, for instance, that "[t]here is no clear twentieth-century case of recognition of belligerency . . ." and that "[o]ther candidates, such as 'recognition of insurgency,' have failed to establish themselves in doctrine or practice."[47] Another jurist asserts in passing that conventional law on the subject of recognition of insurgency and belligerency have become "largely obsolete" as a result of ". . . new developments in the nature of armed conflict and the emergence of the national liberation movement."[48] A third international lawyer traces the origins of the decline of these types of limited recognition back to the period after the First World War and refers to the emergence of unconventional forms of warfare, such as guerrilla war, and the disappearance of the distinction between "international and non-national wars" with the increased frequency of intervention by third parties in the latter as the possible causes of this decline.[49]

The impact of the decline of recognition of insurgency and belligerency on the problem of juridical sovereignty is apparently indirect and somewhat intricate. At one level, the lack of a procedure for ascertaining the candidates for such sovereign status from the outset means that when such entities achieve qualities of effective government and factual statehood, they will not have the possibility of making references to previous recognition as insurgents or belligerents to support their present claims for recognition as governments or states. Although it is not necessarily so, since there is always the possibility for such entities

to lead a precarious and, most likely, short political life as juridically non-sovereign entities, such a situation may lead to the emergence of problematic borderline cases of juridical sovereignty of the above-mentioned type. At another level, however, the current tendency to substitute these limited forms of recognition—"the subjective approach" in the words of an international lawyer—with "an objective criterion" in the sense of application of "humanitarian rules . . . to non-national conflict" without any need for recognition of belligerency[50] may have the adverse effect of consolidating the juridically non-sovereign status of such entities. This would be due to the fact that such a replacement of recognition of insurgency and belligerency with general principles governing humanitarian standards in war entails a certain step back from the emphasis on the rights of nascent *territorial entities* under international law in the direction of accentuating the rights of human *individuals* under that law—and hence, a tacit reinforcement of the sovereign right of the mother country to territorial integrity at the expense of the right of the successful separatist entity to potential secession and juridical sovereignty.

The second type of divergence is related to the complex relationship that exists between recognition as a government and recognition as a state. Leaving aside the question of recognition for a moment for the sake of analysis, at the most elementary level there does not seem to be any principal controversy in international law as regards the relationship between "government" and "state." General propositions such as the notion of "effective government" as the "best evidence" of statehood,[51] the conceptualization of "government" as "the depository of the State's sovereignty" with an unequivocal right to represent that state in international relations,[52] the view of the state as "subject" of law and that of the government as the "organ" of that subject[53] are not contradicted in any direct manner anywhere in the available literature.

At face value, such phraseology may denote the possibility that "statehood" precedes "government" in the sequence of legally relevant facts or that the former is a prerequisite of the latter in a more general sense. However, this implication turns out to be false when two specific circumstances are taken into account. In the first place, as it has been shown in the previous chapter, the legal criteria of statehood in international law unambiguously designate "effective government" as a criterion of statehood. This would imply logical precedence of "government" over "statehood" in a manner that confirms the above-mentioned conceptualization of the ideal type of "recognition as a state" as a "ladder"—that is, as an incremental process. In the second place, certain aspects of the

practice of recognition of governments and states exclude the possibility that the latter may have any logical or empirical antecedence. In certain cases, the issue of recognition of a government may raise although there is not any state—in the sense of international law—in existence, or when the existing state(s) as such lacks immediate relevance to the issue in hand. This is exactly what happens when rebels, who may or may not aspire to separate statehood, establish their control over a certain piece of territory and a clearly defined portion of population and, as a result of such factual circumstances and mainly for limited practical purposes, are recognized as a "*de facto* government"[54] or a "local *de facto* government."[55] However, if the recognition so granted takes the form of de jure recognition of that government, this would entail either previous existence of a state whose government is being replaced or simultaneous creation of a new state. The first dimension of this situation is related to the definitional characteristics of the concept of "*de jure* recognition of a government." As it has been pointed out in a recent study, in such a context the concept signifies that ". . . in the opinion of the recognizing State, the government so recognized is the government of a sovereign State, i.e. the depository of the State's sovereignty or, in more general terms, a sovereign authority."[56] This is, moreover, the primary reason why it is impossible to recognize de jure more than one government at a time within a given state without obliterating the unity of that state and why it has become common practice in cases of rival governments to recognize only one of the governments de jure and the other de facto—or both of them only de facto.[57] The second dimension of the same situation has to do with state praxis to the extent that states ". . . when they recognize the governments of newly established States, often do not distinguish between the institutions of government and State"[58] or since ". . . recognition of states may take the form of recognition of a government."[59] In such cases, it is virtually impossible to differentiate between recognition of a government and recognition of a state. In the third place—and this is what ultimately validates the conception of the ideal type of "recognition as a state" as a piecemeal process resembling ascent on a ladder—it is not possible to conceive of a situation where there is recognition of a state without any recognition of a government—previously or simultaneously—as the depository of that same state. The case of annexed states where the annexation is not recognized de jure by other states is particularly illustrative in this context. The normal practice in such situations is to accord recognition to a government in exile or to the diplomatic representatives of the state[60] whose legal existence is threatened by the act of annexation—thus, to combine such recognition of

government in exile—or of representatives—with the continued recognition of the state that has been annexed. Furthermore, it is possible to assert that continued recognition of an annexed state that is not complemented with recognition of its government—in exile or *in situ*—or its representatives collapses, at a purely theoretical level, into mere nonrecognition of the international delict caused by the annexation.[61]

Thus, seen from such a vantage point, two types of incongruities between the legal and the actual status of a territorial entity, in the context of the relationship between recognition as a government and recognition as a state, may produce problematic borderline cases as regards de jure sovereignty. The first of these concerns those cases where a territorial entity is recognized de jure as a *government* over a *more extensive* territory than it in fact controls instead of being recognized as a *state* within the *more limited* territory that it actually controls.[62] Such an incongruity marks, for instance, the situation of the Peoples Republic of China after 1971 and Taiwan before that same date, with the difference between these two cases being one of degree. Here, it is also possible to mention the Burhanuddin Rabbani government of Afghanistan until 2001 and perhaps even the Baath Party regime in Iraq until 2003 because of the Kurdish Autonomous Region in the north, as cases that were in the process of gradually becoming consolidated instances of this sort of the problem of juridical sovereignty. The second relevant type of incongruity is the corollary of the first and encompasses those cases where a local de facto government, whose control over and administration of a certain piece of territory has been consolidated by the passage of a long period of time, is despite this situation not recognized as a state over that same territory. A classical case in point is Taiwan in the post–1971 period, which is a state as a matter of objective fact—though not as a matter of subjective, expressed intent—but which is not recognized as a state by other states. A possible future candidate for such a similarly problematic status is probably the Kurdish Autonomous Region in Northern Iraq, which, at the time of writing, has been functioning as a local de facto government under the partial military protection of the United States and the United Kingdom for more than a decade.

The Problem of Juridical Sovereignty and the Number of Recognizing States

In the ideal state of affairs, a territorial entity that acquires the traits of statehood would be accorded recognition as a state by means of a sweeping, but not necessarily coordinated, action on the part of other states.

Thus, it would not only be the case that facts would be recognized for what they actually are, but they would also be recognized universally, by all subjects of the international legal order. Such an extensive recognition of a new entity as a state and, by implication, a universal endorsement of its membership in the international society of sovereign states, would effectively prevent any problematic cases of juridical sovereignty from coming into existence. Such a clear-cut and authoritative determination of the legal position of nascent territorial entities would also be due to the fact that the widespread recognition as a state when the legally relevant facts are present would be complemented with the corollary of this situation, that is, with the complete withholding of recognition in the absence of such facts.

This dimension of the ideal type of "recognition as a state" has its origins in two sets of considerations that can be found in the writings of international lawyers. The first of these is closely related to the theoretical criticism delivered by declaratory writers against the constitutivist view on recognition. As it has been put by a jurist, ". . . since recognition is accorded by States individually, and simultaneous action cannot be reasonably expected, the international personality thus recognized must, until universality of recognition is achieved, necessarily be partial and relative."[63] One consequence of this situation—an unfortunate one for the constitutivist view—is that, in general terms, a state may have legal existence in relation to one state but not to another and that "no State can claim that it exists in the absolute sense."[64] In other words, to quote another writer, "[t]he status of a state recognized by state A but not recognized by state B, and therefore apparently both an 'international person' and not an 'international person' at the same time, would be a legal curiosity."[65] It is possible to conceive of these arguments as constituting the diametrically opposite pole of the ideal type depicted earlier and, moreover, it is also possible to envisage the direct or indirect attempts of constitutivist writers to counter them as a reassertion of some of the basic principles of this ideal type.

Thus, the second set of considerations concerns the expressed ambition of some constitutivist lawyers to remedy this problem of relative existence. Writing just after the Second World War, one prominent jurist on the subject points out the unsatisfactory nature of the prevailing situation and "[t]he dual position of the recognizing State as an organ administering international law and as a guardian of its own interests"; a position that opens up the way for utilizing "the weapon of recognition for the purpose of achieving political advantages."[66] "The solution," the reasoning goes on, "would seem to lie in transferring [the function of

recognition] to an international organ not impeded by a conflict between interest and duty."[67] The collectivization of the procedure of recognition in such a manner would prevent the anomalous situation where communities exist as states only in a relative sense.[68] In a similar context, another renowned international lawyer holds that it would be more suitable if matters relating to recognition were settled by a "central organ of the international community" or, alternatively, by means of "a rule of general international law that if a community is recognized as a state by a certain number of states, it has to be considered as a state by all the others."[69]

In the actual state of affairs, absence of such a procedure of collective recognition, that would enable universal acknowledgment of a new entity as a state by means of an institutionalized, centralized, and authoritative action, is the most conspicuous deviation from the ideal type of recognition that has been described earlier. Now, it is true that it has been claimed as early as 1930s in the context of admittance to membership of the League of Nations that ". . . recognition is accomplished through admission, that recognition being valid even against the will of states opposing admission"[70] and, that as a result of this situation, "much of the legal significance of individualized *de jure* recognition is lost."[71] It is also true that it has been argued in a more contemporary study, this time in respect to the nature of the United Nations, that "[i]t is hard to distinguish [the] process of institutional admission and diplomacy from collective recognition . . ."[72] and that as a result of this novel situation the "weaknesses in the constitutive position are remedied, if not completely cured . . ."[73] However, such arguments notwithstanding, the general tendency among international lawyers has been to adopt a more restrained approach to the possible relationship between the issue of centralized, collective recognition, on the one hand, and the development in the twentieth century of universally inclusive intergovernmental organizations such as the League of Nations and the United Nations, on the other. Nowhere is this reserved attitude more apparent than in the cautious language employed by these lawyers: for instance, admission to the United Nations has been depicted as, to reiterate some of the expressions compiled by a contemporary jurist, "a kind of collective recognition," "a step forward towards the principle of collective recognition," "nearest analogue," "a system of certification which has in substance fulfilled the function of collective recognition," and "tantamount to recognition of the member admitted as a state."[74]

Thus, seen from such a vantage point, it is possible to assert that admission to the United Nations is, with a certain exception that shall be

dealt with in a moment, an unmistakable indicator of[75] what may be called "general recognition as a state"—to be distinguished from the centralized, authoritative, and universal recognition implied by the term "collective recognition as a state." As such it is tantamount in its legal consequences to maintaining widespread diplomatic relations with other states.[76] From here it is but one step to the pivotal question that is pertinent to this study: how much deviation from *general* recognition as a state results in emergence of problematic borderline cases of juridical sovereignty? One aspect of the question touches upon the more general problem of classifications, to the extent that which territorial entities end up on the borderline between the classes depends on where the borders are definitionally drawn by the observer, with the specific implication that any answer to this question cannot be but, at least to a certain extent, arbitrary. Another aspect of it is, however, directly related to predominant state practice in respect of recognition, which, if taken account of in an analysis, constitutes a counterweight to such arbitrariness.

Against the background of these considerations, it is possible to maintain that divided states of the cold war period, that is, the Federal Republic of Germany, the German Democratic Republic, the Democratic Republic of Vietnam, the Republic of Vietnam, the Republic of Korea, and the Democratic People's Republic of Korea have evidently constituted problematic borderline cases of juridical sovereignty. This has been due to the fact that those states that have accorded recognition to them have chosen to recognize *only one* of the competing entities and that their choices have strictly followed the block lines established by decades of cold war politics. As a result of such recognition patterns and, more significantly, due to the repeated use of veto power in the Security Council, these states have been denied membership in the United Nations and widespread diplomatic relations—and hence general recognition as a state—during long periods of their existence.

If divided states are evident cases of the problem of juridical state sovereignty, Biafra is a case where the limited number of recognizing states have not been able to produce even a slight incidence of this problem. In 1968 and under the conditions of ongoing civil war, Biafra was recognized de jure as a state by five countries: Tanzania, Gabon, Ivory Coast, Zambia, and Haiti.[77] However, the restricted number of the recognizing states was apparently insufficient to bolster the legal status of Biafra in such a manner that this entity would move in the direction of acquiring de jure sovereign status. The issue of Biafra's statehood or the civil war in Nigeria was never raised in the United Nations, while the Organization of African Unity openly gave its support to the federal

government of Nigeria. Moreover, there were even good reasons to accept the legal opinion that the five recognizing states, by granting recognition prematurely, were in fact committing an international delict.[78]

However, a paradoxical case in this context is that of Israel. On the one hand, when this state was admitted to the United Nations, 12 member states voted against its admission while 9 abstained and 37 voted in favor.[79] Taken together with the fact that most of the states that rejected the Israeli membership in the world organization were neighboring Arab states, this situation blurred the legal status of the Israeli state and pushed it in the direction of the problem of juridical sovereignty—a condition that was reflected in Israel's actual, experienced, and expressed feelings of insecurity for decades. On the other hand, however, as it has been put by a lawyer, "United Nations organs have consistently acted on the assumption that Israel is protected by the principles of the Charter on the use of force *vis-à-vis* her Arab neighbours."[80] Moreover, on a rhetorical level it has been the common practice of both Israel and Arab states to sustain their mutual accusations with direct references to the principles of international law and the stipulations of the UN Charter.[81] Taken together, these circumstances would move the Israeli state away from the unclear legal status denoted by the problem of juridical state sovereignty.

The Problem of Juridical Sovereignty and the Form of Recognition

Finally, in the ideal state of affairs, recognition of a territorial entity as a state would take the form of an unambiguous declaration or an unequivocal action that does not leave any room for doubts as to the complete and comprehensive nature of the act of recognition involved, including the whole range of legal consequences that emanates from it. Thus, it would not only be the case that facts, as it has been described in the preceding sections, would be recognized for what they actually are and in a universal and sweeping manner, but—to formulate the third and the last dimension of the ideal type of "recognition as a state"—they would also be recognized straightforwardly without any kind of ambiguity surrounding the cognizance of their occurrence or any sort of obscurity blurring the legal consequences that follow from such cognizance. Such clarity in words and deeds would eliminate diverse, and sometimes contradictory interpretations, as regards the legal personality of territorial entities and effectively impede problematic cases of juridical state sovereignty from occurring.

Just like other previously mentioned dimensions of the ideal type of "recognition as a state," even this third aspect can be inferred from the writings of international lawyers. As far as the essence of the act of recognition is concerned, there seems to be a broad consensus among jurists, both among the adherents of the constitutive and the declaratory schools, that it is nothing other than the *intention* of the recognizing state *to recognize* that plays the decisive role in generating that act.[82] Thus, seen from such a perspective the ideal type described earlier would have its origins in a condition characterized by absence of doubts as regards the existence of an intention to recognize—hence the above-mentioned requirement of "an unambiguous declaration" or "an unequivocal action."

In the actual state of affairs, however, deliberate or accidental ambiguity as to the existence of such an intention on the part of the state that is to perform the act of recognition of a territorial entity as a state is the most obvious deviation from the ideal type. Such divergence between the ideal and the factual circumstances can be found in both facets of state praxis, both in formal declarations of recognition and in various types of nonverbal actions by means of which recognition is tacitly—or putatively—granted.

At the level of words, one sort of deviation seems to be a rather general phenomenon and related to the contextual nature of the term "recognition" as this word is employed by states in official declarations of recognition. It has been held in a recent study that, in contrast to the literature on the subject that treats the concepts of "recognition" and "nonrecognition" as "terms of art with a consistent, uniform legal meaning," state practice "shows that the term 'recognition' has been employed in a variety of different meanings depending on the factual and legal circumstances of the case."[83] Thus, an extensive survey of the relevant aspects of the practice of states is concluded with the proposition that "[r]ecognition statements alone are seldom a safe guide to the intention of the recognizing State" and that the existence of such intention should rather be established by means of all sorts of accessible data that is germane to the issue at hand—that is, with reference to "diplomatic correspondence, communiqués, statements in international organizations, declarations in national assemblies, interviews by government officials, and so forth."[84] From these statements, it is not difficult to derive the conclusion that identification of indicators of intention in formal declarations of recognition of states will invariably be a matter of interpretation, with a wide range of possibilities making the whole enterprise an intricate and, at times, an inconclusive affair.

Another, more particular aspect of the deviation from the ideal type is related to the distinction often made by international lawyers, especially in the context of recognition of governments,[85] between de jure and de facto recognition. Understandably, there is a certain tendency among some declaratory writers to downplay the importance of this distinction and its legal implications. For one writer who proclaims "the death of recognition" in his work, "*de facto* recognition" is one of the "fictions" created by law to come to terms with the fact that states treat "entities" that are "unrecognised" in a similar fashion as they deal with those that are "recognized."[86] Another international lawyer argues that, although states may use the expression "*de facto* recognition" in declarations of recognition of governments in order to signify political reluctance or legal reservations, ". . . the legal and political elements of caution in the epithet *de facto* . . . are rarely regarded as significant, and courts both national and international accord the same strength to *de facto* recognition as evidence of an effective government as they do to *de jure* recognition."[87] Thus, it is emphasized, "[t]he distinction occurs exclusively in the political context of recognition of governments."[88] In a third study "the so-called 'legal' distinctions between *de jure* and *de facto* recognition" are rejected outright as "irrelevant," and it is claimed that the difference between these two forms is "primarily political." Furthermore, what deserves special attention here is the structure of the argumentation used to sustain this conclusion, which is formulated in terms that betray the basic principles of the declaratory doctrine on recognition: "[s]ince recognition indicates the state of political relations between parties, and since political relations admit of degrees and variations, recognition, as a reflection of such political relations, must consequently be divisible into grades. . . ."[89] Thus, de jure recognition designates "a measure of subjective approval of the coming into being of the entity" while de facto recognition reveals "no sign of enthusiasm, but is the minimum recognition consistent with the fact of existence."[90]

If the tendency among declaratory writers has been to underestimate the legal significance of the differentiation made in state practice between de jure and de facto recognition, this has not been the case with constitutivist writers.[91] It has been maintained, for instance, by one of the preeminent proponents of this doctrine that in spite of the fact that "the legislative and other internal measures" of an authority recognized de facto and those of a state or a government recognized de jure have the same status before the courts of the recognizing state and, notwithstanding the jurisdictional immunity enjoyed in these courts by authorities recognized in either mode, "it is not correct to assume that no legal consequences follow from the distinction between *de jure* and *de facto*

recognition."[92] Employing similar phraseology, another jurist asserts that although it is, in some respects, virtually impossible to distinguish between the legal consequences of these two types of recognition,[93] "it cannot correctly be maintained that the distinction between *de facto* and *de jure* recognition is of a purely political nature."[94] It is argued that there are several reasons for this, such as, the representation of the state by de jure recognized authority in issues related, inter alia, to state succession, the optional nature of full diplomatic intercourse and diplomatic immunities in cases of de facto recognition and the possibility of withdrawal of de facto recognition with reference to causes that are more numerous than those that entitle withdrawal of de jure recognition.[95] It is in the writings of a third international lawyer that the legal differences between these two forms of recognition are brought out in sharp relief: while in the case of de facto recognition an entity so recognized "is entitled to be treated as a subject of international law" insofar as "[s]tate activities in areas under [its] . . . effective territorial control" are concerned, de jure recognition has more comprehensive consequences since it means that the entity in question "is recognised as a subject for all purposes of international law."[96]

Thus, insertion of the term "*de facto*" into a statement of recognition indicates general reluctance on the part of the recognizing state to bring about the whole range of legal effects that would follow from a standard de jure recognition. Furthermore, to the extent that recognition is a matter of intention, such inexact reservations involved in the term "*de facto*" signify a certain, albeit somewhat undefined,[97] drawback from expression of a clear-cut intention on the part of the recognizing state; this latter, being reasonably subject to the reservations mentioned above, the gist of de jure recognition. Against the backdrop of such considerations it is possible to assert that, applied to the context of recognition of states, legal reservations involved in the usage of the word "*de facto*," taken together with the intrinsically mutable meaning of the term "recognition" in the official statements of states, create uncertainty as to the existence of an intention on the part of the recognizing state to recognize a territorial entity as a state—and hence, per definition, obscure the existence or not of the act of recognition in the first place. Such an uncertainty in the intention of the recognizing state and, consequently, in the act of recognition inevitably immerses the legal status of the recognized entity into some obscurity and, by way of implication, facilitates the emergence of problematic cases of juridical state sovereignty.

At the level of deeds, to turn the focus of attention to this facet of the practice of states, an evident source of deviation from the ideal type of

recognition is associated with the fact that the intention to recognize may also be communicated in a nonverbal fashion, by means of various types of actions, by what has been alternatively referred to as "modes of recognition"[98] or "forms of implied recognition."[99] In this context, it has been underscored that the crucial element "is the intention underlying the act"[100] and that "acquisition of international personality" by means of "implied recognition and estoppel through conduct" is necessarily "a matter of inference."[101] However, in the absence of expressed, verbal forms of recognition such as an official declaration to that effect, the existence of which would make the whole issue of implied recognition superfluous, the question arises as to what sorts of actions *intrinsically* comprise such an intention to recognize and, as a result, are ipso facto equivalent to an act of recognition. It has been argued by an international lawyer, for example, that "[i]n order that an act may be a sufficient indication of the intention to recognize, there must be something inherent in the act itself which warrants such an inference."[102] Thus, as has been put by another jurist, the question "resolves itself into an enquiry as to the kind and type of conduct which, in the absence of clear indications to the contrary, the law will interpret as amounting to recognition."[103]

In this way, the question of the ascertainment of intention in cases of implied recognition is transformed into an issue of determination of whether or not certain kinds of actions or well-defined forms of conduct that are presumed to imply recognition intrinsically, are performed by a certain state. However, what makes the matter rather complicated is the fact that few individual acts of states and few forms of state behavior in general are sufficiently unambiguous in their content so as to correspond readily to the "unequivocal action" required by the ideal type described earlier—and, hence, validate the inference of an intention to recognize. In practical terms, such actions or conduct seem to be limited to "conclusion of a bilateral treaty which regulates comprehensively the relations between the two States . . . formal initiation of diplomatic relations and, probably, the issue of consular exequatur; and . . . in the case of belligerency, a proclamation of neutrality or some such unequivocal act."[104] Other suggested forms and modes are actual or potential sources of controversy among international lawyers and, consequently, are likely to arouse doubts as to whether or not the state that allegedly accords implied recognition by performing a certain act or following a certain course of conduct has *in reality* the intention of according such recognition—and hence, per definition, whether or not the action or conduct in question *is indeed* a recognition. The details of such controversial

suggestions of implied recognition are not pertinent to the present account and they can, therefore, reasonably be left aside. What is of crucial importance here is merely *the existence* or *the likelihood* of such controversy in the first place, which indicates ambivalence as regards the existence of intention to recognize and obscurity as to the existence of the act of recognition. This, in turn, triggers the logical and empirical chain of developments that may ultimately end up with the emergence of problematic cases of juridical sovereignty.

A prototype of ambiguous statements in the context of recognition of states is probably the Taiwan Relations Act that was passed by the U.S. Congress in 1979. The document was a reaction to the rupture of diplomatic relations between the Republic of China (Taiwan) and the United States and the proclamation by the latter of the so-called one China policy,[105] which, in practical terms, transformed the break of diplomatic relations into a withdrawal of recognition on the part of the United States. Falling short of comprising an official declaration of de facto or de jure recognition of Taiwan, the Taiwan Relations Act, nonetheless and in an unprecedented manner, reestablished relations between the two countries "to nearly an official level." Thus, one particular effect of the instrument was to reconfirm "Taiwan's status as a sovereign nation-state according to U.S. law . . . ," and furthermore, it granted to the Taipei government the right of representation in the United States, diplomatic privileges, access to the country's courts, security guarantees and "other perquisites restricted to sovereign nation-states."[106]

Insofar as equivocal actions that may possibly constitute implied recognition are concerned, the cases of indefinite forms of diplomatic representation are especially illustrative. The German Democratic Republic, for instance, in order to overcome the obstacles presented by the so-called Halstein Doctrine during the 1950s and 1960s, employed the diplomatic strategy of attempting to establish "trade missions on a sub-diplomatic level" or of sending "trade delegations" to some newly independent states followed by a request to establish "resident Trade Missions." The latter strategy has been particularly successful in some African countries, notably in Algeria, Sudan, Kenya, and Zambia,[107] in a manner that would inevitably raise the issue of whether or not the host countries, by granting such representation of a dubious nature to the German Democratic Republic, were also performing an act that could be interpreted as a form of implied recognition of that state. In a similar vein, the bilateral treaty concluded between Israel and Lebanon on May 17, 1983 and the "liaison office" established subsequently by Israel in the Lebanese city of Jounieh in accordance with the provisions of that

treaty[108] raises the question of whether or not these actions involve an act of implied recognition, at least on the part of Lebanon.

The explication of the problem of juridical state sovereignty and the investigation of the relationship of this problem to the complicated aspects of the institution of recognition should be brought to an end with two concluding remarks. In the first place, different dimensions of both the problem of juridical state sovereignty and that of recognition have been treated, for the purposes of analysis, in a separate and isolated manner in this chapter. In reality, however, these dimensions may interact with each other and probably even with other factors to produce perplexing results. Seen from a certain vantage point, such interlinks may exacerbate the problems of recognition and juridical state sovereignty. It is completely conceivable, for example, that a territorial entity may not only lag behind in the ladder of recognition but also enjoy that limited degree of recognition only in relation to some states while the existence or nonexistence of such recognition may be further obscured in connection to yet some other states. Viewed from another perspective, however, the results may be rather paradoxical and perhaps, even absurd: an entity may be unrecognized, and hence legally nonexistent in relation to a certain state at the level of formal relations, while this situation may be obscured at another level by informal contacts and the unofficial conduct of that state.

In the second place, it is possible to discern a certain pattern in the relationships between various dimensions of the problem of juridical state sovereignty and those of the problem of recognition. It may well be the case that what has been referred to earlier as "fragmented legal personality" is caused by lower degrees of recognition, "relative legal personality" by an insufficient number of recognizing states, and "uncertain juridical personality" by unclarity as to the forms of recognition employed by states. However, to present such causal statements as the conclusion of this chapter would be to go beyond the evidence.

CHAPTER 7

Factual State Sovereignty: An Omnipresence that is Allegedly Absent

If the controversy as regards *juridical* state sovereignty is about *what* kind of entities are as a matter of law endowed with this type of sovereignty, the dispute concerning *factual* sovereignty is entirely of a different sort. Here, the main discussion is *not* about which type of territorial entities display those characteristics that are normally associated with factual state sovereignty, but about the precise nature of these characteristics, that is to say, about the specific features of a more general quality that usually applies equally to *all* states. Thus, in the contemporary literature, the issue is often raised as to whether factual state sovereignty—as such—is limited, compromised, shared, pooled, outdated, transferred, or transcended. In this terminological affluence, however, it is possible to distinguish the contours of three principal arguments: that factual sovereignty has gradually fallen into insignificance or irrelevance owing to factors restricting the independence and autonomy of states; that this is in some cases the result of institutionalized supranational integration or its mirror image, formalized infranational disintegration; and, finally, that this is due to a lack of territorial control on the part of states and similar entities. As it shall be seen in this chapter, none of these skeptical arguments are empirically tenable. Factual state sovereignty continues to be a pivotal feature of world politics and cases where states have lost this type of sovereignty are few and exist in the margins of international relations.

Factual State Sovereignty and Independence or Autonomy

One central argument that is often reiterated in the contemporary international relations literature is the standpoint that there is a general loss of factual state sovereignty due to factors operating at the interstate and intrastate level and placing limitations on the autonomy and independence of states. For instance, in what is probably the most thorough explication of this view, Stephen D. Krasner departs from a neologism, "Westphalian sovereignty," which replaces the old epithet "external sovereignty"[1] and which is defined in terms of "exclusion of external actors from authority structures within a given territory" or from "domestic authority configurations."[2] Thus, Westphalian sovereignty "is violated when external actors influence or determine domestic authority structures"—a condition, the argument goes on, that should be distinguished from a situation where the rulers of a state are "constrained by the external environment." Krasner asserts that such an infiltration of authority structures may take place "through both coercive and voluntary actions," both "through intervention and invitation."[3] The latter may happen, we are told, when rulers "issue invitations for a variety of reasons," such as "tying the hands of their successors, securing external financial resources, and strengthening domestic support for values that they, themselves, embrace."[4]

Against this theoretical background, and on the basis of a comprehensive empirical survey, Krasner formulates his main conclusion: "Westphalian sovereignty," he writes, has ". . . always been violated," since "[i]f rulers want to stay in power and to promote the security, material, and ideational interests of their constituents, following the conventional practices of Westphalian . . . sovereignty might or might not be an optimal policy."[5] As a result, "[r]ulers have frequently departed from the principle that external actors should be excluded from authority structures within the territory of their own or other states" and "[t]he norm of autonomy, the core of Westphalian sovereignty has been challenged by alternatives including human rights, minority rights, fiscal responsibility, and the maintenance of international stability."[6] Hence, Westphalian sovereignty is best understood as an example of "organized hypocrisy,"[7] which "occurs when the logic of appropriateness and the logic of consequences are in conflict."[8]

Now, seen from the perspective of state sovereignty—rather than that of international relations—it is necessary to point out three counterarguments that may be raised against these propositions. In the first place,

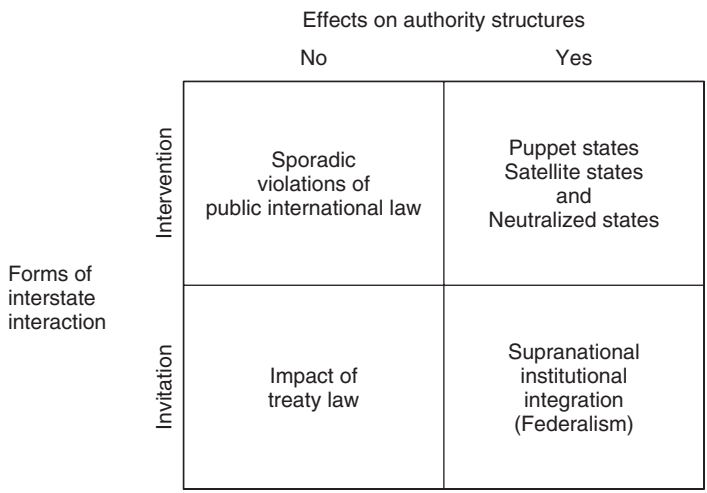
to conceptualize "intervention and coercive actions" on the one hand, and "invitation and voluntary actions," on the other, as functional equivalents of each other, with similar effects insofar as factual external state sovereignty[9] is concerned, creates an unwarranted tendency to underestimate the relationship between *a state's will* and *its sovereignty*. The problem caused by such a de-emphasis of what is normally regarded as the core of *any* kind of sovereignty may be illustrated by means of a brief—if superficial—comparison between pre-1989 and post–1989 East European states from the theoretical position on factual state sovereignty adopted in Krasner's study. To the extent that membership in military alliances entails involvement of external actors in "domestic authority structures," it follows that all East European states, with the exception of Yugoslavia, Albania, and Rumania, have compromised their "Westphalian sovereignty" by membership in the Warsaw Pact during the pre-1989 period. Moreover, after the end of the cold war and the collapse of the Soviet Union, three of these states, Poland, Czech Republic, and Hungary, applied for and were admitted to NATO—hence, *ex hypothesi*, they once again compromised their Westphalian sovereignty. Now, according to the conceptualization of sovereignty under investigation, there are no *qualitative differences* between these two types of memberships in military alliances insofar as the consequences for the factual sovereignty of these states are concerned. In both cases, "Westphalian" sovereignty is compromised and the differences that do exist between these two processes may be traced back to the *means* employed: intervention during the pre-1989 period and invitation thereafter. However, according to the most basic sense of the notion of sovereignty, and even according to Krasner's initial conceptualization of Westphalian sovereignty, it is nothing other than the existence or absence of freedom of action that will render the choice between these two types of membership an expression of the concerned states' will—or for that matter, lack of any choice in that respect a suppression of that will—is what sovereignty is all about.

In the second place, there is a logical tension, if not a contradiction, between at least one of the assumptions and one of the conclusions in Krasner's analysis. On the one hand, as it has been quoted earlier, Krasner presumes that autonomy is the gist of "Westphalian" sovereignty, which supposedly is generally compromised by, inter alia, "voluntary actions" or "invitation" on the part of the rulers of states. On the other hand, "Westphalian" sovereignty is regarded as a case of "organized hypocrisy" since these same rulers, we are told, depending on the requirements of their self-interest, may resort to, apply, or ignore those

rules related to this same kind of sovereignty. Now, to the extent that violation of "Westphalian" sovereignty by voluntary actions is concerned, and to the extent that *engagement* in "organized hypocrisy" for self-interest presupposes some sort of freedom of action—and hence the *existence of some sort of autonomy*—there is a logical problem involved here: it is not possible to reconcile the supposed lack of or compromised autonomy on the part of "rulers," which is due to violations of "Westphalian" sovereignty by means of invitations on a voluntary basis, with the existence of an uncompromised form of *such* autonomy, and with intact existence of *such* sovereignty, implied by the engagement of these same "rulers" in "organized hypocrisy." In other words, it is not clear how rulers may compromise their own autonomy and at the same time be involved in activities, which require that this same autonomy is more or less intact—or how autonomy may be compromised notwithstanding its repeated use.[10]

In the third place, analogous problems also affect the view that violations of Westphalian sovereignty may be the consequence of "coercive actions" and "interventions" on the part of external actors. In this context, the unresolved issue is how existence of such factors that putatively "influence or determine" the domestic "authority structures"—and hence compromise "Westphalian" sovereignty—in the targeted states is to be reconciled with the existence of *successful resistance* and *capacity to break legal commitments*—that is, indicators of untouched autonomy and "Westphalian" sovereignty—on the part of these same states. For instance, Krasner argues that introduction of minority rights in the Balkans during the nineteenth century was "the result of intervention through coercion or imposition,"[11] and that some provisions of the Treaty of Berlin "were inconsistent with the Westphalian model."[12] Thus, as far as the states established in the aftermath of the Treaty of Berlin are concerned, the "[a]ctors in [the] new states were not left to structure their own relationships between rulers and ruled" and "[t]hey accepted formal restraints on their own domestic autonomy to secure international recognition."[13] However, Krasner also points out that once these states acquired international recognition and became powerful, they became less vulnerable to outside pressure and they reneged their commitments. In general terms, monitoring was always difficult and the protection of minority rights in the Balkans failed. It may be argued that such resistance that thwarts the attempts of the targeting state(s) to dictate policies would rather indicate that the autonomy, the "authority configurations," and the factual external—or "Westphalian"—sovereignty of the targeted states in question is *not* compromised.

These three theoretical and logical problems are due to the broadness of the conceptual apparatus employed by Krasner in his analysis of Westphalian or factual state sovereignty. Yet, they may be remedied to a certain extent by taking further steps that simply depart from this analysis but clearly put the *will* and the *capacity* of the state—the two core elements of factual external state sovereignty—in focus. Thus, what is needed here is a higher degree of precision, a more stringent differentiation than that made by Krasner between two sets of circumstances. On the one hand, in the context of factual state sovereignty, a clear demarcation line should be drawn between acts of *intervention* and acts of *invitation*. As it shall be seen in due course, when their consequences for factual state sovereignty is investigated, these two types of phenomena have a tendency to raise two different sets of theoretical and empirical questions within the framework of constitutional law and theory. On the other hand, a clear differentiation has to be made between those cases where these two forms of interstate interaction have *qualitative* consequences for "authority configurations," autonomy, independence—and hence for factual sovereignty—of a territorial entity and those instances where they have no such effects. The resulting classification may be illustrated by means of a diagram:



The first category contains those cases where intervention and coercive actions on the part of targeting state(s) do *not* have any significant effects on the "authority structures," autonomy, independence, or the internal constitutional organization of the targeted state or territorial

entity. Such acts, when sporadic and unsystematic, may be viewed as aspects of power politics between factually sovereign entities. In most cases, they may be regarded as violations of the nonintervention principle of public international law, although this point may be disputed with reference to both changes in contemporary state behavior or recent developments within the discipline of international law. Where resort to intervention is systematic but bilateral and involves non-state actors such as multinational corporations or nongovernmental international organizations, the related issues are similar to those concerning the impact of interdependence and globalization on factual state sovereignty.

The second class of entities refers to the opposite situation. It comprises those cases where "intervention" and "coercive actions" launched by targeting state(s) decisively change the nature of the "authority configurations" in the territorial entity that is exposed to these measures. The systematic and continual nature of the coercion, and the substantial transformation of the constitutional structure of the targeted entity that this coercion leads to, immediately raises the question as to whether or not the entity concerned has been able to preserve its autonomy, independence, and hence its factual external sovereignty.

The third group encompasses those cases where "invitation" or "voluntary acts" carried out by states and similar entities do *not* have any qualitative impact on those features that constitute their factual external state sovereignty. The factors involved in such cases are identical with the consequences of the regulative principles of public international law and, more generally, of the stipulations of the treaty law for the reserved domain—or the legal freedom—of states and similar entities. As such these factors have implications for the *extent* of freedom of action an entity enjoys in relation to a delimited piece of territory. However, in a fashion analogous to juridical state sovereignty, they should not be confused with *possession* of that freedom of action, given that the extent of freedom of action is not restricted to such a degree that it has simply become obliterated.

The fourth and last category comprises those cases that manifest the opposite condition. Here, "invitation" or "voluntary acts" on the part of states and similar entities *do* have significant, qualitative effects on their "authority structures," autonomy, and independence. In this context, the relevant question is whether or not the constitutional changes that emanate from such optional actions have the nature of *delegation of powers* or *alienation of powers*. The former situation may be considered as subspecies of the previous category, while the latter condition, where the powers have been transferred to an external authority beyond the

possibility of reclaiming them, distinguishes those states and similar entities that have lost their factual state sovereignty as a result of voluntary action.

Seen from such a theoretical vantage point, the empirical question under investigation may be couched in more rigorous terms. In the first place, the question is to what extent, if any, it is a widespread phenomenon that *interventions* or other types of coercive actions on the part of states and similar entities have *qualitative* effects on the "authority structures" of targeted states and, hence, compromise their Westphalian sovereignty—or, to be faithful to the terminology used in this work, leads to lack of factual state sovereignty. In the second place, the issue that should be investigated is if it is a common feature of international relations that *invitations* or other types of voluntary actions on the part of territorial entities have such or similar effects. Of these, the first question is investigated in the rest of this section while the second will be the main theme of the next section, where the argument about comprised sovereignty due to voluntary actions will be tested in the specific context of a hard case for this proposition: the case of the West European integration.

A rapid and perhaps even superficial inquiry into the matter will reveal that lack of factual state sovereignty, as a result of compulsion appears to be a marginal phenomenon in the sphere of international relations. Despite the contemporary, but at the time of writing dubious, cases of Afghanistan and Iraq, it would *not* be an exaggeration to say that such cases are more or less anachronistic and that the issue is gradually becoming one of mainly historical interest. Nevertheless, it is still possible to identify four principal types of entities that are in the condition of being factually non-sovereign: puppet states, satellite states, entities subject to imposed-unequal treaties, and coercively neutralized states.

The difference between the first two, the puppet states and the satellite states, may be traced back to international law and political scientific definitions of dependency in international relations. In the words of an international lawyer, James Crawford, the former term, puppet states, "is used to describe nominal sovereigns under effective foreign control, especially in cases where the establishment of the puppet State is intended as a cloak for manifest illegality."[14] Owen Lattimore, in turn, points out that "[a] puppet differs from a colony in that the ruling state, after having imposed control over the puppet by force, has reasons of its own for setting up a fiction of independence instead of asserting title of ownership."[15] As a phenomenon, puppet states have proliferated during the interwar period and the Second World War. The establishment

of the State of Manchukuo in the Chinese province of Manchuria by Japan in 1932 is usually presented as the prototype of puppet states, both in the political scientific literature[16] and in monographs on international law.[17] The states of Egypt and Iraq during the interwar period where British control was more than nominal, the States of Croatia and Slovakia created in the German-occupied territories in 1939 and 1941, Philippines under Japanese control during the Second World War, and the state established in northern Italy by Germany in 1943 are often cited as other examples.[18] However, as it has been pointed out by James in the mid-1980s, "[s]o extended and manifest a system of dominance is nowadays out of fashion."[19] It may be argued that the Turkish Republic of Northern Cyprus, which was declared in 1983 and which was only recognized as a state by Turkey and for a short period by Pakistan, is at the moment of writing the only existent puppet state in the world.[20]

Satellite states, on the other hand, are those entities that lack factual state sovereignty while having a juridically sovereign status. "Political satellitism," writes Ferenc A. Vali, "is a method whereby another country may be controlled or made dependent on another state without incorporation or any other legal or official admission of the *de facto* reality of dependency."[21] Lattimore, in turn, identifies three dimensions of "satellitism": "the interest of the controlling state in acquiring the satellite; the existence of a minority group in the subordinate state that wants the satellite relationship; and the prevailing fear that other alternatives are worse, which enables the minority to induce the majority to go along."[22] It should be noted in this context that it would be a mistake to take the word "satellite" in these definitions literally. As Vali remarks, what is involved here "is a kind of indirect rule, an autonomy enjoyed by the dependent state which agrees to follow the advice or commands of the dominating power."[23] The possible existence of such a leeway is encapsulated in concepts such as "domesticism,"[24] "international communist empire,"[25] and "national communism"[26] coined to describe the freedom of action enjoyed by eastern European satellite states, especially during the post–Stalin period. However, insofar as the nature of the relationship between the satellites and the dominant powers is concerned, the pertinent question is *not* whether the former have freedom of action but the *nature* of that freedom of action: whether or not, in a manner similar to internal devolution, it originates in "powers" that are *alienated* or *delegated* on the part of the dominant state. In other words, it is the fact that the freedom of action enjoyed by the satellite is dependent on delegation on the part of the dominant entity, and that it is tolerated or consented but retrievable at any time by the latter, which

distinguishes satellite states from other ostensibly similar cases. As it has been noted by Gordon Skilling, just before the invasion of Czechoslovakia and the formulation of the Brejnev Doctrine, in some of the eastern European countries, ". . . [the] national action can take place only within the limits set by the control and influence emanating from the Soviet Union in the political, military, and economic realms."[27]

In empirical terms, satellite states, just like puppet states, have more or less disappeared as a phenomenon from the realm of international relations: the most obvious examples in this respect were the Warsaw Pact states in East Europe, especially Hungary and Czechoslovakia after the foreign interventions of 1956 and 1968, respectively, while Mongolia probably constituted the only pre-Second World War satellite of the Soviet Union. In the post–cold war era, on the other hand, there are strong reasons to presume that, Lebanon under the control of Syria, at least until the death of the Syrian President Hafez al-Assad, is the only example of satellitism, while Bhutan under the tutelage of India, as it shall be shown in the next chapter, is probably a problematic case as regards factual state sovereignty. However, it is possible to argue that, lack of clear-cut contemporary examples notwithstanding, recent developments in Afghanistan and Iraq indicate that satellitism is gradually becoming one of the permanent features of post–cold war international relations. At the time of writing, nevertheless, it is too early to support or argue against such a position.

The third and the fourth type of entities, that is, states subject to imposed-unequal treaties and coercively neutralized states are equally rare but much more difficult to ascertain. In both cases the means employed by the targeting state(s) have the effect of destroying or frustrating attempts to create the necessary conditions for independence and autonomy and hence for factual state sovereignty. What makes such cases difficult to identify is the fact that the instruments at the disposal of the targeting state(s), while clearly observable, may fall short of creating such qualitative effects or, to put it differently, may restrain the freedom of action enjoyed by the targeted state(s) without completely obliterating it.

In a manner similar to those previous categories of factually non-sovereign entities, what characterizes an imposed-unequal treaty is an asymmetric power or legal relationship between two or more territorial entities. In the available literature, an international lawyer, Ingrid De Lupis, identifies the following features as the common denominator of unequal treaties: "[a] newly independent state," "[r]estrictions of territorial sovereignty," and "[t]he establishment of military bases."[28] However,

what is pertinent to the present analysis is a broader category than the international law notion of "unequal treaties"—hence the neologism *imposed-unequal treaties*. Thus, it will be argued that imposed-unequal treaties lead to the elimination of factual state sovereignty if they have two features: if the treaty is concluded under duress, by use of military force or by threat thereof or if its conclusion is a precondition for the creation of a new state, and if it stipulates that the weaker part to the treaty refrain from or transfer to an external authority some of its sovereign functions, such as jurisdiction over its own territory or the right to establish military alliances. It has to be emphasized that what is decisive, insofar as existence or not of factual state sovereignty is concerned, is the *simultaneous occurrence* of these two types of events. On the one hand, conclusion of a treaty under duress after a military defeat or military threat is a necessary but not sufficient condition for obliteration of factual state sovereignty. This may be illustrated by means of a single historic example. The peace settlement between Prussia and France after the 1870 War forced France to withdraw from all of Alsace and greater parts of Lorraine and to pay huge sums in reparations. However, it left the sovereign functions of the French state intact, and this factor may be pointed out as the precise reason why the treaty, though imposed upon France, did not have any implications for its factual state sovereignty—except, of course, for limitation of its physical scope due to territorial losses. On the other hand, to shift to the opposite condition, it may reasonably be argued that transfer of sovereign functions to an external authority, without any involvement of external military force or threat, does not necessarily imply eradication of factual state sovereignty. As was noted earlier, such cases of "invitations" or "voluntary actions" will be investigated in detail in the next section; thus, it should be sufficient to point out here that it is nothing other than the interjection of military force or threat into such processes that indicates that the powers or sovereign functions transferred are indeed alienated rather than delegated—hence, the loss of factual state sovereignty. Seen from such a theoretical perspective, the treaty of 1915 between the United States and Haiti may be regarded as a relatively clear example of an imposed-unequal treaty: the treaty gave the United States "a right to intervention" and Haiti "was pledged to preserve its sovereignty intact and not to lease or cede territory, nor to give other states a right of jurisdiction." What made such transfer of powers and sovereign functions more than a delegation, an abdication beyond the possibility of reclaim, was the military factor: "the United States occupied the island to 'ensure' ratification of the treaty."[29] In the contemporary era, the Treaty of Brotherhood, Co-operation

and Co-ordination and the Defence Pact concluded between Syria and Lebanon in 1991 constitute evident examples of imposed-unequal treaties that obliterate the factual state sovereignty of the weaker part, in this case that of the Lebanese state.[30] But, once again, there is nothing that indicates that imposed and unequal treaties are a widespread or an endemic phenomenon in the sphere of international relations.

Coercively neutralized states refer, on the other hand, to those entities that lack factual external state sovereignty due to the fact that the general outlines of their foreign policy are determined by other, usually more powerful, states. "A neutralised State," writes Oppenheim in his classical work on international law,

> is a State whose independence and integrity are for all future time guaranteed by an international convention, under the condition that such State binds itself never to take up arms against any other State except for defence against attack, and never to enter into such international obligations as could indirectly involve it in war.[31]

Or to refer to another definition,

> *A neutralized state is one whose political independence and territorial integrity are guaranteed permanently by a collective agreement of great powers, subject to the conditions that the neutralized state will not take up arms against another state, except to defend itself, and will not assume treaty obligations which may compromise its neutralized status.*[32]

It is necessary to highlight two aspects of these definitions. In the first place, references to guaranteeing "independence" is paradoxical since neutralized states, to the extent that neutrality is imposed by other states, lack independence in the strict sense of this term. Thus, it is not possible to interpret the notion of independence in such descriptions other than in terms of independence *from* total, puppet- or satellite-like, control by other states. As has been pointed out by Schwarzenberger, "[w]hat matters in law is whether . . . policies of neutrality or the maintenance of independence remain matters of sovereign decision."[33] In the second place, the definitions stress the role of international conventions or collective agreements among great powers in neutralizing a state. This is especially emphasized by Oppenheim who writes that "[t]he act through which a State becomes a neutralised State for all time is a treaty of the guaranteeing States between themselves and the State concerned . . ."[34] Seen in this vein, the class of neutralized states could be regarded as subspecies of the previous category of entities subject to imposed-unequal

treaties. However, at least in theoretical terms and clearly from the vantage point of the present analysis, the existence of a treaty is not a necessary condition for the emergence of such an entity on the international scene. In other words, what is of crucial importance is *neutralization by force* rather than *neutralization by treaty*, that is to say, whether the neutralization is consented to or resented by the state on which it is imposed—hence the neologism *coercively neutralized states* employed here in order to bring the *will* of the state to the fore. Against the background of such considerations, it is possible to identify one clear-cut, but historical, case of coercively neutralized states in the empirical world: Belgium between 1839 and 1914, which "had always tended to regard neutralization as an unjustified limitation on its sovereignty imposed as a condition of its independence."[35] Post–Second World War Austria, on the other hand, which ". . . was free . . . only to choose between continued occupation and permanent neutrality" and which ". . . did not have the option of an independent foreign policy without obligations,"[36] was, as shall be shown in chapter 8 of this book, only a problematic case as regards factual state sovereignty. As far as the frequency of neutralized states is concerned, it was noted in the late 1960s in the midst of the cold war that, notwithstanding a few exceptions, "neutralization is hardly a fashionable notion among contemporary statesmen."[37] Thus, it is perhaps not surprising that in the present era it is difficult to find an example that would unambiguously fit into the category of coercively neutralized states.

On the basis of this brief survey it is possible to assert that the proposition that factual state sovereignty is compromised by interventions and compulsory actions on the part of other, more powerful states is not sustained by empirical evidence. In spite of the interventions of the United States in Afghanistan and Iraq, the outcome of which is still obscure at the time of writing, it is possible to argue that most of the states and similar entities that have lost their sovereignty due to imposition, compulsion, or control are cases that belong to the realm of history with little relevance to the present contemporary world. As shall be seen in chapter 8, those few possible cases that do exist constitute problematic cases as regards factual state sovereignty, that is to say, cases where it is not possible to give any clear-cut answer to the question of whether or not the territorial entity in question has lost its sovereignty due to intervention and compulsory actions. Thus, it is now possible to shift the focus of attention to the second question and ask whether factual state sovereignty is compromised by means of invitation or voluntary actions on the part of states. This question will be studied in an indirect manner

with reference to the structure of federal and confederal states and in the specific context of the European integration. It may be argued that to the extent that such institutions originate in and build upon international treaties—and hence, elementary forms of "invitations" or "voluntary actions"—they constitute hard cases where the thesis about compromised factual state sovereignty may be tested.

Factual State Sovereignty and Institutionalized Supranational Integration or Infranational Disintegration

The second general proposition about factual state sovereignty to be found in the political scientific and international relations literature is the argument that this kind of sovereignty is compromised, transformed, or dispersed as a result of institutionalized supranational integration—or its mirror image, formal infra-national devolution or disintegration—entered into or initiated voluntarily by states and similar entities.[38]

This standpoint has been formulated first and foremost although in a rather rudimentary form, in the specific context of European Union in order to refer to the new, allegedly unique constitutional structures that have emerged in western Europe during the second half of the twentieth century. Thus, William Wallace writes that "[n]o government in Europe remains sovereign in the sense understood by diplomats or constitutional lawyers of half a century ago."[39] The new thing, as indicated by the title of his article, is "The Sharing of Sovereignty," a condition where an "intricate network of Councils and committees" administer the "shared sovereignty" of governments.[40] In other words,

> [S]overeignty is increasingly held in common: pooled among governments, negotiated by thousands of officials through hundreds of multilateral committees, compromised through acceptance of regulations and court judgements which operate on the principle of mutual interference in each other's domestic affairs.[41]

Shirley Williams, in turn, refers to "pooling of sovereignty," a situation where sovereignty is "collectively held by an association of states which reaches decisions on specified matters by a qualified majority."[42] For Koen Lenaerts "[t]here simply is no nucleus of sovereignty that the Member States can invoke, as such, against the Community."[43] He alludes to what has happened to that sovereignty in another context when he writes that "the Member States . . . assume their own sovereignty, not

any longer through autonomous, but through common decision-making."[44] Such a notion is sometimes expressed without any reference to striking neologisms but by invoking the old terminology:

> [T]he sovereignty of the Community's member states has not been lost, but subjected to a process of division and combination internally, and hence in a way enhanced externally. But the process of division and combination has taken us "beyond the sovereign state," indeed, well beyond it.[45]

On four accounts, which in increasing degrees of graveness indicate the problematic aspects involved, such a conceptualization of factual state sovereignty is not satisfactory. In the first place, and at the most basic level, the word sovereignty is used in these excerpts as a synonym, sometimes unambiguously as such, for other more empirical terms such as "decision-making" or "formal competence." After all, what is referred to in these accounts is observable, even if complicated, transactions between Brussels and the capitals of member states—or to put it more concretely, between the individuals and institutions that act on behalf of these political centers. Seen in this vein, it may be argued that it is anyone's wonder and, for that matter, a source of justified criticism why in conducting empirical research one should replace words that convey more or less clear and simple ideas with an abstract and complicated idiom that has been contested for centuries.[46] The argument here is something more than indulgence in linguistic pedantry, or lamentation of, to borrow James's elegant formulation, "absence of legislative control over semantic practice."[47] The epistemological and theoretical approach outlined in chapter 4 and some of the arguments formulated in that context apply with equal force even to this usage of the word "sovereignty."

In the second place, and partly as a result of this, these conceptualizations say nothing specific about sovereignty in general and the European supranational integration in particular. This point can be illustrated with reference to one of the more precise descriptions of this notion of sovereignty quoted earlier: if the main elements of "pooling sovereignty" are, as it is defined by Williams, "an association of states," decisions in "specified matters," and "qualified majority" in decision making, then, it would be possible to apply the concept to *any* international organization that follows the principle of qualified majority and weighted voting in its decision making. Thus, on this basis it would be possible to say that what characterizes, for instance, the UN Security Council is "pooling

sovereignty" to the extent that it:

(a) is an "association of states" (five permanent and ten elected members);
(b) that "reaches decisions on specified matters" (international peace and security);
(c) and does so "by qualified majority" (consent of the permanent members and nine-tenth of the members of the Security Council, which may be interpreted as the functional equivalents of the weighted vote, and of qualified majority in the Council of Ministers, respectively).

To these elements, as well as to the definition of "pooling sovereignty," it could be added that

(d) the decisions taken by the UN Security Council are of a binding character just like those taken by the Council of Ministers in the European Union (Article 25 of the United Nations Charter stipulates that "[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council").

In other words, on the basis of the definition it would be possible to claim that the member states of the UN Security Council "pool" their sovereignty and exercise that pooled sovereignty not only over each other but also over other member states that are not represented in the council. The likelihood of such an absurd application indicates the inherent analytical weakness of the conceptualization involved.

In the third place, if these concepts are too broad as regards the domain of empirical application, they are also too narrow with respect to the issue that they attempt to address. This is due to the fact that they have a propensity to overemphasize the specific nature of European institutionalized supranational integration while downplaying those similar, if historical, cases that might be helpful in highlighting those aspects of this integration that are related to state sovereignty. After all, European integration is not taking place in a vacuum but in a territorial room, the outer confines of which are clearly and rather strictly demarcated: not all or *any* but only the *member* states are involved in the set of interactions that are labeled in these analyses as "pooling," "shared," or "joint exercise of sovereignty."[48] Seen in this vein, the unique example of European integration becomes one among many familiar cases of confederation or federation-building, the difference between the two being one of a

constitutional nature: whether the powers transferred to the center is *delegated* or *alienated*. Such an approach to the issue is *also* in line with classical notions of the origins of federal government. For instance, in a manner reminiscent of, or maybe even heralding the difficulties encountered by the European federalists, Dicey has regarded successful federations as "the slowly-matured fruit of earlier and looser connection."[49] Wheare, in turn, refers to "previous existence as distinct colonies or states" without "long history as . . . truly sovereign state[s]" as a factor that distinguishes modern federations.[50]

Consequently, the questions related to factual state sovereignty in the context of the European Union turn out to be akin to those that arise in the context of an analysis of state sovereignty in *any* comparable federal or confederal structure. Thus, on the one hand, these conceptualizations of sovereignty, as shall be seen in a moment, attempt to answer the issue as to the locus of sovereignty without any reference to the constitutional structure of the European Union. On the other hand, they take insufficient account of, but implicitly position themselves in, the theoretical debate about the locus of sovereignty in federal and confederal structures that have been launched previously and that have crystallized into positions informed by quantitative and qualitative conceptualizations of sovereignty: the notion of federalism as a matter of degree as well as the idea that "[i]t belongs . . . to the essence of a Bund that the question of sovereignty always remains an open one between the union and the member states, so long as the Bund as such exists alongside the member states as such."[51] To the extent that notions of "pooling," "shared," or "joint exercise of sovereignty" imply the former quantitative conceptualization of sovereignty, the arguments formulated against this view in chapter 4 of this volume are equally valid here.

In the fourth place, and most importantly, the concepts of "pooling," "shared," or "joint exercise of sovereignty" conceal from consideration the latent constitutional conflict that lurks behind the formal integration processes in western Europe; a conflict that is judicial in form but political in essence and the solution of which, if and when it becomes manifest, will solve the question as to the locus of sovereignty within the confines of the European Union. The potential controversy concerns the incompatible opinions adopted by the European Court of Justice, on the one hand, and the national courts of the member states, on the other, about the *basis* of legal sovereignty within the overlapping positive legal orders—or the "constitutional pluralism"[52]—that characterize the legal structure of the European Union. And here there is no evidence to suggest that the approach of the judges to the issue is similar to that of the

political scientists quoted earlier or that they are predisposed to adopt such quantitative notions of state sovereignty.

In the available literature, and also as a matter of political fact, there does not seem to be any controversy about the supremacy of European Union law over the domestic law of the member states. However, diametrically opposite views are adopted by jurists about the *basis* of that supremacy. On the one hand, according to the doctrine definitively adopted by the European Court of Justice, at least since 1964, the community constitutes "a new legal order, or an order *sui generis*"[53] that is "neither a subordinate part of the laws of the member states nor simply a sub-system of International law."[54] On the other hand, with the possible exception of Netherlands, the general tendency among the judges in the member states of the European Union is to derive the supremacy of European Union law from the provisions of their own domestic constitutional law. This position is clearly indicated, among other things, by the famous decision of the Federal Constitutional Court of the German Republic and the opinion of the House of Lords about the sovereignty of the United Kingdom.[55] The existent situation is described succinctly by MacCormick:

> National courts which implement Community law thus find themselves doing so on a ground different from that which the ECJ regards as mandating their doing so. The ECJ considers the implementation of Community law by national courts to be directly required by an EC constitution, and considers the doctrine of primacy or supremacy as applying (above all) to that constitution. The national Courts consider Community law, constitution included, as applicable only in virtue of national constitutional law.[56]

Thus, there is an "interlocking of legal systems, with mutual recognition of each other's validity, but with different grounds for that recognition."[57] This is, MacCormick points out, the source of what has been labeled by an Irish jurist, Rossa Phelan, as the "revolt or revolution dilemma" that will be encountered by national courts in case of a fundamental and manifest legal conflict between these two juridical systems.[58] With reference to the work of Phelan, MacCormick writes that

> [T]he present legal situation cannot last forever, Key test cases are bound to arise, if, indeed, they have not already arisen. The highest court in some state (or in more than one) will be driven, . . . to the point where one or other of two paths must be taken. Either loyalty to Community law will force them to sanction a revolution in their own state, a constitutionally

> unauthorized change of the constitution that will effectively transfer the people's sovereignty to organs of the Union. . . . Or loyalty to the constitution as expression of the people's sovereign mastery of their state will sanction a revolt against the constitution of the Community, and the decisions of the ECJ that have created it.[59]

This is another way of saying that, by necessarily displaying their loyalty to *one* of the two judicial authorities involved in any open legal conflict, the *courts* will determine, as a matter of fact, where sovereignty resides within the European Union. Here it is necessary to point out five things.

First, in contrast to the quantitative conceptualizations of factual state sovereignty adopted by the political scientists quoted earlier, the jurists apparently have a predisposition to give this concept a qualitative substance. To the extent that they do not implicitly or explicitly designate the national constitutional court—or any other national equivalent to it—or the European Court of Justice as the sovereign body (since in the absence of an open conflict between them there is no urgency of taking a stance on the issue), they, in a fashion similar to that of Schmitt, leave the question as to the whereabouts of sovereignty open, to be decided by the outcome of the future "revolt or revolution dilemma." The implication here is that it is the member states that are sovereign if the national courts display loyalty toward the organs that represent or interpret the national constitution (revolt), and it is the European Union as such that is sovereign if the national courts follow the verdict issued by the European Court of Justice (revolution). There is no room for such a thing as "pooling" or "shared" or "joint exercise of sovereignty" in this conception of sovereignty.

Second, the legal nature of the dispute notwithstanding, in case of a "revolt or revolution dilemma," the *actual* behavior of the courts determines, as a matter of fact, where sovereignty resides—hence, what from an intrastate perspective may appear as a legal confrontation about the locus of juridical sovereignty turns out to be an act of creation of factual sovereignty at the level of states and similar entities. This is due to the fact that the aggregate behavior of courts creates enclaves or territories—and in the particular context of European Union, member states—where *one* but *not another* legal order is actually prevalent. This may occur while the legal dispute may continue for decades from that moment on.

Third, there is nothing novel about the idea that courts play such a decisive role when it comes to determining the whereabouts of sovereignty within a political system. Long before the debates about the

constitutional makeup of the European Union, H. W. R. Wade wrote in an article published in the mid-1950s that "[t]he courts cannot serve two masters; if there are two or more legislatures within the same legal system, there must be one to which the courts will allow the last word in any particular matter."[60] Furthermore, "[t]his," Wade continues, "is the 'ultimate legal principle' ";[61] a principle that constitutes the basis of the authority of "sovereign legislation" and that is "a political fact for which no purely legal explanation can be given . . ."[62] To the extent that legislation, broadly defined, may even involve interpretation of the existing positive law, what Wade writes about sovereign legislation is equally valid for courts of last appeal (or constitutional or otherwise highest courts) and, consequently, for the national constitutional courts of the member states and European Court of Justice.

Fourth, the use of the terms "pooling," "shared," and "joint exercise of sovereignty" in a context where students of law and politics cannot reasonably say anything about the locus of sovereignty opens up the field for rhetorical abuse of this concept. Consequently, the line between the use of the concept of sovereignty as an instrument of politics and employment of this concept as an analytical instrument in disciplines is blurred. As has been noted by Michael Newman

> [O]pponents of the European Union have customarily argued that it threatens "sovereignty," while proponents have normally taken one or more of the following positions: either that "sovereignty" had already ceased to exist in the contemporary world, or that is *should* be superseded, or that the EU leads to "pooled" or "shared" sovereignty. The debate has been bitter and prolonged but it is doubtful whether it has clarified the issues. There are two reasons for this: first, the term "sovereignty" is inherently ambiguous; secondly, each side in the debate has often been intent on using the word to justify its aims rather than to explain anything.[63]

Thus, seen from such a perspective, these conceptions of sovereignty that are putatively proposed in order to analyze sovereignty in the context of the European supra-national integration—or vice versa—collapse into implicit contributions to a overly politicized debate about that integration.

Fifth, it is possible to assert that the constitutional structure of the European Union and the questions related to factual state sovereignty in that context are by no means unique. What at face value seems to be an uncommon case of "pooling," "shared," or "joint exercise of sovereignty" within an unprecedented political construction, that is, the European

Union, turns out to be, on close examination, one more case in a sequence of historical cases that raise similar questions about state sovereignty. Here it should be sufficient to refer to two analogous cases to illustrate this point: United States of America from 1778 to 1861 and the dissolution of the British Empire and the case of Southern Rhodesia from 1963 to 1965.

Seen from the perspective of statehood and state-building, it is not possible to mistake the parallels between the present European Union and the historical so-called Philadelphian system, that is, the United States of America between the establishment of the union (1781–1789) and the Civil War (1861–1865):[64] the latter too was neither a confederation nor a federation,[65] it was not regarded as a state by some of the contemporary observers[66] and it had also special procedures for admitting new states as members.[67] However, the resemblances extend beyond the surface and include even the internal composition of these entities. The contemporary debate about the constitutional structure and the locus of sovereignty in the European Union had striking similarities with the constitutional controversy about the power relationships between the central government and the member states of the federation that took place in the United States of America during that period. On the one hand, the doctrine of the European Court of Justice had its equivalent in the notion proposed by one of the advocates of the federal government of the United States that "[i]n 1789, . . . the transition had been made from one form of political organization to the other" and that "[i]n place of a treaty association a constitution had been created."[68] The argument here—analogous to the sui generis argument of the European Court of Justice—contained an emphasis that "the central government was a fully fledged national government, standing on its own base, with which the individual states had nothing whatever to do."[69] On the other hand, the views of the national courts in member states of the European Union had its counterpart in the notion presented by one of the proponents of the member states of the United States that ". . . a federal system of government necessarily implied the reserved sovereignty of the member states or peoples, and the delegation by them of certain governmental powers to a central body or institution."[70] It is true that in the American debate the supremacy of the two different institutions was derived from two different demarcations of *people* and with reference to the notion of popular sovereignty rather than pure legal doctrine: sovereignty of *one* American people or nation and "sovereignties" of *many* peoples of the member states respectively.[71] However, despite the "elaborate interpretations" of the constitution that were developed about

the issue of secession of member states and the three consecutive Great Compromises that temporarily saved the Union,[72] the controversy over supreme authority within the Union, the right or not of secession of the member states, and hence, the issue of the locus of sovereignty was solved qualitatively: it was decided on a political basis by means of the Civil War.[73]

During the gradual dissolution of the British Empire during the second half of the nineteenth and the first half of the twentieth century, there was probably always a potential for constitutional conflicts, the likelihood of the emergence of some equivalents of the "revolt or revolution dilemma." Writing about South Africa in mid-1950s, and after referring to the prevalent view at the time that the Parliament of the Union of South Africa was a sovereign legislature, Wade argued that

> Thirty years ago it [the Parliament of the Union of South Africa] was undoubtedly a subordinate legislature, for it was subject to the Colonial Laws Validity Act . . . During these years the seat of sovereign legal power has therefore shifted from Westminster to Pretoria. How has this come about? One naturally answers that it is the result of the Statute of Westminster, 1931, and of South Africa's own Status of the Union Act, 1934 . . . But such a purely legal answer can easily be shown to be inadequate; for it does not explain what would happen if . . . the United Kingdom Parliament were to attempt to amend or repeal the Statute of Westminster. Most people would predict, . . . that English judges would be bound to uphold the United Kingdom Parliament's power to repeal or amend the Statute, but that South African judges would not. The repealing Act would thus be ineffective in South Africa, and the South African courts would have thrown off their allegiance to the United Kingdom Parliament. That means that a revolution has already taken place.[74]

Thus,

> When sovereignty is relinquished in an atmosphere of harmony, the naked fact of revolution is not so easy to discern beneath its elaborate legal dress.[75]

During the latter stages of the dissolution of the British Empire, the case of Southern Rhodesia 1963–1965 was probably the most conspicuous case where it was not possible to speak about such a "peaceful revolution" with the issue of sovereign power being "obscured by legal camouflage."[76] During the period after 1923, the British government gradually relinquished its powers to intervene in Southern Rhodesian internal

affairs, and by 1961 those powers that it still held were "reserve powers" that were "purely negative in character."[77] These powers were further reduced, first replaced by "checking devices" and then formally incorporated into the 1961 Constitution that was in force until the Unilateral Declaration of Independence in November 1965.[78] Insofar as external affairs were concerned, Southern Rhodesia was a member of the Central African Federation until 1963, when it applied for independence following the secession of Nyasaland and Northern Rhodesia from the federation.[79] The ensuing period of 1963–1965 was characterized by a deadlock in the negotiations between Southern Rhodesia and the United Kingdom as the British government "was not satisfied that five prerequisites for the grant of independence had been met."[80] What is relevant for the issue of factual state sovereignty are the constitutional aspects of this stalemate: the United Kingdom was bound by the convention of noninterference, which was by then incorporated into the 1961 Constitution and which guaranteed Southern Rhodesian factual internal sovereignty—and thus it could not enforce these five requirements. Southern Rhodesia, in turn, was legally powerless to cut the bonds with the United Kingdom and to acquire not only factual external sovereignty but also juridical sovereignty by changing its international status.[81] As a result of two sets of developments, the constitutional stalemate transformed into a constitutional crisis and a situation analogous to the "revolt or revolution dilemma" in the European Union context emerged. On the one hand, the Unilateral Declaration of Independence of November 1965 and the promulgation by the Southern Rhodesian government of a "Constitution of 1965"[82] attempted to create a legal order that was completely independent from the United Kingdom. On the other hand, the British government countered these actions by passing two Acts of Parliament: the Southern Rhodesia Act of 1965, which maintained that Southern Rhodesia was a dominion under United Kingdom's responsibility and jurisdiction, and the Southern Rhodesia (Constitution) Order of 1965, which invalidated the Constitution of 1965.[83] What surfaced were two legal orders that emanated from these two sets of legal instruments and that were in manifest conflict with each other. The emerging constitutional crisis could only be solved on the basis of the attitude of those courts, that is, the Southern Rhodesian courts, the loyalty of which was required by both the Southern Rhodesian and the United Kingdom governments. As it is well known, between 1965 and 1979, these courts remained loyal to and enforced the laws enacted by the Rhodesian state, which under the Ian Smith government thus acquired factual state sovereignty. However, in a manner that verifies the arguments of this

study, this situation had no implications whatsoever for acquisition of juridical sovereignty by this entity.

Thus, in the absence of a manifest conflict between the European Court of Justice and national courts of the member states that will raise the issue of the locus of legal sovereignty and in the absence of any clear agreement between these legal authorities about the *origins* of the hierarchy of the legal orders involved—that would imply a silent or "peaceful" revolution—it is not possible to identify the locus of factual sovereignty within the European Union. Two conclusions may be derived from this. First, against the background of the historical developments that have been witnessed in the similar cases of the United States of America until 1861 and the dissolution of the British Empire and the case of Southern Rhodesia in 1965, it may be claimed that the notions of "pooled," "shared," or "joint exercise of sovereignty" are attempts at answering a question, that can reasonably be left to the competent treatment of a fortune-teller. Second, given the potential for legal conflict and the necessary resolution of such a conflict by political means and in terms of intact factual state sovereignty, there is nothing that indicates that factual state sovereignty is compromised rather than transferred from one authority to another or, alternatively, retained by one of these authorities. This state of affairs does not support the proposition to the effect that this kind of sovereignty is generally compromised by "invitation" or "voluntary actions."

Factual State Sovereignty and Territorial Control

The third argument frequently put forward by students of international relations is the view that factual internal state sovereignty is undermined as a result of loss of or inability to establish territorial control on the part of states. This argument has been presented, albeit in a non-pristine form, in two different contexts: with reference to the Third World or, more precisely, sub-Saharan African countries, as emergence of "quasi-statehood" and "shortage of positive sovereignty,"[84] and more conspicuously in relation to developed countries, as loss of "interdependence sovereignty." In this section, these two versions of the argument will be scrutinized critically.

As has been argued in chapter 5 of this book, in the context of a discussion of juridical state sovereignty, what characterizes the Third World in the aftermath of the decolonization processes is the emergence of empirically weak states. Referring to the development since 1960s, Robert Jackson writes that ". . . numerous emergent states did not, and

may still do not, disclose substantial and credible statehood by the empirical criteria of classical positive international law."[85] These entities display

> [L]imited empirical statehood: their populations do not enjoy many of the advantages traditionally associated with independent statehood. Their governments are often deficient in the political will, institutional authority and organized power to protect human rights or provide socioeconomic welfare. The concrete benefits which have historically justified the undeniable burdens of sovereign statehood are often limited to fairly narrow elites and not yet extended to the citizenry at large whose lives may be scarcely improved by independence or even adversely affected by it. These states are primarily juridical. They are still far from complete, so to speak, and empirical statehood in large measure still remains to be built.[86]

It has to be pointed out here that Jackson's interpretation of empirical criteria of statehood in terms of *good government* deviates significantly from the positive international law understanding of these same criteria as containing, among other things, the criterion of *effective* government, which, in turn, necessarily comprises the element of territorial control.[87] The tension caused by this deviation may be alleviated with reference to the fact that the existence of the latter, effective government, is a necessary condition for the emergence of the former, good government. However, since it can by no means be regarded as a sufficient condition, it is necessary here to refer to Jackson's earlier work, where his argument is more clearly in line with the view generally adopted by international lawyers. Thus, in an article on statehood in sub-Saharan Africa published in 1982, Jackson, together with Carl G. Rosberg, asserts that most of the African national governments "exercise only tenuous control over the people, organizations, and activities within their territorial jurisdictions" and that "[s]ome governments have periodically ceased to control substantial segments of their country's territory and population."[88] After interpreting empirical statehood in terms of existence of "a stable community" and "an effective government,"[89] the authors claim that

> It is evident that the term "empirical state" can only be used selectively to describe many states in Black Africa today. With some notable exceptions . . . it seems accurate to characterize Africa's states as empirically weak or underdeveloped. If we adopted a narrow empirical criterion of statehood—such as Weber's monopoly of force—we would have to conclude that some African countries were not states and that statehood in others has periodically been in doubt.[90]

With two reservations, the validity of these observations is admitted. First, it may be questioned to what extent quasi-statehood is an exclusive phenomenon that is *confined to* sub-Saharan Africa. During the post–Second World War period, there have been, at least periodically, empirically weak states, such as Burma, Laos, Lebanon,[91] and Malaysia,[92] in other parts of the world in a fashion, which would indicate that the existence of this kind of phenomena has not been limited to Black Africa. Insofar as the post–cold war period is concerned, it may reasonably be argued that most of the former Soviet republics in Central Asia and at least some of the independent states, such as Bosnia-Herzegovina and Macedonia, which succeeded the breakup of the Yugoslav Federation were/are manifesting traits of weak statehood. This situation supports the view that quasi-statehood, rather than being endemic to sub-Saharan Africa, is perhaps widespread in every part of the world that has been undergoing decolonization processes. Moreover, cases such as Lebanon until 1990 and Indonesia at the moment of writing show that due to unfavorable circumstances even states that were once empirically strong may deteriorate into quasi-statehood.

Second, in the light of recent developments, it may be asked to what extent quasi-statehood is widespread *within* sub-Saharan Africa. Writing about contemporary African states, Catherine Boone maintains that there is a "diversity in underlying state structures,"[93] and argues that the origins of this variation may be traced back to the "basic features of modern African political economy," and that "state formation has been more successful . . . in the Africa of peasant commodity production than it has been in the extractive and plantation enclaves."[94] Thus, there is reason to adopt a more nuanced picture of statehood in sub-Saharan Africa:

> The disintegration of Liberia, Sierra Leone, and Somalia does seem to confirm the hypothesis that in Africa statehood is extraordinarily fragile, and that both regime survival and the territorial integrity of states are supremely dependent upon foreign patronage. Meanwhile, however, other African regimes have responded to the current challenges by reconfiguring domestic alliances, mobilizing internal constituencies, building new institutions to channel and control participation, making end runs around their opponents, and resorting to repression. Many African regimes—including perhaps Senegal, Côte d'Ivoire, Ghana, Cameroon, Kenya, Uganda, Tanzania, Malawi, Zambia, and Zimbabwe—seem to be surviving the transition to the post–Cold War world. In these cases, the empirical bases of statehood appear to be deeper and broader than the Jackson–Rosberg argument suggested.[95]

The second version of the argument about the relationship between a supposed general loss of territorial control and that of factual internal state sovereignty has been formulated with reference to interaction patterns at various levels that may be discerned among—first and foremost—developed states. The gist of this view is probably best encapsulated in the neologism "interdependence sovereignty" coined by Stephen D. Krasner. He conceptualizes this entirely in terms of "control"[96] and defines it as ". . . the ability of public authorities to control transborder movements" or "to regulate the flow of information, ideas, goods, people, pollutants, or capital across the borders of their state."[97] On this basis, Krasner identifies a general trend in the discipline of international relations and politics:

> In contemporary discource it has become commonplace for observers to note that state sovereignty is being eroded by globalization. . . . The inability to regulate the flow of goods, persons, pollutants, diseases, and ideas across territorial boundaries has been described as a loss of sovereignty.[98]

To provide another example in this vein, David Held maintains that "an uncritically appropriated concept of the territorial political community" is at the core of the prevalent theories of "democratic politics" and that "political communities" should be conceptualized "as multiple overlapping networks of interaction" rather than "in isolation as bounded geographical totalities." Thus

> [T]he spatial reach of the modern nation state did not fix impermeable borders for other networks, the scope and reach of which have been as much local as international or even global. . . . The theory and practice of the democratic state has always been in some tension with the actuality of state sovereignty and autonomy.[99]

John Vasquez, to give a third and final example from numerous examples to be found in the literature, summarizes this argument with reference to John Burton's work in the following terms.

> [T]he geographical nation-state map of the world [does] not adequately capture the linkages and transactions that shape world society and are unaffected by state boundaries or notions of sovereignty.[100]

From the outset, it has to be noted that the argument to the effect that there is a general loss of factual internal state sovereignty as a result

of inability on the part of states to control those juridically delimited pieces of territories assigned to them is a combination of two different things: *an empirical observation about what is happening on state boundaries* and *a certain presumption about the power and will of states*. And the counterargument here is that both components of the argument are flawed and of dubious validity.

To start with the first of these elements, it is argued, more or less on an empirical basis, that the amount of transborder transactions and international flows has reached very high and unparalleled levels, that what characterizes the current situation is not only emergence of transnational networks but also a long range of transnational threats, and that the boundaries of states have consequently become porous, rendering their territories vulnerable to infiltration and penetration. However, the argument that we are witnessing unique or novel processes is questionable.

> [I]t is nowhere near as self-evident as many observers have suggested that international environment at the end of the twentieth century has reached unprecedented levels of openness that are placing new and unique strains on states. By some measures international capital markets were more open before the First World War than they are now. The importance of international trade has followed a similar trajectory, growing during the last half of the nineteenth century, then falling from the first to the fifth decades of the twentieth century, then growing after 1950 to unprecedented levels for most but not all states. International labour movements were more open in the nineteenth century than they are now.[101]

To these observations it may be added that some of the arguments presented in support of this view are double-edged. For instance, it is possible to compare favorably the capabilities of modern states to take drastic measures, such as closure of borders and application of quarantines in case of a worldwide epidemic, such as the recent spread of SARS, with the rapid dissemination of plague during the fourteenth century due to lack of such capacities and come to completely opposite conclusions about the impact of diseases on territorial control. Likewise, insofar as the transborder or other spread of AIDS is concerned, it may be argued that the sovereignty of those states, whose attitude about the issue is informed by anything from Third World populism to religious fundamentalism, has been a major obstacle to attempts at carrying out rational policies to contain the epidemic and to alleviate its consequences. Analogously, to give a final example, it may well be true that in case of an accident, the Barseback nuclear power plant in southern

Sweden may expose the Danish capital and Danish territory to nuclear disaster and pollution. However, it is equally true that it is the sovereignty—both factual and juridical—of another state, that of Sweden, that stops Denmark from, so to speak, sending a police force in order to shut down that reactor. The same logic applies to other, more dangerous, nuclear plants such as Chernobyl in Ukraine, Ignalina in Lithuania, and Metzamor in Armenia. Moreover, another counterargument to this view may be raised with a point of departure at a more everyday level. It is somewhat incomprehensible that political scientists and scholars of international relations should be oblivious to a fact—that is, the sometimes insurmountable difficulty of trespassing or infiltrating state boundaries—that is very well known to many ordinary people, such as refugees who pay enormous sums to organized criminals to enter West Europe or mafia bosses who try to smuggle narcotics from one country to another or simply tourists who notice at an airport that they have forgotten their passport at home or that they do not have the necessary visas.

In the second place, the argument about loss of territorial control and factual internal state sovereignty presumes that the will and power of states are in direct and unsuccessful confrontation with this alleged state of affairs. The assumption here is that what is happening at state boundaries and on the territories of states is happening *notwithstanding* the resistance of these states. This assumption is by no means valid. When states decide to impose control over their otherwise open borders, they are usually able to do so. This point may be illustrated by means of a brief view of some episodes that have taken place during the last few years on the internal borders of the European Union (with the exclusion of United Kingdom and Ireland) and the Swedish-Norwegian border. Once again, the cases in question are "hard cases" to the extent that the borders in question, with the probable exception of those that crisscross inhabitable places, such as jungles, deserts, high mountains, or tundras, are probably the least controlled and most open state borders in the world. Insofar as the internal borders of the continental members of the European Union are concerned, this condition is basically due to the Schengen Agreement, which in Article II(1) stipulates that "[I]nternal borders may be crossed at any point without any checks on persons being carried out." However, in a manner clearly referring to the will and power of states, Article II(2) stipulates immediately afterward that

> Where public policy or national security so require, . . . a Contracting Party may, after consulting the other Contracting Parties, decide that for

> a limited period national border checks appropriate to the situation will be carried out at internal borders. If public policy or national security require immediate action, the Contracting Party concerned shall take the necessary measures and shall inform the other Contracting Parties thereof at the earliest opportunity.

Hence, when they deemed such a measure necessary—or, in short, when they simply wanted to do so—some of the member states have been able to impose control over those borders that separate them from other signatories of the Schengen Agreement. For instance, Belgium and Luxemburg closed their borders in January 2000 for free passage in order to come to terms with illegal immigration.[102] The same year, Netherlands imposed border controls in order to prevent football hooligans from entering the country where the European Championship was taking place.[103] Similar measures were proposed by the French president, Jacques Chirac, but that time with the purpose of bringing to a halt the suspected flow of soft drugs from the Netherlands.[104] A year later Italy, targeting the entrance of violent antiglobalization demonstrators into the country during the G-8 submit in Genoa, suspended the Schengen Agreement.[105] Another case in point, but this time unrelated to the Schengen Agreement, is the closure by Norway of its long borders with Sweden in March 2001 in order to stop import of meat and dairy products during the foot and mouth disease crisis—a measure that turned out to be detrimental to cross border trade and had devastating effects on Swedish shopkeepers.[106]

Moreover, the states are not only able to impose territorial control whenever they wish to do so, but they are probably also able to do so much more effectively than before due to the latest technological developments in the fields of surveillance and border control. In the post–September 11 era, the border police of many developed states are equipped with huge x-ray machines and PMMW scanners that monitor the loads of lorries to detect illegal immigrants. For the same purpose, some states use the so-called sniffers that measure the carbon dioxide levels. In some airports, such as Amsterdam's Schiphol Airport, iris-recognition technology is used for passport controls. Closed-circuit television cameras (CCTVs) are omnipresent in some countries, such as the United Kingdom, while more comprehensive surveillance systems such as the Echelon, cast their shadow over the whole world. Seen in a historical context, the states have never had such advanced technological possibilities at their disposal to control their territories and they have never had the current capacity to raise insurmountable barriers against those

fleeing from persecution or poverty and have to make their journey from one country to another illegally.

In conclusion, if the argument of this chapter is convincing, then it is possible to maintain that, with the exception of the phenomenon of "quasi-states," nothing in the sphere of international relations indicates that states and similar entities lack or have a tendency to compromise their factual state sovereignty. Once the often reiterated statements to be found in the literature about the porousness of international borders and the related loss of factual internal state sovereignty—or "interdependence sovereignty"—are scrutinized on the basis of their observable implications, they turn out to be devoid of evidential support insofar as the developed states are concerned. Similarly, when arguments about compromising factual external state sovereignty—or "Westphalian sovereignty"—via voluntary or compulsory actions are rendered precise in such a manner that they acquire sufficient degree of testable empirical content, it becomes clear that loss of such sovereignty is a marginal phenomenon in the sphere of international relations. In general terms states are able to preserve their autonomy, are capable of controlling their territories whenever they wish to do so, and are jealous of their independence—although the last point may be disputed with reference to the dominant role played by the United States of America in the recent developments in Afghanistan and Iraq. With these observations in mind, it is now possible to shift the focus of attention to another, equally marginal, phenomenon in international relations: the problematic cases of factual state sovereignty.

CHAPTER 8

The Problem of Factual State Sovereignty

In the context of state sovereignty as a matter of actual might rather than legal right, some political entities occupy the grey zone that separates those entities that are supreme over a delimited piece of territory and independent of agents outside of it from those that lack such properties. Being indefinable conclusively in terms of factual state sovereignty or non-sovereignty, such entities display traits of what may be called *the problem of factual state sovereignty*. This phenomenon may manifest itself in four different forms. In some instances, such entities exist on the fringes of the set of phenomena referred to by the concept of factual state sovereignty and their basic features reflect the difficulties involved in general concept formation. Hence, they may be in an ambiguous position where it may *not* be clear whether or not they exert control over a delimited piece of territory—*the problem of the degree of territorial control*—or it may not be possible to determine if they are exposed to complete political control or mere political influence on the part of another, more powerful entity—*the problem of insularity*. In other cases, however, the symptoms of the problem indicate deeper complications that pervade the concept as such. Thus, in some problematic cases it may be impossible to determine, with any degree of certainty, if the behavior of the entity in question is the expression of the sovereign will of an integral sovereign agent or if any potential agent is fragmented to an extent that would invalidate the notion of a sovereign will in the first place—*the problem of the collective agent*. In a similar vein, it may not be possible to determine *which* territorial entity's sovereign will is reflected in the behavior of the problematic entity concerned—*the problem of the*

counterfactuals. In this chapter, these four factors that complicate the concept of factual state sovereignty will be analyzed in some detail. It will be argued that the problem of factual state sovereignty, just like factual non-sovereignty is a marginal phenomenon in the sphere of international relations.

The Problem of Factual State Sovereignty and the Problem of the Degree of Territorial Control

One frequent disclosure of the problem of factual state sovereignty is related to the complexities involved in a territorial entity's exercise of effective political, military, and police control over a certain piece of territory.[1] In such cases, the roots of the problem may be traced back to the fact that while both *state building* and *collapse of a state* are quantitative processes, acquisition or loss of factual sovereignty occurs only at certain qualitative points in these processes. In other words, what is involved in the emergence or disappearance of a factually sovereign entity is a transformation that takes place during what may be regarded as a two-way process. First, during the process of step-by-step establishment or reestablishment of a factually sovereign state or a similar entity, it would be possible to speak of exertion of territorial control—and consequently, *ceteris paribus*, exertion of factual internal state sovereignty—*only after a certain degree* of control or monopoly of violence has been established by that entity. Second, during the gradual collapse of a factually sovereign territorial entity, it would be possible to speak about loss of territorial control, and consequently—once again, *ceteris paribus*—loss of factual internal state sovereignty, *only after a certain point* in the gradual breakdown of law and order in the territory supposedly controlled by that entity. The problem of factual state sovereignty arises when a territorial entity lingers at that point—often temporarily, but sometimes permanently—in a manner that makes it impossible to determine with any certainty whether that entity exercises territorial control or not.

In the classical literature on sovereignty, Austin identifies this problem, but from a slightly different perspective to the extent that what is involved in his analysis is, so to speak, "population control" rather than territorial control. Writing about the definition of the term *independent political society*, which also includes "the definition of the correlative term sovereignty," Austin maintains that

> In order that a given society may form a society political and independent . . . The *generality* or *bulk* of its members must be in a *habit* of

> obedience to a *certain* and *common* superior: whilst that certain person, or certain body of persons, must *not* be habitually obedient to a certain person or body.
>
> But, in order that the *bulk* of its members may render obedience to a *common* superior, *how many* of its members, or *what proportion* of its members, must render obedience to *one and the same* superior? And, assuming that the bulk of its members render obedience to a common superior, *how often* must they render it, and *how long* must they render it, in order that that obedience may be *habitual*?[2]

Thus, Austin concludes that while "at the extremes" it is possible to apply "the positive test" of independent society and sovereignty without any complication, this is not a workable approach when it comes to cases that "lie between the extremes."[3]

Before illustrating the problem of territorial control—and hence, one of the four particular manifestations of the problem of factual state sovereignty—with reference to empirical cases, it is necessary to clarify four points. In the first place, the notion of *problematic* cases of factual sovereignty as a consequence of ambiguities in the degree of territorial control should be distinguished from the argument, which has been scrutinized in chapter 7, about *loss* of factual state sovereignty—or loss of "interdependence sovereignty"—as a result of weakened territorial control or porous state borders. The latter, the claim about loss of state sovereignty, which has been presented inter alia by the scholars of the interdependence school, is a theoretical statement with observable implications, which may, as it has been attempted earlier, be tested on the basis of empirical facts. Thus, to the extent that it is formulated with a certain degree of rigorousness and precision, it refers to obvious cases existing at one of the two extreme points of sovereignty and non-sovereignty. The former, the problem of factual sovereignty, which is discussed in this chapter, however, alludes to the limits of a theoretical statement, since it refers to unclear peripheral cases rather than evident clear-cut cases.

In the second place, to the extent that the origins of the type of the problem under consideration may be traced back to the quantitative nature of territorial control, the issue of "*territorial control* as a matter of degree" should be distinguished from the question of "*statehood* as a matter of degree." In the relevant literature, the broader notion of relative statehood is the outcome of a generalization about "[t]he new post–Cold War global order" and an assertion that this novel order "consists . . . of a mass of power structures which, regardless of formal designation, enjoy greater or lesser degrees of statehood."[4] The gist of the argument here is

the notion that "all states rely on some combination of external recognition and domestic power, even though the ingredients of the mix may vary sharply from one case to another."[5] Thus, with reference to sub-Saharan African states, it has been noted that

> As a result, first, of the emergence of effective insurgent movements capable of sustaining prolonged opposition to African governments and, second, of the increasing absorption of these movements into international politics, the dividing line between "states" and "non-states" has become so blurred as to be virtually imperceptible.[6]

However, the narrower concept "territorial control as a matter of degree" concerns in a direct manner only the first of these two factors: "insurgent movements" should be effective *only* to the extent that the territorial control of the opposed state lingers at the grey zone that characterizes the problem of factual sovereignty, *but not to an extent* that would herald the collapse of the state concerned or push it in to the class of factually non-sovereign entities.

In the third place, there are two different procedures or methods of identifying the "controlled territory" in the context of factual state sovereignty. On the one hand, it is possible to adopt a narrow conceptualization and argue that a territorial entity *is only* factually internally sovereign *within* the territory that it actually controls. Such a mode of analysis does not cause any serious methodological problems, but it is also probably the case that, when applied in empirical research, it may only produce uninteresting results, such as a collapsed state being de facto sovereign within its capital city or a guerrilla movement being factually sovereign over a certain number of mountains and villages—and that only during nights—and so on. Therefore, there are good reasons to adopt the second approach to the issue, which views effective territorial control as a correspondence between the territorial ambitions of a state or similar entity—as, for instance, it is expressed in terms of recognized international borders or unrecognized maps produced by separatist movements—and the territory that it actually controls. One important consequence of such a modus operandi is the emergence of two different types of conceptual grey zones in the context of factual state sovereignty: one as regards the *effectivity* of territorial control and another in relation to the *range* of that control.

In the fourth place, in cases of constitutionally regulated, limited territorial control due to devolution in unitary states or vertical division of powers or "division of powers"[7] in federal states, the cause of the

problem of factual state sovereignty is transformed from being one of territorial control to one being due to the problem of counterfactuals. This issue will be discussed in detail later in this chapter.

In the available literature, it is possible to find sporadic, but often indirect, references to the problem of territorial control. For instance, Joshua B. Forrest maintains that "[a]t various points between 1980 and 1995, and in some cases on a sustained basis throughout that time period, approximately one-third of African states have experienced major difficulties in exerting their authority over rural regions (where most Africans live) and in being able to carry out public policies throughout their territories."[8] In logical terms, this implies that at least some of these states—at least periodically—were lingering in the grey zone that divides the above-mentioned extreme points of control and non-control and that, consequently, it would not be possible to make clear-cut statements about the factual sovereignty of these states. In the post–September 11 era, similar statements about problematic degrees of territorial control have been made in the press and mass media about Yemen and Pakistan and with reference to those regions of these countries that are unofficially ruled by local tribes. Moreover, though not mentioned in the available literature, cases like that of Cyprus, where substantial parts of the territory of the state in question are subject to foreign belligerent occupation, may also be regarded as examples of problematic cases of territorial control and factual sovereignty.

In order to illustrate this problematic aspect of factual state sovereignty in some depth, the rest of this section will concentrate on two cases: one of them, Lebanon, may be regarded as a manifestation of this problem in terms of the spatial range of territorial control, while the other, Colombia, relates the problem to the effectivity of that control regardless of its spatial dimensions.

The territory, which Lebanon aspires to control, is defined in the Lebanese constitution and coincides with the internationally recognized borders of this state. Article 1 of the new constitution, which is identical with that of the previous one of 1926, describes in detail the borders of the country that enclose a 10,230 square kilometer territory at the eastern shores of the Mediterranean Sea.[9] After the conclusion of the Taif Agreement in autumn 1989, which formally ended the civil war that had devastated the country for fifteen years and the ousting of one of the two rival prime ministers, Michel Aoun, in October 1990, the Lebanese state launched an attempt to reestablish its jurisdiction and actual control over the territory that it laid claim to in its constitution. The crucial element in this respect has been those provisions of the Taif Agreement that

aimed at enforcing the factual internal sovereignty of the Lebanese state and that stipulated that the National Reconciliation government was to present a detailed one-year plan with the goal of extending the sovereignty of the Lebanese state over the *whole* of the Lebanese territory. Moreover, the Lebanese and non-Lebanese militias were to be disarmed and the weapons at their disposal transferred to the state within six months after the ratification of the National Reconciliation Charter. In order to achieve these goals, the Taif Agreement also stipulated that the defense and security forces of the Lebanese state be strengthened by means of a broad range of measures.[10]

During the 13 years that elapsed after the conclusion of the Taif Agreement, Lebanon, as a result of attempts at implementing the provisions of this agreement on territorial control, has moved away from the condition of being a "collapsed state" toward a state that is, everything being equal,[11] a problematic case as regards its factual internal sovereignty. On the one hand, it is true that attempts at enforcing the provisions of the Taif Agreement concerning disarming the paramilitary organizations and putting an end to their rule has been successful to a certain extent. By the beginning of 1991, the so-called Greater Beirut Security Plan had been fully executed and the regular Lebanese troops, with the exception of a few districts, took over control of an administratively expanded Beirut.[12] During the following months, the Lebanese state extended its rule over Nabatiyya, Tyre, Iqlim al-Tuffah and, after heavy fighting with Palestinian groups, Saida in South Lebanon.[13] However, attempts on the part of the Lebanese state to establish territorial control had lost momentum by the summer of 1991, and in the ensuing four years it only took over the Sheikh Abdullah barracks in Baalbek and established checkpoints in three more villages in South Lebanon.[14] Both in Beirut and in South Lebanon, the Lebanese army declined to enter the Palestinian refugee camps, which were, and still are, controlled by different Palestinian guerrilla groups. At the time of writing, the largest Palestinian refuge camp in Lebanon, Ain al-Halwa, continues to be the scene of sporadic fighting between the adherents of Yasser Arafat's Fatah movement and its Islamist opponents.[15] Moreover, during the entire post–Taif era, the Shia paramilitary organization Hizbullah has been exempted from the disarming of militia groups.[16] After the withdrawal of the Israeli army from the so-called security zone in the south and the collapse of its client organization, the South Lebanese Army, Hizbullah has taken over control of those previously occupied zones in South Lebanon. In addition, and most importantly, by the mid-1990s Syria still occupied Northern Lebanon, the Beqaa

Valley, the second largest city in Lebanon, Tripoli,[17] and refused to withdrawal of its troops from Beirut.[18] According to some reports, Syria maintains 30–40 thousand soldiers in these regions, which constitute 70 percent of the Lebanese territory.[19]

Insofar as the problem of territorial control—and, hence, the problem of *factual* sovereignty—as a result of the *efficiency* of that control is concerned, the Latin American state of Colombia probably constitutes the best example. In a fashion similar to that of Lebanon, Colombia has also had its share of guerrilla movements and paramilitary groups that have curbed its territorial control in spatial terms. By 1988, the largest guerrilla organization in the country, The Revolutionary Armed Forces of Colombia (FARC), had established control over substantial areas of the Colombian hinterland.[20] With the start of the peace process during Andrés Pastrana's presidency, Colombian troops and police withdrew in 1998 from five municipalities in the south, an area as large as Switzerland, in order to create a safe haven where negotiations with this organization could take place. Dubbed by visiting journalists as "Farcland" and populated by 90,000 inhabitants, the zone soon became a state within a state with the city of San Vincente del Caguan as its capital, with guerrilla checkpoints and patrols acting as a police force and with rebel "complaint offices" functioning as courts.[21] Similar arrangements were also made for the second largest guerrilla group in the country, the National Liberation Army (ELN), in 2000. The Colombian government agreed to pull troops and police out of an area surrounding three towns on the Magdalena River in the north in order to create a safe haven for this organization. Although ELN's territory was much smaller than that of FARC, the area, affluent in gold, oil, and coca production, was important both economically and strategically.[22] Moreover, though their impact in terms of territorial control remains unclear, numerous right-wing paramilitary groups have been operating against these and other guerrilla movements. According to one report, there were 128 such groups active in the country in 1988.[23] At the time of writing, the United Self-Defense Groups of Colombia (AUC) was by far the largest right-wing paramilitary group acting in the country.[24]

In addition to these substantial areas outside of the reach of the central government of Colombia, there were also two factors, which undermined the efficiency of the existent, but spatially limited, territorial control. First, during the late 1980s two powerful groups of narcotics traffickers, the Medellin Cartel being the most famous of them, used Colombian territory as a launching pad for their operations. Insofar as internal security is concerned, the turning point was probably the

assassination in 1984 of the minister of justice, who was a vocal enemy of drug smugglers. In many cases, traffickers formed their own paramilitary groups in order to thwart the campaign launched against them by the Colombian government.[25] Second, the territories under the formal control of the Colombian government have witnessed a general deterioration of law and order during the last two decades. According to United Nations' reports, 402 massacres occurred in Colombia in 1999, the majority of which were committed by right-wing paramilitary groups.[26] Moreover, Colombia had one of the highest homicide rates in the world during this period and, according to data published by the Colombian government in 1987, it was estimated that approximately 80 percent of the crimes committed in the country went unreported and only 1 percent of those crimes reported lead to convictions and sentences.[27]

In spite of these factors undermining the territorial control of the state, Colombia cannot be regarded as a collapsed state or a "quasi-state" of the type discussed in previous chapters. First, due to the obscure and illicit relationship between right-wing paramilitary groups and the Colombian army,[28] it is not clear to what extent the violence exercised by the former is directed against the territorial control of the Colombian state or aimed at bolstering that control. Second, the state has been powerful and effective enough not only to inaugurate the so-called Plan Colombia, aimed at putting an end to the drugs trade and enforcing state authority, but also to enroll the support of the Clinton administration for realizing this plan.[29] In a similar effort, the Pastrana government has been seeking to get £600m in aid from Europe and Japan to finance social development projects in the cocaine-producing southern regions of Colombia.[30] Third, the Colombian government was periodically able to mount military operations against those enclaves controlled by the guerrilla organizations.[31] Consequently, it is possible to claim that Colombia constitutes a problematic case of factual internal state sovereignty because of the existent but insufficient degree of territorial control that it exerts.

The Problem of Factual State Sovereignty and the Problem of the Degree of Insularity

Another specific manifestation of the problem of factual sovereignty is related to difficulties encountered in determining to what extent a state or a similar entity has to be insulated from the leverage of external actors in order to be able to preserve its sovereign will. A prerequisite of identifying this problem is a differentiation between exposure to *political*

influence, which is an everyday aspect of international relations and is compatible with possession of sovereign will on the part of the entity so exposed, and subjection to *political control*, which, though being a marginal phenomenon, indicates an absence of sovereign will on the part of the territorial entity subjected to such control.[32] The problem of the degree of insularity—and consequently, the problem of factual sovereignty—arises as a result of the existence of inherent links that connect these two extreme types of phenomena in the sense that both "influence" and "control" are species that belong to the genus of quantifiable "power terms."[33] Within the confines of that genus, there is always a grey zone that separates these two types of phenomena from each other but that also makes it impossible to realize that separation authoritatively and conclusively. Thus, the problem of the degree of insularity emerges when a state or a similar entity remains in that zone, as a result of which it becomes virtually impossible to determine with any precision whether the entity in question is exposed to tolerable political influence or devastating political control, whether it preserves its sovereign will intact or the will that it displays is the sovereign will of some other entity and, consequently, whether it is a factually sovereign or a factually non-sovereign entity.

Once again, the problem of factual state sovereignty as a result of uncertainty in the degree of insularity may be identified, in an embryonic form, in the writings of Austin. Differentiating "habitual obedience" from obedience that is "few and rare" and with reference to the "Saxon government," he writes that

> A feeble state holds its independence precariously, or at the will of the powerful states to whose aggressions it is obnoxious. And since it is obnoxious to their aggressions, it and the bulk of its subjects render obedience to commands which they occasionally express or intimate. Such, for instance, is the position of the Saxon government and its subjects in respect of the conspiring sovereigns who form the Holy Alliance. But since the commands and the obedience are comparatively few and rare, they are not sufficient to constitute the relation of sovereignty and subjection between the powerful states and the feeble state with its subjects. In spite of those commands, and in spite of that obedience, the feeble state is sovereign or independent.[34]

However,

> [I]n case the commands and submission were somewhat more numerous and frequent, we might find it impossible to determine certainly the class

> of the Saxon community. We might find it impossible to determine certainly where the sovereignty resided: whether the Saxon government were a government supreme and independent; or were in a *habit* of obedience, and therefore in a state of subjection, to the allied or conspiring monarchs.[35]

Thus, in a fashion similar to that of the above-mentioned "positive test" of sovereignty—or control of a population—a grey zone where the "negative mark of sovereignty" becomes "an uncertain measure"[36] divides clear-cut cases of sovereignty and those of non-sovereignty.

Before illustrating the problem of insularity, and this particular form of the problem of factual sovereignty, with an empirical example, it is necessary to clarify two points. In the first place, in empirical terms it is possible to distinguish the indicators of political control from those of political influence in *only* one class of cases, that of "puppet states" in the juridical sense of this term. It has been pointed out by Crawford that one of the main factors taken into account in determining the classical cases of puppet states in the literature has been the fact that the state in question was "staffed, especially in more important positions, by nationals of the dominant State."[37] James, in turn, asserts in the context of a discussion of the difference between "a dependent and a puppet state" that

> The crucial element is the staffing of all the key positions in a state's decision-making apparatus by nationals of another state, those nationals being known to be there for the purpose of seeing that the will of their state is done. The key positions in this sense will not, of course, necessarily be those with the greatest outward importance. It will be enough if those who formally take the decisions do so on the advice of nationals of the dominant state who are always at their side.[38]

However, in other types of cases than those of puppet states, the instruments of control and those of influence coincide with each other, and it is nothing other than the degree of efficiency of these instruments that determines whether the entity in question is exposed to systematic control or sporadic influence or whether it is a problematic case of insularity.[39]

In the second place, in those cases where such instruments are at the disposal of the dominant state, and they are efficient enough to give the impression that the weaker entity in question is under political control, there may still be doubts as to which entity's sovereign will is expressed in the behavior of the weaker entity. In such cases, as shall be seen later, the cause of the problem of factual sovereignty turns out to be one that

is related to the problem of counterfactuals rather than the problematic nature of the degree of insularity.

The problem of factual sovereignty emanating from an unclear degree of insularity may be illustrated with reference to the case of Bhutan, or, more precisely, Bhutanese-Indian relationships. After the end of the British colonial rule in South Asia, the newly independent state of India took over the role of being "Bhutan's protector"—a position previously held by Britain.[40] There were many elements in the ensuing relationship between India and Bhutan that were detrimental to the factual external sovereignty of the Bhutanese state, the most conspicuous of them being the Treaty of Friendship between the Government of India and the Government of Bhutan of 1949. While ensuring "Indian non-interference in Bhutan's internal affairs," Article 2 of this 10-article agreement stipulated that Bhutan was to agree "to be guided by the advice of the Government of India in regard to its external relations."[41] Consequently, the Bhutanese king Druk Gyalpo declared in 1960 that, because of the 1949 treaty, Bhutan was not "100 percent independent."[42] Moreover, as the Chinese threat against Bhutan became more serious, "India became increasingly involved in the build-up of Bhutan's indigenous defensive capability, especially in the training and equipping of the Royal Bhutan Army," in addition to the fact that the Government of India had a say on Bhutanese arms, ammunition, and military equipment imports.[43]

These factors, which indicated that the state of Bhutan, due to its special relationship with India, lacked the degree of insularity that was necessary for factual external state sovereignty, were counterbalanced by other factors that problematized that sovereignty. Bhutan has been, and still is, "a strategic buffer state" squeezed between India and China,[44] and notwithstanding India's extensive influence, issues related to Bhutan's territorial borders with India were first resolved between 1973 and 1984[45]—a situation, which indicates that India was probably not able to impose its position on the issue. In addition to this, Bhutan refused to allow the stationing of Indian troops on its territory, although such proposals were presented within the Bhutanese government.[46] Moreover, after starting to join international organization in the 1960s,[47] Bhutan followed a more independent line in its foreign policy orientation during the 1970s. In 1974 Bhutan's minister of foreign affairs stated that whether Bhutan followed "India's advice and guidance on foreign policy matters was optional." Bhutan raised its diplomatic representation in India to an ambassadorial level in 1971 and in 1978 changed the name of its diplomatic office in New Delhi from the Royal

Bhutan Mission to the Royal Bhutan Embassy. In the diplomatic sphere at the Non-Aligned Movement summit conference in Havana in 1979, Bhutan voted with China and some Southeast Asian states on the issue of Cambodia's representation by the Khmer Rouge. Similarly, Bhutan's votes in the United Nations on issues such as the status of landlocked nations deviated from India's stance.[48]

In sum, during the period under consideration, the degree of external influence on Bhutan was strong to such an extent that it is reasonable to ask if this state had factual sovereignty or not. However, as indicated by the freedom of action that it sometimes enjoyed in its foreign relations, this influence fell short of developing into a kind of complete political control. Thus, these contradictory factors obscured the degree of insularity that Bhutan enjoyed and, consequently, rendered the factual external sovereignty of this state problematic: it is not possible to give an unequivocal answer to the question if Bhutan was a factually sovereign or non-sovereign entity during this period.

The Problem of Factual State Sovereignty and the Problem of the Collective Sovereign Agent

A third disclosure of the problem of factual sovereignty is due to the absence of a unitary agent that clearly possesses the existent sovereign power or is the consequence of complexities in the structure of the agent that is associated with that power. In such situations, the absence of a clearly identifiable agent, or the emergence of a fragmented agent or a set of agents, renders identification of the holder of the factual sovereign authority difficult, if not completely impossible. This is mainly due to the fact that the answer to the question as to which entity is factually sovereign becomes contingent upon clarification of the intricate power relationships that *do* exist in that fragmented agent, which, while being sovereign in juridical or nominal terms, may also physically extend across the nominal borders of the existent territorial entities. Under certain circumstances, such a diffusion of power undermines the inner and outer limits of the actual territorial entity.

The origin of this, which may be called the problem of the collective agent or "sovereign numbers," is inherent in the standard conceptualizations of sovereignty. Seen from an intrastate perspective, the sovereign agent may be "One or Number," in the sense that it may consist of a single person or "a determinate collective body."[49] Consequently, the problem exists as an intrinsic complexity in every situation where the agent that is institutionally endowed with factual sovereignty embodies more

than the least possible methodological unit, that is, more than a single individual. As has been expressed eloquently by Sawer,

> An able dictator who is in thorough command of his soldiers and officials, works hard, is a bachelor, does not dissipate and governs a small country is about the nearest practical expression of the doctrine of sovereignty as absolute and indivisible which human societies are likely to experience. He takes no orders and everyone obeys him. In such a situation, the proposition that sovereignty is indivisible and that a sovereign cannot bind himself boil down into propositions about the dictator as a person; no one can stop him from changing his mind and his position enables him to make every change of mind effective, so that if one day he purports to set up a sub-dictator, irrevocably, in part of his realm, a change of heart next day is followed by the effective sacking of the sub-dictator.[50]

Although the reasoning is couched in terms of absoluteness and indivisibility of sovereignty—a conceptualization that has been discussed in chapter 4—the logic behind the analogy of *a secluded and competent dictator* also has another implication. Once the sovereign becomes a collective and more individuals or institutions are added to the solitary supreme in possession of sovereignty, other types of power relationships *than* those that exist between that unitary supreme agent as a whole and the *internal* agents, such as citizens and the *external* agents, such as other territorial entities have to be taken into account. In other words, under conditions where the factually sovereign agent within a territorial entity is a collective, account has to be taken of those power relationships that exist *within* that collective agent as such, between *different parts* of that collective agent and *other* internal and external agents, and finally, of the impact of such power relationships on the identity and boundaries of the territorial entity in question. In certain cases such factors may even obscure the internal/external divide of such an entity.

One particular expression of this complication may be found in the contrast, usually made in conventional comparative politics, between political systems characterized by *parliamentary sovereignty* and *separation of powers*. Here the underlying presumption is that while the former contains *one* single sovereign authority and displays a pristine form of popular sovereignty, the latter comprises a federal government, where authority is distributed among *several* centers that check and balance each other and, thus, is nothing but a pure complication for the theory of sovereignty. However, seen from the vantage point of factual sovereignty, this contrast is to a significant degree an illusion of mind. On the one hand, *parliamentary sovereignty* is often anything but a clearly

delimited *single* sovereign agent. For instance, it has been pointed out in relation to the British Parliament, which, despite the recent constitutional reforms, continues to constitute the paradigm for the notion of parliamentary sovereignty, that ". . . the will of the Parliament is the will not of the members as such nor even of either House as such, but a notional, and notionally unitary, entity . . ."[51] Thus, the question of parliamentary sovereignty "places authority where there is not in fact a will," that is, in a "personified abstraction."[52] Another author argues that ". . . the apparently simple statement that in the United Kingdom, the Queen in Parliament is 'sovereign' soon dissolves into mysticism or requires elaborate explanation."[53] A third scholar maintains that ". . . Parliament as such does not exist. . . . if we speak of Parliament as if it were a single body, possessing a collective will and capable of making collective decisions, we speak quite nonsensically."[54]

On the other hand, insofar as factual external state sovereignty is concerned, *division of powers* appears to be less than a distribution of powers—sovereign or otherwise—among *several* agents in federal structures. This may be demonstrated with reference to some aspects of the political system of the United States of America, which constitutes the prototype of federal systems characterized by dispersion of political power. For instance, it has been pointed out by a scholar that "[w]hatever the theory, . . . there is virtually nothing related to foreign affairs that is beyond the constitutional powers of the federal government, . . ."[55] In the context of the *separation of powers*, on the other hand, problems of designating the sovereign agent become analogous in practice to those encountered in a rigidly institutionalized and functionally specialized parliament.[56]

Insofar as the present discussion of the problem of factual state sovereignty is concerned, these observations about the British and the American political systems indicate one certain similarity: the issues of *which* persons or *which* majorities or *which* institutions are sovereign within the British political system are comparable to questions of *which* federal organs (foreign policy) or *which* member states (amendment of the constitution) are sovereign within the American political system. In both cases the problem of the collective agent or of the "sovereign numbers" is existent in an embryonic form—regardless of whether *who* or *which* is defined in an institutional sense or in Schmittian terms as the agent who "decides on the exception."

At the level of states and similar entities, the problem of the collective sovereign agent—or the problem of the "sovereign numbers"—manifests itself in the context of the emergence of collective agents, or factually

sovereign territorial entities, that transcend the nominal borders of states. Thus, on this basis it is possible to argue that *puppet states*—or satellite states—are probably the most pristine cases where the discrepancy between nominal and actual boundaries are wide enough to contain this problem at least in an embryonic form. Conceived in generic terms, it is rather evident that puppets are puppets because they represent no one but their masters, who pull their strings. However, once the focus of attention is shifted from this literary metaphor to the actual power relationships that prevail in the domain of territorial entities, a more complex picture emerges: puppets may have their own interests, may acquire their own accomplices, and may start to represent populations.

This aspect of puppet or satellite states may be discerned in Owen Lattimore's analysis of the satellite condition of postwar Mongolia, where he defines satellitism as a state of affairs characterized by

> the interest of the controlling state in acquiring the satellite; the existence of a minority group in the subordinate state that wants the satellite relationship; and the prevailing fear that other alternatives are worse, which enables the minority to induce the majority to go along.[57]

The behavior of the majority group and the interest of the controlling state is not material to the discussion here and can conveniently be left aside, although these factors probably have the merit of explaining the causes behind the emergence of the dominance relationship in the first place. However, what is important for the purposes of the present analysis is the *size of the minority group* in the subject state that wants the dominance relationship: how small should this minority be so that it may still be possible to speak about a puppet state; or, to put it differently, at what point would the size of the minority be large enough to support the view that the territorial entity in question encapsulates the interests of a sizable minority and can, therefore, be regarded as a manifestation of a *dictatorship with substantial popular support* in the dominated entity rather than a puppet regime.

The logic of this problem may be illustrated with reference to one of the classical cases of puppet states in international law, the state of Manchukuo, which was established by Japan in 1932 in the Chinese province of Manchuria. Using a bomb explosion on one of the tracks of the South Manchuria Railway Company on September 18, 1931 as a pretext, the Japanese army started to invade Manchuria and was able to completely overcome the resistance of the Chinese regular forces by the end of 1932.[58] However, by January 1932 pro-Japanese administrations

where special Japanese " 'advisors' controlled the actions and policy of their nominal Chinese superiors" were established in each of the three provinces of Manchuria.[59] The next stage in the process was the creation of a new state, which was to be controlled by Japan but bolstered by an "independence" movement. To that effect, the Japanese Kwantung Army supported the organization of a "Self-Government Guiding Board" with the task of organizing "local self-government executive committees," launching a movement for an independent state and sending around propagandists for that purpose. In February of the same year, following a conference attended by pro-Japanese elements, the Northeastern Supreme Administrative Council was established in order to prepare the foundations of the new state. The process came to a conclusion on March 9, when "the Organic Law of 'Manchukuo' " was proclaimed and the last Manchu Emperor Henry P'u-Yi was appointed as its chief executive. After an internal power struggle within the Japanese state apparatus, the Japanese government recognized the new state in July 1932.[60]

Seen from the point of view of international law, the emergent entity was, and still is, nothing but a prototype of illegally established puppet states. However, what is relevant for the analysis here is the outcome of the Japanese attempts at creating an independence movement and the implications of that outcome for the problem of the collective sovereign agent and factual state sovereignty. The new Japanese regime in Manchuria received support not only from certain Chinese politicians and the military ready and willing to advance their personal interests but also from all of the minority groups in the province with the exception of Muslims, that is to say, from the Manchus, the Mongols, the Koreans, the White Russians and, perhaps naturally, the Japanese.[61] Thus, in the words of one analyst,

> [W]hile there would have been no independence movement without Japanese instigation and direction, the movement once launched did secure a certain amount of spontaneous support.[62]

Now, as a matter of fact, those ethnic groups that supported the state of Manchukuo constituted only an insignificant portion of the overall Manchurian population,[63] and the majority, the Chinese, "would undoubtedly have preferred the former régime, with all its shortcomings."[64] But what if the opposite had happened to be the case: if the Chinese were merely a substantial minority or there were a large Japanese population supporting the new state, or the aggregate of the minority

groups bolstering Japanese domination had created a division of the population from the middle. In such situations it would not be possible to unambiguously identify the state of Manchukuo as an alien institution, a puppet state, imposed on the Manchurian people by the Japanese state. The emergent state would be anything but a materialization of a collective sovereign agent stretching across the nominal borders of Japan and China. In other words, it is not the Japanese control per se but the absence within the confines of the newly established entity of Manchukuo of a substantial Japanese community or of other sufficiently large minority ethnic groups that are positively disposed toward that control that renders the state of Manchukuo a puppet state rather than a mere dictatorship sustained by a foreign power—that is, a condition where the minority group and the foreign power constitute parts of *one* collective sovereign agent in a manner that would render the notion of a territorial entity and factual sovereignty problematic.

Seen from such a perspective, Lebanon may be regarded as a case where the size of this minority is large enough to cause the problem of the collective sovereign agent. It is possible to argue that the neighboring state of Syria had established its political and military control of Lebanon by the mid-1990s. In contrast to the state of Manchukuo, where Japanese control was achieved by means of a parallel command structure at all levels of the administration, Syria had at least four different means at its disposal to mold its dominance over Lebanon. In the first place, since the outbreak of the civil war in 1975, Syria had both allies, which, while representing certain sections of the society, also had common interests with the Syrian regime, and client organizations, which lacked popular support and were completely dependent on Syria for their survival on the Lebanese scene.[65] Among the latter were the Amal Movement,[66] certain factions of the Syrian Social Nationalist Party,[67] the Lebanese Forces—Executive Command (later Wa'ad party),[68] and the pro-Syrian wing of the Baath Party.[69] While acting as armed militias during the civil war, these organizations transformed themselves into legal political parties during the post–Taif era. In the second place, the Lebanese political elite was packed with pro-Syrian individuals, such as the leaders of the above-mentioned client organizations,[70] traditional families who would have become irrelevant for Lebanese politics if it were not for their close ties with Syria[71] and a new generation of politicians who entered into the political game more or less as puppets in the hands of the Syrian state.[72] In the third place, Syria was, and still is, the stronger party in those committees, which have been established in accordance with Article 6 of the Treaty of Brotherhood, Co-operation

and Co-ordination signed between Syria and Lebanon in 1991.[73] There are six such committees that meet on a regular basis and that aim at coordinating the activities of both states in areas of high politics, such as defense, security, and foreign policy.[74] The most important among them is the Higher Council, which comprises the presidents, prime ministers, deputy prime ministers, and speakers of both countries and whose decisions are binding on both parties.[75] In the fourth place, ad hoc interventions in Lebanese internal affairs by Syria, especially in connection with the election of presidents, formation of coalition governments, and resolution of various governmental crises, have also been an effective control instrument.[76] Moreover, Syrian control over Lebanon was bolstered and, so to speak, legally sanctioned by international agreements.

However, in contrast to the case of Manchukuo, Syrian control in Lebanon is supported by substantial confessional groups within the Lebanese population. This condition makes the Lebanese case a problematic case as far as the collective sovereign agent is concerned. The sources of this support—and, hence, the problem of factual sovereignty in Lebanon—may be traced back to the unwritten National Pact of 1943, which not only established the Lebanese political community as such but also the factually sovereign collective agent within it as a Maronite-Sunni alliance. According to the understandings of this agreement, the Christians were "to forego seeking protection or attempting to bring the country under foreign control" while the Muslims were to relinquish "making any attempt to bring about any political union with Syria, or any form of Arab union."[77] Consequently, Lebanon was defined as a state "with Arab 'face' and language, and a part of the Arab World—having however, a special character."[78] Seen from the perspective of these provisions, the history of the Republic of Lebanon may be seen as the history of the undermining of the core understandings of the pact, of the gradual fragmentation of the collective sovereign agent established by that pact, and finally, of the emergence of the problem of factual sovereignty in the Lebanese case. From its inception in 1940s, "the neutrality principle"[79] of the National Pact and the identity of the Lebanese state as neither completely Islamic-Arabic nor totally Western-Christian was challenged by two radical organizations. The Phalangist Party (al-Kataib), which was supported by sections of the Maronite population, opposed the Alexandria Protocol[80] and thereby the membership of Lebanon in the League of Arab States. On its part, the Syrian Social Nationalist Party (SSNP), which recruited its members from minority confessional groups, tried to pull the country in the other direction.

With the aim of uniting Syria and Lebanon explicitly written into its program, SSNP launched two unsuccessful *coups d'état*, first in 1949 and then in 1961.[81] Moreover, during the 1950s, especially after the Suez Crisis in 1956, the Sunnis were affected by the wave of Arab nationalism that was supported, and to a large extent led, by the Egyptian president Gamal Abdul Nasser. When Egypt and Syria were united in 1958 to form the United Arab Republic, the Sunnis in Lebanon shared the enthusiasm of the rest of the Arab world and "began to entertain the prospect of being included in this new powerful Arab state."[82] The Maronite elite reacted to these pro-Nasserite tendencies among the Sunni population by accepting the Eisenhower doctrine, which attempted to curb the influence of the Soviet Union—Nasser's most important ally at that time—in the Middle East.[83] This was regarded as a violation of the neutrality principle of the National Pact[84] and was probably the proximate factor behind the outbreak of the first civil war in Lebanon in 1958.

Consequently, it is not surprising that the civil war years of 1975–1990 and the ensuing post–Taif era witnessed the emergence of transnational alliances, amalgamation of de facto sovereign collective agents across international borders, and eventually, problematization of the factual sovereignty of Lebanon. After the 1966 coup in Syria that heralded the rise of a Shia sect, the Alawites, to power within the ruling Baath Party and the political mobilization of Shias in Lebanon, which had become the most numerous confessional group in the country in the 1970s under the leadership of Musa Sadr,[85] a Syrian-Lebanese Shia axis—or a collective agent—gradually developed across the nominal borders of Syria and Lebanon. While Sunni attitudes toward Syria after these developments could best be described as lukewarm, the Maronite organizations, such as the Phalangist Party and the National Liberal Party, reacted to the situation by gradually establishing contacts with Israel—contacts that eventually developed into a full-fledged alliance after the Israeli invasion in 1982.[86] Thus, although hard empirical evidence in the form of surveys is lacking, it is possible to argue that, at the time of writing, Syrian control of Lebanon is more or less openly supported by large sections of the Shia population while resented and opposed by the majority of the Maronites and sporadically by the Druze. Formulated in numerical terms, this would imply that somewhat over 30 percent of the Lebanese population opposes the Syrian control of Lebanon while that same control is supported—or, at least not opposed—by a similar proportion of the population.[87]

The Problem of Factual State Sovereignty and the Problem of the Counterfactuals

The fourth and last form of the problem of factual sovereignty is related to *the problem of counterfactuals*. This, in turn, may appear as a result of the complex relationships that exist between the sovereign will and the behavior of a territorial entity and factors determining that behavior, both at an internal and an external level, among them the will and the behavior of other entities.

In an implicit manner, the problem of counterfactuals has already been touched upon in chapter 7 of this volume, in the context of a discussion about state sovereignty in cases of institutionalized supranational integration and infra-national devolution. It has been pointed out then that the reasons behind the difficulties in answering the question of the locus of factual sovereignty in some of these cases could be traced back to difficulties in assessing the outcome of manifest, future constitutional conflicts. Now it is possible to formulate this same argument in a manner that will bring to the fore the counterfactual element intrinsic to it: in cases of latent constitutional conflict over the basis of the prevailing legal order, it is not possible to identify the locus of sovereignty because it is not possible to determine *what* the courts and their long arm, the police and the military, would do *if* a constitutional crisis occurred and, *if* more than one authority claimed sovereign supremacy and the loyalty of these courts and other related institutions. Consequently, to recall the empirical examples referred to in chapter 7, it was argued that it would not be possible to identify the locus of factual sovereignty in the United States of America in 1778–1861 and in Southern Rhodesia in 1963–1965 because it would not be possible to know *what* the courts—and, by way of implication, the police and the military—would do *if* multiple agents explicitly claiming factual sovereign supremacy emerged, and started to issue conflicting orders. In a similar vein, to recall the contemporary case analyzed in chapter 7, it is not possible to determine the whereabouts of sovereignty in the European Union because it is not possible to know empirically *what* the lower courts of member states would do *if* a manifest conflict between the European Court of Justice and the Constitutional or Higher Courts of member states concerning the basis of European Law were to emerge in the future and place conflicting demands on their loyalty.

In such cases of constitutional and political uncertainty, students of law and politics may attempt to identify the locus of factual state sovereignty by means of enlightened counterfactual analyses. Thus, it would

probably be possible to argue—prospectively rather than retrospectively and negatively rather than positively[88]—that the southern states were bound to display factual sovereignty that would result in the outbreak of the American Civil War or that the Rhodesian courts, police, and military were disposed to ignore the Southern Rhodesia Act of the British Parliament thus creating the factually sovereign entity of Rhodesia. Similarly, at present it is possible to produce plausible counterfactual analyses of the locus of factual state sovereignty within the European Union. On the one hand, such analyses may support the view that, in case of constitutional crises, the national courts are likely to take nationalistic tendencies within the member states into account and ignore the verdicts of the European Court of Justice—thus, the factual sovereignty of member states. On the other hand, with reference to the internal, self-perpetuating dynamics of institutions and organizations, a counterfactual analysis might sustain the equally plausible view that they would probably abide by these verdicts—and hence, the factual sovereignty of the European Union. As shall be seen in a moment, it is the sum of such contradictory, but equally plausible, explanations about what the counterfactual could be that accounts for the emergence of the problem of the counterfactual.

Thus, at one level the problem of counterfactuals may be defined in terms of *the methodological limits* of such enlightened counterfactual analyses.[89] For the purposes of the present analysis, nevertheless, counterfactuals have the merit of uncovering some of the weak aspects of abstract concepts.[90] Insofar as the particular concept of factual state sovereignty is concerned, they achieve this by focusing on conditions where it is not possible to answer with any degree of confidence who possesses factual sovereignty within a given territorial entity. Therefore, at another level the problem of counterfactuals may be defined as the outcome of the existence of *completely contradictory*, *but equally plausible*, explanations about what the counterfactual would be. This condition may be illustrated with reference to two cases: the first of them, devolution to Scotland in the United Kingdom, is associated with the emergence of the problem of counterfactuals in the context of factual *internal* state sovereignty, while the other, the neutrality of Austria and Finland during the Cold World, relates the problem to factual *external* state sovereignty.

The Act of Scotland in 1998, which was passed by the parliament in Westminster following a referendum held in Scotland in September 1997, constitutes the legal basis of devolution to Scotland. Section 1 of this act provides for the establishment of a Scottish Parliament, which, according to Section 28, is entitled to make laws within its area of

competence. However, what is most important for the purposes of the analysis here is Subsection 7, which rejects both separatism and federalism and declares that

> This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland.[91]

The introduction of these novel elements into the constitutional structure of the United Kingdom raises the question of whether the sovereignty of the parliament—and, hence, that of the United Kingdom—is intact or whether the political system is moving in the direction of federalism, with loss of internal factual sovereignty on the part of the central state as its ultimate consequence. In other words, the pivotal question is *which legislature*, the parliament in Westminster or the Scottish Parliament in Edinburgh, will prevail *if* an open confrontation between these two assemblies were to occur in the future. At the time of writing, the answer to this question can only be given by means of counterfactual analysis, and here it has to be noted at once that there are *two conflicting but equally plausible explanations*—hence, the problem of counterfactuals.

On the one hand it is possible to argue that *if* the parliament in Westminster attempted to repeal The Scotland Act or tried to reclaim the powers transferred to Edinburgh by invoking Section 28(7) of this act, it would *be able to do so* successfully. Such an analysis, which implies that the factual sovereignty of the United Kingdom is not affected by devolution, may be supported with reference to historical experiences from yet another devolution, that to Northern Ireland. According to the Government of Ireland Act of 1920 two assemblies were to be established in two separate parts of Ireland, but in the event the Parliament of Northern Ireland was the only legislative body that came into existence.[92] According to Section 75 of the 1920 Act,

> Notwithstanding the establishment of the Parliament of Northern Ireland—or of anything contained in this Act, the supreme authority of the Parliament of the United Kingdom shall remain unaffected and undiminished over all persons, matters and things in Northern Ireland and every part thereof.[93]

After almost half a century of restraint *vis-à-vis* the internal affairs of Northern Ireland and in the aftermath of the civil rights struggles of the 1960s and the ensuing deterioration of law and order in the province,

the British Government invoked this section of the 1920 Act and suspended the Northern Ireland Parliament in 1972.[94] This course of developments, that is, devolution followed later by reassertion of powers by Westminster, were more or less repeated after the Labour Party came to power in 1997, ended direct rule over Northern Ireland, devolved competencies to Belfast once again and suspended the executive of Northern Ireland twice within a rather short period of time. Thus, the main argument of such a counterfactual analysis would be that due to structural similarities between devolutions to Northern Ireland and Scotland, the parliament in Westminster would be able to do in the latter case what it did in the former and recover the delegated powers when it wished to do so.

On the other hand, it is equally plausible to assert the opposite view and claim that any such attempt on the part of the British Parliament will fail due to the different circumstances that prevail in Scotland. Such an analysis, though not couched in the terminology of counterfactuals, was presented by Vernon Bogdanor shortly after the implementation of those constitutional reforms that led to devolution to Scotland, Wales, and Northern Ireland. Bogdanor argues that "devolution to a self-conscious part of the United Kingdom is a very different thing from devolution, for example, to a local authority."[95] Thus

> The Scotland Act provided for the retention of full sovereignty with Westminster and thus the preservation of the unitary state. But that is mere constitutional theory, for a Scottish Parliament will create a new locus of political power in Scotland, making it extraordinarily difficult for Westminster to continue to exercise its supremacy. In practice, therefore, sovereignty is being transferred, and Westminster will not be able to recover it, except under pathological circumstances.[96]

Bogdanor maintains further that after devolution "the supremacy of Parliament over Scotland . . . will become merely a nebulous right to supervise the Scottish Parliament"[97] or "the power to supervise *another* legislative body, with its own legitimacy, gained through democratic election, and representative, so it will be argued, of the Scottish nation."[98] On this basis, Bogdanor formulates an alternative, albeit implicit, counterfactual analysis, thus revealing the problem of counterfactuals involved insofar as the factual internal sovereignty of the United Kingdom is concerned.

> In practice, therefore, the Scotland Bill will establish, if not a federal *constitution* for the UK, a quasi-federal *relationship* between Westminster and Edinburgh. The government of Scotland will come in practice to

> resemble the government of a province in a federal state. Power developed will be not power retained but power transferred. This quasi-federal relationship will, moreover, be buttressed by the Judicial Committee of the Privy Council, the ultimate court of appeal on matters of *vires* in the Scotland Act. The Judicial Committee will come to assume the role of a constitutional court on devolution matters.[99]

The neutrality of Austria and Finland during the cold war period are two cases in point that illustrate the problem of counterfactuals in relation to factual external state sovereignty. Even here the problem emanates from two plausible but conflicting explanations, this time as to the nature of and the reasons for their neutrality.

On the one hand, it is possible to argue that both Austria and Finland adopted neutrality because of Soviet political and military pressure in eastern Europe. Formulated in counterfactual terms, the argument would be that *if* the Soviet Union collapsed, withdrew from eastern Europe, or simply refrained from exerting pressure, these two states *would* adopt a policy line other than neutrality. Such an argument could be supported with reference to the initial positions of Austria and Finland immediately after the Second World War and a parallel argument about the impact of the Soviet Union on the factual sovereignty of the eastern European states. As regards the situation just before the cold war, it was pointed out in chapter 7 of this book that for Austria neutrality was the only option if it was to free itself from the ongoing Soviet occupation of its territory. Insofar as Finland is concerned, it may reasonably be argued that given the territorial ambitions of the Soviet Union and the Finnish defeat in the Winter War, neutrality combined with a special relationship with the Soviet Union was probably the only alternative to becoming yet another satellite state in the Soviet Block. The parallel counterfactual analysis of the condition of the eastern European states, on the other hand, would have the merit of emphasizing what the alternative to neutrality would have been. The view that most of the eastern European states were under the control of the Soviet Union and thus lacked factual sovereignty—or, to formulate it in counterfactual terms, that they *would* have had another pattern of foreign policy behavior *if* it were not for the control of the Soviet Union—could be supported by means of a counterfactual analysis long before its vindication by the events of 1989. Such an analysis could refer to factors such as deployment of Soviet troops at the end of the Second World War, the infamous Prague Coup in Czechoslovakia, and Soviet military interventions in Hungary in 1956 and Czechoslovakia in 1967 as factors causing

satellite relationships between these states and the Soviet Union. In the absence of such factors, the counterfactual analysis could reasonably argue that the postwar orientation of these states would follow radically different directions due to their factual state sovereignty. Such an analysis could also be bolstered with references to the possible advantages that these states could gain from early European Union membership and the existence of strong national identities in at least some of these states that would exclude close ties with the Soviet Union. In conclusion, it could be asserted that the ongoing neutrality of Austria and Finland during the cold war was due to these and similar circumstances that led to the establishment of satellitism elsewhere in East Europe.

However, it is precisely this view of the neutrality of Austria and Finland that has been falsified by developments during the post–1989 period—hence, what emerges here is the theoretical possibility of an alternative counterfactual analysis during the cold war era. As a matter of fact, both Austria and Finland have preserved their neutrality after the collapse of the Soviet Union. The post–cold war behavior of these states indicates that neutralization was probably *not* unequivocally due to the influence of Soviet Union or that this mode of policy was perhaps internalized at some point during the four decades that elapsed after the beginning of the cold war. Whichever of these explanations is adopted, any counterfactual analysis along these lines would indicate the existence on the part of Austria and Finland of factual external state sovereignty in a manner that contradicts the previous counterfactual analysis.

Consequently, during the cold war period both Finland and Austria were problematic cases as regards factual external state sovereignty. This was due to the fact that plausible counterfactual strategies were unable to provide a clear answer—or were prone to providing contradictory answers—as to what the external behavior of these states would be in the absence of Soviet political and military control in East Europe.

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CHAPTER 9

Conclusion

The point of departure for the analysis conducted in the preceding chapters was a set of empirical questions about the sovereignty of states and similar territorial entities. These were later compressed into three broad questions about state sovereignty:

What is state sovereignty that is what does sovereignty as a descriptive concept refer to at the level of states and similar entities?
Which kind of political entities are sovereign as a matter of fact and law?
What types of difficulties are encountered when determining the sovereignty of such entities?

During the analysis conducted in the preceding pages, the first of these questions has been addressed in a manner that would bring the *empirical utility* and the *analytical value* of the concept of state sovereignty into focus. In this respect, the conclusions of the analysis have been fourfold. First, *from the very outset*, any attempt at understanding the empirical connection of the concept of sovereignty has to specify the level of analysis and clarify the epistemological assumptions of that endeavor. On the one hand, while employing this concept in an empirical context, we have to be clear about whether we are referring to sovereignty in relation to the internal institutions of states and similar entities, or to the entities as such, or to relations between them. Without such clear-cut delimitations, it is not only difficult to identify the relevant disciplines and their research output, but it is also impossible to avoid increasing our confusion about an already confusing concept. It should be noted in this context that one particular consequence of neglecting the level of analysis has been widespread confusion about the

difference between *sovereign rights* and *sovereign status*—or juridical state sovereignty. The latter is a descriptive category depicting a qualitative condition that territorial entities as such may or may not have, while the former refers to a set of quantitative and normative propositions about the regulation of relations between such entities and—according to one line of thought within the discipline of international law—between such entities and their subjects. To the extent that sovereign rights are a consequence of enjoyment of sovereign status, confusion between these two types of properties are also tantamount to confusion between cause and effect. On the other hand, we need to be clear about whether we are describing how things are or whether we are prescribing how things ought to be. Nowhere are the consequences of intermingling these two different types of propositions clearer than in those conceptualizations of sovereignty to be found in the so-called interdependence literature where normative statements about the necessity of transcending state sovereignty are mixed with descriptive statements about the actual loss of sovereignty—without raising the question of why the former is necessary if the latter is the actual reality.

Second, at a methodological level, any explication of the empirical relevance of the concept of state sovereignty may proceed on the basis of three classical dichotomous questions about the nature of this concept: is state sovereignty a juridical attribute or a factual condition; a qualitative feature or a quantitative property; an indivisible quality or a divisible property? Possible answers to these questions have been analyzed in detail in chapter 4. There are compelling arguments, which support the view that state sovereignty refers to two distinct but interrelated phenomena, a juridical status and a factual condition, which necessitate employment of two concepts in analysis: juridical state sovereignty and factual state sovereignty. Furthermore, the most important conclusion in this chapter has been a thorough argument *against* the notion of state sovereignty as a limited property that may be possessed more or less by states and similar territorial entities. As far as juridical state sovereignty is concerned, a quantitative conception of state sovereignty has the consequence of blurring the distinction between the quantifiable property of sovereign *rights*, on the one hand, and the qualitative feature of sovereign *status*, on the other. In this context, it has been pointed out that international lawyers, when regarding juridical sovereignty as a limited property, often refer to rights emanating from sovereign status rather than possession of this status as such. On the other hand, a quantitative conception of factual state sovereignty, besides being incompatible with the norm and the fact of international responsibility, results in, among

other things, rendering state *sovereignty* indistinguishable from state *power* pure and simple.

Third, some of the theoretical problems related to state sovereignty are not intrinsic to the concept *per se* but merely a reflection of the complicated relationship that generally exists between laws and facts. On the one hand, those types of legal stipulations that are constitutive in their basic character have the consequence of creating facts. First and foremost among such stipulations are those that create the positive legal order as such by identifying its objects and subjects. Hence, juridical sovereignty, referring as it does to subject status under positive international legal order, is a descriptive concept, although it originates in law. In this respect, there is no difference between this concept and other concepts that refer to juridical persons, such as citizens, companies, clubs, and so on, since all of them are the material consequences of legal decrees that have a constitutive character. On the other hand, factual sovereignty at the level of states and similar entities is the consequence of legal sovereignty at the intrastate level, the locus of which, in turn, is determined by the actual behavior of subordinate authorities. This is due to the fact that factual state sovereignty, conceived of as a positive legal order that is successfully enforced, is the outcome of legal edicts issued by the possessor of legal sovereignty that are imposed by means of the factual behavior of courts, police, and the military. As has been pointed out in chapter 7, this is the reason why the issue of factual state sovereignty in the context of the European Union can only be determined on the basis of the issue of legal sovereignty *within* that union. Whether the European Union or the member states are endowed with factual state sovereignty depends on whether the locus of legal sovereignty *within* the union is the European Court of Justice or the National Courts of the member states. This issue, in turn, can only be resolved on the basis of the actual behavior of courts at lower levels of the judicial hierarchy and of the police and military that enforce legal verdicts of these courts, *when/if* the former receive *conflicting* legal orders from the European Court of Justice and the National Courts. Similarly, to provide another example, if Chechen courts and police refuse to obey legal orders emanating from the Russian Federation and start to enforce the verdicts of some legal authority in Grozny, this results in the emergence of a factually sovereign enclave—that is, a factually sovereign territorial entity as was the case until 2001.

Fourth, the postmodern and post-structuralist approaches to sovereignty, by adopting the position that the concept inevitably lacks a fixed referent and that it is inherently indefinable, have reinforced an unwarranted skepticism about the analytical utility of this concept. This position has

also led to fragmentation of the field of research on sovereignty rather than repudiating the concept of sovereignty completely or producing an alternative to the existing conceptualizations. In general terms, the most important impact of these approaches has been the emergence of two insular research projects, two bodies of scholarly literature that enshrine different premises, apply different methodological standards, have different disciplinary affiliations, but that seldom interact with one another. Nowhere is this fragmentation more evident than in contemporary research on sovereignty, where empirically oriented students continue to conduct research in a business-as-usual manner while philosophically minded scholars establish their argument on a criticism of this state of affairs. In other words, as has been described in detail in chapter 2, what we have at the present stage is a situation where the traditional uses of "sovereignty," where empirical research conducted on that basis is deprived of precise analytical tools produced by sophisticated conceptual analysis, are being countered by overly problematized notions of this concept where conceptual analysis is without any immediate links to the material world—and hence, to the type of empirical questions that have been reiterated at the beginning of this book. Seen in this way, the disciplinary division of intellectual labor criticized by postmodern writers has been paradoxically strengthened by the content and the form of that same criticism. This general outcome is at least partially due to the logical tensions in the overall structure of postmodern and post-structuralist thought. As has been shown in chapter 2, such novel conceptualizations of sovereignty begin their inquiry with an attack on the epistemological premises of scientific disciplines by questioning the prospects of acquiring objective knowledge and by rejecting the possibility of fixing the referent of the concept of sovereignty in a noncontingent way—that is, on the basis of rational argument. However, once they commence their own narrative, they necessarily—and in a more or less orderly and coherent form—make various delimitations and demarcations in time and space, as a result of which they reintroduce a subject and a systematically fixed referent into their discourse with the consequence of producing statements about a world that is ontologically independent from that discourse. It is exactly at this point, where object/subject and concept/referent distinctions rejected initially are subsequently reincorporated into the narrative that the postmodern discourse acquires empirical traits. From here it is but a little step to the emergence of a new discipline-like intellectual activity, which is independent but whose propositions about sovereignty are occasionally commensurable with statements produced in other empirically oriented disciplinary

approaches to sovereignty. On the other hand, however, it has to be admitted that this development has had one important and positive impact on the general methodology of conceptual analysis: it is by now an indisputable fact that postmodern and post-structuralist approaches to sovereignty have increased the self-awareness of scholars about the unexplored premises of their own disciplines. It is precisely this consciousness that has been mobilized in the preceding chapters in order to emphasize the importance of interdisciplinary approaches, since as soon as such an approach is adopted, the outcome may often be the emergence of a scope for conceptual development. For instance, as has been indicated in chapter 5, once disciplinary boundaries are transcended it becomes clear that the unproblematic nature of the concept of "juridical sovereignty" in international relations is comparable to the unproblematic nature of the concept of "state" in international law and that, probably because of such shortcomings, none of these disciplines has been able to explain the emergence of juridical state sovereignty as a legal status in the international arena without encountering logical and empirical problems. Similarly, as has been seen in chapter 4, the notion of "limited" or "loss of sovereignty," frequently referred to in contemporary international relations literature, is incompatible with international responsibility, which is one of the necessary conditions for the existence of international public law as a positive legal system.

As regards the second question investigated in this book, *Which kind of political entities are sovereign as a matter of fact and law?* the evidence produced in chapters 5 and 7 support the view that both juridical and factual state sovereignty are widespread phenomena in the sphere of international relations and that those territorial entities that aspire to state sovereignty while lacking it are few and marginal. Moreover, the attempt to address this question has also produced two interrelated and counterintuitive results: in the first place, the evidence provided in these chapters indicates the limits of the scientific search for regular or regulated state behavior with regard to the emergence of juridically sovereign entities in the sphere of international relations. As has been shown in chapter 5, once a cross-disciplinary perspective is adopted it becomes clear that lawyers of international law and students of international relations have not been able to produce a logically coherent and empirically sustainable explanation of the acquisition of subject status under international law. Among the three explanations to be found in the literature, the arguments that trace the roots of such juridical personality back to *constitutional independence* or *empirical traits of statehood* are not only imbued with problems, such as logical contradiction or logical

circularity, but they are also untenable empirically. As regards the third explanation, which views juridical state sovereignty as a consequence of *recognition as a state* and which seems to be in line with the actual state of affairs, any attempt at explaining the existing correlation in terms of legal causation—that is, as an outcome of legally stipulated state behavior—runs into logical inconsistency. This lack of conclusiveness as regards the acquisition of state sovereignty seems to be due both to the nature of the object of analysis and to the intrinsic or accidental shortcomings of those scientific disciplines that are involved in the study of that object. On the one hand, in the context of the emergence of new territorial entities possessing sovereign rights, the relevant state behavior appears to be characterized more by contingency than by definite and stable patterns. On the other hand, it is also probably the case that, because of the requirements of their disciplines, students of empirical political science have been searching for patterns of behavior where there are none, while international lawyers have been attempting to identify the subjects of a positive legal order that, for all practical purposes, is rudimentary at best—if not simply nonexistent. In practical terms this implies that if aspirants of juridical state sovereignty, such as Chechen separatists, Palestinian organizations, or Kurdish insurgents, were to ask what they have to do in order to be able to establish a juridically sovereign state with subject status under international law, the lawyers and scholars have nothing to say but to refer them to the brutal contingencies of international relations or the unpredictable caprices of great power politics.

In the second place, a general review of statements about sovereignty to be found in the literature gives the impression that acquisition of juridical state sovereignty is regarded as a straightforward property, while factual state sovereignty is viewed as a problematic feature of states. However, the evidence produced in the preceding analysis indicates that the opposite is true. As far as juridical sovereignty is concerned, the discipline of international law has not been able to establish a legal procedure by means of which newly emerging entities may be granted or denied juridical sovereignty. The most important implication of this situation is that international law, which putatively regulates the behavior of states and similar entities that are endowed with juridical sovereignty, is unable to identify which entities are unequivocally endowed with that status. In other words, what we have here is a legal order that is unable to identify its subjects, that is to say, a legal order that cannot be regarded as a *positive legal order* properly speaking. Moreover, as has been seen in chapter 5, neither is it possible to identify the subjects of

positive international law on the basis of the constitutional law or constitutional structures of states and similar entities that are candidates for such subject status. Thus, acquisition of juridical state sovereignty remains a problematic and arbitrary thing in international relations. Factual state sovereignty, on the other hand, appears to be a condition that is present everywhere. Whenever the power of a state collapses, there is always a new, factually sovereign entity ready to occupy the power vacuum that emerges in the aftermath of that collapse—regardless of whether that new entity is a political organization seeking political power over the whole territory of the state or a separatist movement seeking power only over a part of it. Circumstances, such as those witnessed in the immediate aftermath of the collapse of the Baath Party regime in Iraq, where factual state sovereignty is replaced by factual political chaos, a Hobbesian anarchy, a reign of apolitical gangs seeking material goods, are rare and temporary in reality.

The answer to the third question addressed in this book, *What type of difficulties are encountered when determining the sovereignty of such entities?* is that the problematic cases of state sovereignty—both juridical and factual—are marginal phenomena in the sphere of international relations. As far as juridical state sovereignty is concerned, it is possible to identify the problematic cases of this type of sovereignty on the basis of an ideal type where there is complete correspondence between actual facts and legal status: a congruity between empirical traits of a territorial entity that aspires to statehood and the degree, the generality and the form of recognition that is accorded to that entity. Thus, as has been seen in chapter 6, the problematic cases of juridical sovereignty, that is, emergence of *fragmented*, *relative*, and *uncertain* legal personality on the part of territorial entities, can be traced back to nonconformity of their actual properties with "the ladder of recognition"—that in the contemporary era contains only two steps, recognition as a government and recognition as a state—the number of recognizing states and whether the recognition accorded is direct (de jure) or indirect (de facto or implied). The problematic cases of factual state sovereignty, on the other hand, may be traced back both to the general complexities of concept formation and to the specific complexities inherent in sovereignty. Among the former are the grey zone cases, where the difficulties encountered in determining whether the entity in question possesses factual sovereignty or not, is due to unclearness in the degree of territorial control exerted or the degree of insularity enjoyed by that entity. Among the latter are those entities where questions related to factual sovereignty remain unanswered because either the collective sovereign agent that is putatively

endowed with that sovereignty is in a state of complete fragmentation or the possibility of several, equally plausible, counterfactual explanations renders identification of the locus of factual sovereignty impossible.

These conclusions and observations support the view that state sovereignty is a *concept* that refers to an omnipresent *phenomenon*, the *ramifications* of which are marginal but intelligible to the human mind. Thus the widespread skepticism about it, regardless of whether it is epistemologically, methodologically, or empirically motivated, is not warranted. There is no evidence whatsoever to support the view that states have porous territorial borders, limited freedom of action, and subordinate or permeable decision-making mechanisms and that they therefore lack sovereignty or that they only have it in a compromised or limited form. Nor is the pessimism about the analytical utility of the concept and the possibility of employing it in empirical investigations justified: we can provide rational arguments in order to promote certain uses of the concept in an empirical context and show the incoherency and confusion involved in others. Finally, the form of skepticism that disconnects the concept from a material, observable social world and reduces its utility to academic or nonacademic discourses and discursive practices is not sustainable. It is the material, observable world, which is ontologically external to the concept of sovereignty that makes the concept not only an important analytical tool but also a powerful rhetorical device. At the end of the day, we would need many potent arguments—arguments yet to be produced by these skeptical scholars—to convince the aspirants of sovereignty that the concept is anything but a linguistically produced artifact, a concept pure and simple.

I would like to conclude this book with a methodological observation. The analysis of the concept, the referent, and the ramifications of state sovereignty, which has been conducted in the preceding chapters, has been an attempt to bridge the gap between the *fact* that the word is used in an *empirical sense* in the disciplinary literature and the *necessity* that this usage ought[1] to be *empirically meaningful*. If the concept of state sovereignty is to be employed in research in order to refer to a form of social, political, or juridical organization, there is no middle way between a methodologically enlightened, analytically precise and cross-disciplinary approach to the concept and discarding it altogether from the terminology of the scientific disciplines of politics and international relations, positivist international law, and constitutional theory. In this respect, the old alternatives that have been identified by scholars decades ago remain unchanged, if not strengthened, after new developments in the contemporary era, most important among them, the postmodern

and post-structuralist approaches to concept of sovereignty. Thus, compared to other more or less elaborated key concepts such as law, democracy, and power, where it is often possible to identify a linear conceptual development and increased analytical sophistication in the literature over time, the present state of "state sovereignty" as an analytical tool is still rudimentary and in need of much improvement. Seen in this vein, this book to a large extent has been an attempt to cover ground and contribute to social scientific concept formation by means of an explication of the concept of state sovereignty. And if the preceding chapters have been able to take some tentative steps in that direction, then the main goal of this book may be regarded as achieved.

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Notes

1 Introduction

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12. Cf. Giovanni Sartori, "Guidelines for Concept Analysis," in Giovanni Sartori (ed.), *Social Science Concepts: A Systematic Analysis* (Beverly Hills, London, and New Delhi: Sage Publications Ltd., 1984) p.55.
13. Janice E. Thomson, "State Sovereignty in International Relations: Bridging the Gap Between Theory and Empirical Research," *International Studies Quarterly* (Vol.39, No.2 1995) p.219.
14. Daniel Philpott, "Westphalia, Authority, and International Society," in Robert Jackson (ed.), *Political Studies—Sovereignty at the Millennium* (Vol.47, No.3 Special Issue 1999) p.570.
15. P. W. Bridgman, *The Logic of Modern Physics* (New York: The Macmillan Company, 1927).
16. William Outhwaite, *New Philosophies of Social Science—Realism, Hermeneutics and Critical Theory* (London: Macmillan Education Ltd., 1987) pp.10–11. See also William Outhwaite, *Concept Formation in Social Science* (London and Boston: Routledge & Kegan Paul, 1983) p.10.
17. Bridgman, *The Logic of Modern Physics*, p.5.
18. Carl G. Hempel, *Philosophy of Natural Science* (Englewood Cliffs, NJ: Prentice-Hall, 1966) p.89.
19. Bridgman, *The Logic of Modern Physics*, p.10.
20. Hempel, *Philosophy of Natural Science*, p.94.
21. Daniel, Philpott, "Westphalia, Authority, and International Society," p.570.
22. This is indeed the case, notwithstanding the fact that Philpott mentions Grotius as one of "sovereignty's first systematic articulators" who had "supremacy" in mind (Ibid., p.570).
23. Cf. Hugo Grotius, *De Jure Belli Ac Pacis Libri Tres*, translated by Francis W. Kelsey (New York: William S. Hein & Co., Inc., Vol. 2 1995) p.102.
24. See John Austin, *The Province of Jurisprudence Determined*, edited by Wilfrid E. Rumble (Cambridge: Cambridge University Press, 1995) pp.181–182.

25. Sartori, "Guidelines for Concept Analysis," p.35.
26. Janice E. Thomson., "State Sovereignty in International Relations: Bridging the Gap Between Theory and Empirical Research," *International Studies Quarterly* (Vol.39, No.2 1995) p.219.
27. *Ibid*.
28. For the problematic nature of these terms see e.g. Hoffman, *Sovereignty* pp.75–76; R. B. J. Walker, *Inside/Outside: International Relations as Political Theory* (Cambridge: Cambridge University Press, 1993) pp.187 and 188–189; and Mervyn Frost, *Ethics in International Relations—A Constitutive Theory* (Cambridge: Cambridge University Press, 1996) p.225, n.43.
29. Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995) p.52.
30. Ibid., p.13 and 12.
31. Ibid., p.15.
32. Ibid., p.15, see also pp.12–19.
33. Cynthia Weber, *Simulating Sovereignty: Intervention, The State, and Symbolic Exchange* (Cambridge: Cambridge University Press, 1995) p.7.
34. Ibid.
35. Ibid., p.18.
36. Ibid.
37. Walker, *Inside/Outside*, p.8. See also R.B.J. Walker, "Sovereignty, Identity, Community: Reflections on the Horizons of Contemporary Political Practice," in Saul H. Mendlovitz and R. B. J. Walker (eds.), *Contending Sovereignties—Redefining Political Community* (Boulder and London: Lynne Rienner Publishers, 1990) pp.160, 182, and 183. See also Bartelson, *A Genealogy of Sovereignty*, p.18.
38. Walker, *Inside/Outside*, p.19. See also Richard K. Ashley, "Untying the Sovereign State: A Double Reading of the Anarchy Problematique," *Millennium* (Vol.17, No.2 1988) pp.256–257.
39. Walker, "Sovereignty, Identity, Community," p.169.
40. Ibid., p.182.
41. Weber, *Simulating Sovereignty*, p.9.
42. Bartelson, *A Genealogy of Sovereignty*, p.3.
43. Ibid., p.4.
44. Ibid., p.7.
45. Ibid., pp.7 and 8.
46. And consequently, in our everyday language we may continue to speak of "sovereignty" as if it existed while such a usage would be irrelevant to scientific inquiry.
47. The presumption here is that *all* approaches and inquiries into the concept of sovereignty are commensurable at an epistemological and scientific philosophical level although they may be incommensurable at *lower levels of abstraction*, or at a disciplinary level.
48. Walker, "Sovereignty, Identity, Community," p.159; see also Walker, *Inside/Outside*, p.13.

49. Walker, "Sovereignty, Identity, Community," p.165; see also Walker, *Inside/Outside*, p.176.
50. Walker, "Sovereignty, Identity, Community," p.168.
51. Ibid., pp.182–183 and p.160. See also Walker, *Inside/Outside*, p.25.
52. Walker, "Sovereignty, Identity, Community," pp.165–166.
53. See chapter 5 of this book for a critical scrutiny of these three views.
54. Walker, "Sovereignty, Identity, Community," p.170.
55. Ibid., p.171.
56. Bartelson, *A Genealogy of Sovereignty*, p.5.
57. Ibid., p.51, see also pp.50–52, 238–239 and passim.
58. Ibid., p.52.
59. Ibid., p.19, see also pp.19–49 and 238–239.
60. Ibid., p.239.
61. Ibid., p.19 and pp.44–49.
62. Ibid., pp.16 and 30.
63. Of course, this is the case if "logical implication" is to be interpreted as a necessity and "historical production" is to be regarded as a fact.
64. Ibid., p.13.
65. Weber, *Simulating Sovereignty*, p.3.
66. Ibid., pp.31–39 and passim.
67. Ibid., p.39, see also pp.30–31.
68. Ibid., p.123.
69. Ibid., p.125.
70. Ibid.
71. Ibid., p.127.
72. See *International Court of Justice Yearbook 1985–1986* (The Hague: I.C.J., No.40, 1986) pp.137–160.
73. Ti-Chiang Chen, *The International Law of Recognition—With Special Reference to Practice in Great Britain and the United States*, edited by L. C. Green (London: Stevens & Sons Limited, 1951) p.105.
74. Hersch Lauterpacht, *Recognition in International Law* (Cambridge: The University Press, 1947) p.98; see also pp.103 and 141–145.
75. See ibid., pp.102 and 130, see also two versions of this doctrine, one European and the other American, referred to by Chen in Chen, *The International Law of Recognition*, pp.105–111.
76. See Steve Woolgar and Dorothy Pawluch, "Ontological Gerrymandering: The Anatomy of Social Problems Explanations," *Social Problems* (Vol.32, No.3 February 1985) p.216.
77. Martyn Hammersley, *The Politics of Social Research* (London: Sage Publications, 1995) pp.106 and 160.
78. Hospers and Salmon quoted in Sartori, *Guidelines for Concept Analysis*, p.24.
79. Ibid., pp.27 and 28.
80. Ibid., p.26.

3 Theories of Sovereignty: Reclaiming the Domain of Empirical Research

1. Albert O. Hirschman, "The Search For Paradigms As A Hindrance To Understanding," *World Politics* (Vol. 22 1970) pp. 330,338, and 343.
2. Cf. Thomas M. Franck, *The Power of Legitimacy among Nations* (New York and Oxford: Oxford University Press, 1990) p.43.
3. Hedley Bull, *The Anarchical Society—A Study of Order in World Politics* (London: Macmillan Press Ltd., Second edition, 1995) p.131.
4. John Austin, *The Province of Jurisprudence Determined*, edited by Wilfrid E. Rumble (Cambridge: Cambridge University Press, 1995) pp.165 and 285.
5. H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, Second edition, 1994) pp.89–91.
6. See Hersch Lauterpacht, *Recognition in International Law* (Cambridge: The University Press, 1947) pp.427–428 and Ti-Chiang Chen, *The International Law of Recognition—With Special Reference to Practice in Great Britain and the United States*, edited by L. C. Green (London: Stevens & Sons Limited, 1951) pp.413–414.
7. Austin, *The Province of Jurisprudence Determined*, pp.148–150.
8. In this context, it is important to distinguish "constitutional law" from "constitutions," as the latter, especially in dictatorships, may be a bogus or a propaganda ploy, which may consequently be irrelevant for the positive law of the country.
9. Naturally, this is the case under a strict *ceteris paribus* condition, which, for instance, excludes bogus constitutions (such as those of dictatorships) and conflicting constitutional orders (such as those to be found within the EU system).
10. Cf. Ivo D. Duchacek, *Power Maps: Comparative Politics of Constitution* (Oxford, Santa Barbara: ABC Clio Inc., 1973) p.224.
11. Hence, "juridical sovereignty," and the category of entities that enjoy this type of sovereignty, just like "citizenship," and the category of individuals that are citizens, is a descriptive phenomenon although it originates in the legal stipulations of positive international law.
12. For different views in this respect see Austin, *The Province of Jurisprudence Determined*, pp.112 and 175; Bull, *The Anarchical Society*, p.131; and Georg Schwarzenberger, "The Grotius Factor in International Law and Relations: A Functional Approach," in Hedley Bull, et al. (eds.), *Hugo Grotius and International Relations* (Oxford: Clarendon Press, 1990) pp.310–312.
13. Cf. Hedley Bull, "The Importance of Grotius in the Study of International Relations," in Bull et al. (eds.), *Hugo Grotius and International Relations* p.79; Bull, *The Anarchical Society*, pp.139–155.
14. Georg Jellinek quoted in Hidemi Suganami, "Grotius and International Equality," in Bull et al. (eds.), *Hugo Grotius and International Relations,* p.231.

15. It has to be noted that these two questions can be elaborated on, in terms of various sub-questions that treat the issues of indivisibility, unlimitedness, factuality, or legality of sovereignty or the sovereign organ. In order to avoid overburdening the present analysis, I shall refrain from undertaking a survey of these issues in the following discussion.
16. Quoted in Duchacek, *Power Maps: Comparative Politics of Constitution*, p.7.
17. Ibid., p.3.
18. Ibid., p.11.
19. W. J. Rees, "The Theory of Sovereignty Restated," in Peter Laslett, (ed.), *Philosophy, Politics and Society* (Oxford: Basil Blackwell & Mott Limited, 1956) p.57.
20. J. A. Camilleri and J. Falk, *The End of Sovereignty*: *The Politics of a Shrinking and Fragmented World* (Aldershot: Edward Elgar, 1992).
21. Rees, "The Theory of Sovereignty Restated," p.57; Stanley I. Benn, "The Uses of 'Sovereignty,' " in Anthony Quinton (ed.), *Political Philosophy* (London: Oxford University Press, 1967) pp.68–75.
22. Austin, *The Province of Jurisprudence Determined*, pp.166 and 165. In this context, see also A. V. Dicey's definition of parliamentary sovereignty (A. V. Dicey, *Introduction to The Study of The Law of The Constitution* [London: Macmillan & Co. Ltd. and New York: St. Martin's Press, Tenth edition, 1959] pp.39–40).
23. H. W. R. Wade, "The Basis of Legal Sovereignty," *The Cambridge Law Journal* (Nov. 1955) p.189.
24. See chapter 7 of this book.
25. Rees, "The Theory of Sovereignty Restated," pp.72, 75, and 58.
26. Rees, "The Theory of Sovereignty Restated," pp.60 and 75.
27. In this section I have heavily relied on F. H. Hinsley's classical study (F. H. Hinsley, *Sovereignty* [Cambridge: Cambridge University Press, Second edition, 1986]) rather than referring to the original works of Bodin, Hobbes, Althusius, and Rousseau. A similar, but more recent interpretation of these classical political theorists can also be found in Camilleri and Falk, *The End of Sovereignty?* pp.18–21.
28. It has to be noted in this context that there are also a substantial number of theories that have attempted to synthesize these two standpoints. For an analysis of these theories of, what has alternatively been called, "limited," "partial," "double," or "mixed" sovereignty, see Hinsley, *Sovereignty*, p.135–140.
29. Ibid., pp.71, 120–124, and 131.
30. Ibid., pp.141–145.
31. Ibid., pp.132 and 134–135.
32. Ibid., pp.153–154.
33. At this level of analysis, it is also possible to find normative theories that reject sovereignty as a form of political organization. See e.g. Jacques Maritain, "The Concept of Sovereignty," in W. J. Stankiewicz (ed.), *In*

Defense of Sovereignty (New York, London, and Toronto: Oxford University Press, 1969) pp.51, 56, and 61–64.

34. Robert H. Jackson, *Quasi-States: Sovereignty, International Relations, and The Third World* (Cambridge: Cambridge University Press, 1990) pp.3–5, 7, 38–49, 198–199. For a critical view of Jackson's argument see Christopher Clapham, "Degrees of Statehood," *Review of International Studies* (Vol.24 1998) pp.143–157.
35. Kenneth N. Waltz, "Political Structure," in Robert O. Keohane (ed.), *Neorealism and Its Critics* (New York: Columbia University Press, 1986) pp.84–85, 87, and 90.
36. Ibid. It has to be noted in this context that Waltz never uses the term "sovereignty systems." However, the point of departure of his theory is, the systemic approaches to the relations between sovereign entities.
37. Ibid., pp.81–85 and 90.
38. This concept is closely related to a threefold division of theories about international relations that have been introduced by Martin Wight. In the following survey of the central themes of this tradition, I draw on those summaries that have been provided by Hedley Bull and Robert Jackson (Jackson, *Quasi-States*, p.164–165 and 168; Bull, *The Anarchical Society*, p.23–24).
39. Ibid., p.23.
40. It is true that the basic premises of this theoretical tradition display notable similarities with the central assumptions of the previous theory about the sovereignty systems—hence the tendency to regard both theoretical approaches as subspecies of the so-called realist theory.
41. In this section, I draw almost exclusively on the summaries of these theoretical approaches presented by Hedley Bull and Robert Jackson (Bull, *The Anarchical Society*; Jackson, *Quasi-States*).
42. Cf. Bull's definition of "international law" in Bull, *The Anarchical Society*, pp.122 and 122–130.
43. See Ibid., pp.141–142; Hinsley, *Sovereignty*, p.190; Ian Brownlie, *Principles of Public International Law* (Oxford: Clarendon Press, Fourth edition, 1990) pp.1–30.
44. Bull, *The Anarchical Society*, pp.124 and 139–143.
45. Ibid., pp.272–273; Jackson, *Quasi-States*, p.175.
46. Cf. Bull, *The Anarchical Society*, pp.24–25; Jackson, *Quasi-States*, p.174.
47. Hinsley, *Sovereignty*, pp.142–143.
48. David Held, *Political Theory and the Modern State—Essays on State, Power and Democracy* (Oxford: Polity Press, 1989) p.221.
49. Robert Alan Dahl, *Democracy and Its Critics* (New Haven and London: Yale University Press, 1989) p.207.
50. Here, I draw partly on a lecture given by Sverker Gustavsson at the University of Stockholm, Department of Political Science on February 19, 1997.

51. For such definitions see e.g. Ernest Gellner, *Nations and Nationalism* (Oxford: Basil Blackwell Ltd., 1983) p.1; and N. MacCormick, *Legal Right and Social Democracy* (Oxford: Clarendon Press, 1982) p.260.
52. David Miller, *On Nationality* (Oxford: Clarendon Press, 1995) p.11.
53. Ibid., pp.116–118.
54. It has to be noted that there is also a somewhat less representative body of literature, where the concept of sovereignty is conceived of, in exclusively nonlegal terms. See Kenneth N. Waltz, *Theory of International Politics* (Reading, MA: Addison-Wesley Publishing Company, 1979) p.96 and Robert Gilpin, *War and Change in World Politics* (Cambridge: Cambridge University Press, 1981) p.17.
55. Waltz, "Political Structures," p.91.
56. Cf. James, Alan, *Sovereign Statehood—The Basis of International Society* (London: Allen & Unwin Publishers Ltd., 1986) p.59; Austin, John, *The Province of Jurisprudence Determined*, pp.166–167.
57. R. H. Jackson, *Quasi-States*, pp.34 and 40–47.
58. Waltz, "Political Structures," p.90.
59. Cf. Miller, *On Nationality*, pp.29–30; MacCormick, *Legal Right and Social Democracy*, pp.254–255. See also Liah Greenfeld, *Nationalism—Five Roads to Modernity* (London: Harvard University Press, 1992) pp.3, 6–10.
60. I am indebted to Mervyn Frost, King's College—University of London, for drawing my attention to this possibility.

4 Sovereignty of States and Similar Entities: A Conceptual Analysis

1. These expressions together with "sovereignty at the level of states and similar entities" and merely "sovereignty," whenever no other specification is made, will be used synonymously and interchangeably in this chapter.
2. Kenneth N. Waltz, "Political Structures," in Robert O. Keohane (ed.), *Neorealism and Its Critics* (New York: Columbia University Press, 1986) p.90.
3. Barry Buzan, *People State and Fear—The National Security Problem in International Relations* (London: Wheatsheaf Books Ltd., 1983) pp.40, 41, and 94.
4. Ibid., p.42.
5. Alan James, *Sovereign Statehood—The Basis of International Society* (London: Allen & Unwin Publishers Ltd., 1986) p.6.
6. This is probably the case notwithstanding the fact that a much more sophisticated notion of statehood is presented in other parts of the study (see Chapter 2 in Buzan, *People State and Fear*, pp.36–72).
7. Ian Brownlie, *Principles of Public International Law* (Oxford: Clarendon Press, Fourth edition, 1990) p.108.

8. Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* (Oxford: Clarendon Press, 1998) p.50.
9. James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press, 1979) p.26.
10. Hans Kelsen, "Sovereignty and International Law," in Wladyslaw Jozef Stankiewicz (ed.), *In Defence of Sovereignty* (London: Oxford University Press, 1969) p.124.
11. James Leslie Brierly, *The Law of Nations—An Introduction to the International Law of Peace*, edited by Sir Humphrey Waldock (Oxford: Clarendon Press, Sixth edition, 1963) p.162.
12. Lassa Oppenheim, *International Law—A Treatise*, edited by H. Lauterpacht (London, New York, and Toronto: Longmans, Green and Co., Eighth edition, 1955) p.286.
13. Alan James, *Sovereign Statehood—The Basis of International Society* (London: Allen & Unwin Publishers Ltd., 1986) p.25. See also Robert H. Jackson, "Continuity and Change in the State System," in Robert H. Jackson and Alan James (eds.), *States in a Changing World—A Contemporary Analysis* (Oxford: Clarendon Press, 1993) p.347.
14. James, *Sovereign Statehood*, p.39.
15. Paul Taylor, "The United Nations in the 1990s: Proactive Cosmopolitanism and the Issue of Sovereignty," in Robert Jackson (ed.), *Political Studies—Sovereignty at the Millennium* (Vol. 47, No. 3 Special Issue 1999) p.538.
16. Hans J. Morgenthau, *Politics Among Nations—The Struggle for Power and Peace* (New York: Alfred A. Knopf, 1949) pp.259, 261, and 263.
17. Ibid., p.261.
18. Raymond Aron, *Peace and War—A Theory of International Relations*, translated by Richard Howard and Annette Baker Fox (London: Weidenfeld and Nicolson, 1966) pp.745–746.
19. Carl Schmitt, *Political Theology—Four Chapters on the Concept of Sovereignty*, translated by George Schwab (Cambridge, Massachusetts and London, The MIT Press, 1985) p.5. See also Robert O. Keohane, "Hobbes's Dilemma and Institutional Change in World Politics: Sovereignty in International Society," in Hans-Henrik Holm and Georg Sorensen (eds.), *Whose World Order? Uneven Globalization and the End of the Cold War* (Boulder, San Francisco, and Oxford: Westview Press, 1995) p.177 and Charles Burton Marshall, *The Exercise of Sovereignty: Papers on Foreign Policy* (Baltimore: The Johns Hopkins Press, 1965) pp.4–5.
20. Kenneth N. Waltz, *Theory of International Politics* (Addison: Wesley Publishing Company, 1979) p.96.
21. Robert Gilpin, *War and Change in World Politics* (Cambridge: Cambridge University Press, 1981) p.17.
22. Georg Schwarzenberger, *A Manual of International Law* (Abingdon: Professional Books Ltd., Sixth edition, 1976) p.52.

23. David Held, *Political Theory and the Modern State—Essays on State, Power and Democracy* (Oxford: Polity Press, 1989) pp.228–229.
24. Robert H. Jackson, *Quasi-States: Sovereignty, International Relations, and The Third World* (Cambridge: Cambridge University Press, 1990) pp.27 and 29. See also Georg Schwarzenberger, "The Forms of Sovereignty," in Wladyslaw Jozef Stankiewicz (ed.), *In Defence of Sovereignty* (London, New York, and Toronto: Oxford University Press, 1969) pp.165–168; see also Schwarzenberger, *A Manual of International Law*, pp.53–54.
25. See Hedley Bull, *The Anarchical Society—A Study of Order in World Politics* (London: Macmillan Press Ltd., Second edition, 1995) p.8. See also Stephen D. Krasner, "Economic Interdependence and Independent Statehood," in Robert H. Jackson and Alan James (eds.), *States in a Changing World—A Contemporary Analysis* (Oxford: Clarendon Press, 1993) pp.301–302.
26. Stephen D. Krasner, *Sovereignty—Organized Hypocrisy* (Princeton, New Jersey: Princeton University Press, 1999) p.9 and passim.
27. Schwarzenberger, *A Manual of International Law,* pp.96–97.
28. Ibid., p.97.
29. W. E. Hall, *A Treatise on International Law*, edited by Pearce Higgins (Oxford: Clarendon Press, Eighth edition, 1924) p.605.
30. Ibid., pp.605–606.
31. De Cuellar quoted in Thomas M. Franck, *The Power of Legitimacy Among Nations* (New York and Oxford: Oxford University Press, 1990) p.9.
32. Cf. James, *Sovereign Statehood*, p.276.
33. A possible empirical example in this context is the case of Kuwait during the Iraqi occupation in 1990–1991. It may be argued that owing to its juridical sovereignty, the Kuwaitian state was able to mobilize support in the United Nations and among the Arab states and restore its factual sovereignty.
34. The case of Chechenia is probably the most current example in this respect.
35. These two views overlap to a substantial extent with what Fowler and Bunck refer to as "the chunk" and "the basket schools of thought on sovereignty" (Michael Ross Fowler and Julie Marie Bunck, *Law, Power, and the Sovereign State—The Evolution and the Application of the Concept of Sovereignty* [University Park, PA: Pennsylvania State University Press, 1995] p.122; see also pp.64 and 122–123).
36. Cf. Harold Laski, *A Grammar of Politics* (London: George Allen & Unwin Ltd, Fifth edition, 1967) pp.48–49.
37. Cf. K. W. B. Middleton, "Sovereignty in Theory and Practice," in Wladyslaw Jozef Stankiewicz (ed.) *In Defence of Sovereignty* (New York, London and Toronto: Oxford University Press, 1969) p.153.
38. James, *Sovereign Statehood*, p.47.
39. Ibid., p.48.
40. James, *Sovereign Statehood*, p.202. However, James adds immediately that it is possible to consider "sovereign rights" in quantitative terms, if a very broad definition is given to the concept.

41. What is referred to here is not the equality of "everyone" before law but *the equality of all members of the same category of subjects* before law.
42. For an exception in this respect see Fowler and Bunck, *Law, Power, and the Sovereign State*, chapter 3, especially pp.122–125.
43. Ingrid Detter De Lupis, *International Law and the Independent State* (Aldershot, Vermont: Gower Publishing Company Limited, Second edition, 1987) pp. ix–x.
44. Ibid., p.22; see also pp.21–22 and 141.
45. See James, *Sovereign Statehood*, pp.204 and 206 respectively. See also Keohane, *Hobbes's Dilemma and Institutional Change in World*, p.184.
46. James, *Sovereign Statehood*, pp.196–197.
47. Ibid., p.204.
48. Ibid., p.206.
49. Cf. ibid., p.208.
50. See e.g. Brownlie, *Principles of Public International Law*, p.108.
51. Cf. James, *Sovereign Statehood*, pp.207–208.
52. Ibid., p.208.
53. Marshall, *The Exercise of Sovereignty: Papers on Foreign Policy*, p.4.
54. Held, *Political Theory and the Modern State*, p.238; see also p.234.
55. Jackson, *Quasi-States*, pp.29–30.
56. Bull, *The Anarchical Society*, p.8. For a conceptualization of sovereignty as a "variable" rather than as a "constant," see also Samuel J. Barkin and Bruce Cronin, "The State and The Nation: Changing Norms and Rules of Sovereignty in International Relations," *International Organisation* (Vol.48, No.1 Winter 1994) pp.108–110.
57. Cf. David Easton, *A Framework for Political Analysis* (London and Sydney: Prentice-Hall Inc., 1965) p.50; David Easton, *The Political System—An Inquiry into the State of Political Science* (New York: Alfred A. Knopf, 1967) pp.135–137.
58. Jean Bodin, *Six Books of the Commonwealth*, abridged and translated by M. J. Tooley (Oxford: Basil Blackwell, 1955) p.25.
59. Carl Schmitt, *Political Theology—Four Chapters on the Concept of Sovereignty*, translated by George Schwab (Cambridge, Massachusetts and London: The MIT Press, 1985) p.5. See also John Austin's definition of sovereignty in John Austin, *The Province of Jurisprudence Determined*, edited by Wilfrid E. Rumble (Cambridge: Cambridge University Press, 1995) p.166.
60. Cf. ibid.
61. Seen from such a vantage point, it is more reasonable and tenable to discard the concept of factual sovereignty as something irrelevant to the contemporary world than to conceive it in quantitative terms without redefining it.
62. See Robert Alan Dahl, "Power as the Control of Behaviour," in Steven Lukes (ed.), *Power* (Oxford: Basil Blackwell Ltd., 1986) pp.39 and 40.
63. James, *Sovereign Statehood*, p.190. In this context, see also Hinsley's criticism of the alleged association between "sovereignty" and "freedom of action" (see Hinsley, *Sovereignty*, p.226).

64. Ibid., p.49; see also pp.48–49.
65. William Edward Hall, *A Treatise on International Law* edited by A. Pearce Higgins (Oxford: Clarendon Press, Eighth edition, 1924) p.94.
66. *Ibid.* For the sake of accuracy, the rather weak reservation that Hall makes in this respect should also be reiterated: "On the other hand, it is admitted that no government can exercise an *inquisitorial surveillance* over all the doings of persons living within its jurisdiction. There is a point at which the responsibility of a state ceases *in respect of concealed acts*" (italics are added, Ibid., pp.94–95).
67. Ibid., p.95.
68. Cf. Schwarzenberger, *A Manual of International Law*, pp.51–52.
69. Georg Schwarzenberger, "The Forms of Sovereignty," in Wladyslaw Jozef Stankiewicz (ed.), *In Defence of Sovereignty* (London, New York, and Toronto: Oxford University Press, 1969) p.173.
70. T. M. Franck, *The Power of Legitimacy Among Nations*, p.10.
71. Laski, *A Grammar of Politics*, p.52.
72. According to Wilks, even if the notion of sovereign as "a secularised version of the concept of God is too strong," the analogy between "sovereign in his State" and "God in His universe" was not unknown to the political philosophers of the sixteenth and seventeenth century (Cf. Ivor Wilks, "A Note on Sovereignty," in Wladyslaw Jozef Stankiewicz [ed.], *In Defence of Sovereignty* [London, New York, and Toronto: Oxford University Press, 1969] pp.198–199). As regards conceptualization of sovereignty in terms of omnipotence, see also Austin's criticism of Grotius in Austin, *The Province of Jurisprudence Determined*, p.182.
73. K. C. Wheare, *Federal Government* (London, New York, and Toronto: Oxford University Press, Fourth edition, 1963) p.80.
74. Italics are added. K. W. B. Middleton, "Sovereignty in Theory and Practice," in Wladyslaw Jozef Stankiewicz (ed.), *In Defence of Sovereignty* (London, New York, and Toronto: Oxford University Press, 1969) pp.141–142.
75. Cf. Janice E. Thomson, "State Sovereignty in International Relations: Bridging the Gap Between Theory and Empirical Research," *International Studies Quarterly* (Vol.39, No.2 1995) p.227.
76. See John Gerard Ruggie, "Continuity and Transformation in the World Polity—Toward a Neorealist Synthesis," *World Politics* (Vol.35 1983) pp.274–275.
77. Bull, *The Anarchical Society*, pp.245 and 254–255.
78. Morgenthau, *Politics Among Nations*, p.259.
79. Wheare, *Federal Government*, p.10.
80. See chapter 8 of this book for a detailed discussion of this problem.
81. Bodin referred to in De Lupis, *International Law and the Independent State*, p.3.
82. Bull, *The Anarchical Society*, p.8.
83. Bodin referred to in De Lupis, *International Law and the Independent State*, p.3.

84. Bull, *The Anarchical Society*, p.8.
85. De Lupis, *International Law and the Independent State*, pp.3–4.
86. James, *Sovereign Statehood*, pp.25, 40.
87. Ibid., p.50.
88. Ibid., p.57.

5 Juridical State Sovereignty: A Futile Search for Regular or Regulated State Behavior

1. In this chapter, the terms "juridical sovereignty," "sovereign legal status," and "possession of sovereign rights"—with or without its corollary "liability to special obligations"—are used synonymously and interchangeably.
2. Alan James, *Sovereign Statehood—The Basis of International Society* (London: Allen & Unwin Publishers Ltd., 1986) p.203.
3. Ibid., pp.25, 58 and passim.
4. W. J. Rees, "The Theory of Sovereignty Restated," in Peter Laslett (ed.), *Philosophy, Politics and Society* (Oxford: Basil Blackwell & Mott Limited, 1956) p.57.
5. Joseph A. Camilleri and Jim Falk, *The End of Sovereignty?—The Politics of Shrinking and Fragmenting World* (Aldershot, Vermont: Edward Elger Publishing Limited, 1992) p.22.
6. James, *Sovereign Statehood*, p.111.
7. Italics are added. Ibid., p.143.
8. Cf. John Hoffman, *Sovereignty* (Buckingham: Open University Press, 1998) pp.28–29 and David Long, "Book Review of 'Sovereign Statehood—The Basis of International Society' " *Journal of International Studies* (Vol.16, No.2 Summer 1987) p.386.
9. James, *Sovereign Statehood,* p.45 and passim.
10. See Ibid., pp.147–160.
11. See Ibid., p.270. See also Alan James, "The Practice of Sovereign Statehood in Contemporary International Society," in Robert Jackson (ed.), *Political Studies—Sovereignty at the Millennium* (Vol.47, No.3 Special Issue 1999) p.466.
12. For the origins of this principle see Fred Parkinson, "Latin America," in Robert H. Jackson and Alan James (eds.), *States in a Changing World—A Contemporary Analysis* (Oxford: Clarendon Press, 1993) pp.241–243; Fred Parkinson, "Ethnicity and Independent Statehood," in Jackson and James, (eds.), *States in a Changing World*, p.325; and Robert Jackson, "Sovereignty in World Politics: a Glance at the Conceptual and Historical Landscape," in Robert Jackson (ed.), *Political Studies—Sovereignty at the Millennium* (Vol.47, No.3 Special Issue 1999), pp.446–449.
13. Cf. Malcom Shaw, *Title to Territory in Africa—International Legal Issues* (Oxford: Clarendon Press, 1986) p.168.

14. This, for instance, seems to be the case at least in sub-Saharan Africa during the decolonization of that continent. Robert H. Jackson, "Juridical Statehood in Sub-Saharan Africa," in *Journal of International Affairs* (Vol.46, No.1 1992) pp. 4–5.
15. It seems as if, during the second wave of state-building, the principle of *uti possidetis juris* was applied, even in those cases, such as the dissolution of Yugoslavia, where it encountered intense opposition on the part of the local forces; see Colin Warbrick, "Recognition of States: Recent European Practice," in Malcolm D. Evans (ed.), *Aspect of Statehood and Institutionalism in Contemporary Europe* (Dartmouth: Dartmouth Publishing Company Limited, 1997) pp.27–28; Parkinson, "Ethnicity and Independent Statehood," p.336.
16. Cf. James Mayall, "Sovereignty, Nationalism and Self-Determination," in Robert Jackson (ed.), *Political Studies—Sovereignty at the Millennium* (Vol.47, No.3 Special Issue 1999) p.491. It has to be noted that there are also some notable exceptions in this respect, such as Bangladesh and the member states of the Federal Republic of Yugoslavia.
17. Ian Brownlie, *Principles of Public International Law* (Oxford: Clarendon Press, Fourth edition, 1990) p.58.
18. Ibid., p.108.
19. Cf. Ibid., pp.287 and 290.
20. Ibid., pp.71 and 72.
21. Quoted in ibid.
22. See ibid., pp.73–74.
23. William Edward Hall, *A Treatise on International Law*, edited by A. Pearce Higgins (Oxford: Clarendon Press, Eighth edition, 1924) pp.19–20.
24. Ibid., p.17.
25. Ibid., p.55.
26. James Leslie Brierly, *The Law of Nations—An Introduction to the International Law of Peace*, edited by Sir Humphrey Waldock (Oxford: Clarendon Press, Sixth edition, 1963) p.162.
27. Cf. ibid., pp.129, 133, and 169.
28. Ibid., p.137.
29. Cf. Louis Henkin, *International Law: Politics and Values* (Dordrecht, Boston, and London: Martinus Nijhoff Publishers, 1995) p.14. See also J. Crawford, *The Creation of States in International Law*, p.119 (Oxford: Clarendon Press, 1979); and D. P. O'Connell, "The Status of Formosa and the Chinese Recognition Problem," in *The American Journal of International Law* (Vol.50 1956) p.415.
30. Cf. Crawford, *The Creation of States in International Law*, p.119.
31. See Mary C. Turnbull, *A History of Malaysia Singapore and Brunei* (Sydney, London, Boston Wellington: Allen & Unwin Inc., 1989) p.259; Richard Clutterbuch, *Conflict and Violence in Singapore and Malaysia 1945–1983* (Singapore: Graham Brash [Pte] Ltd., 1984) pp.282–284. For a differing view see Chan Hen Chee, "Political Developments, 1965–1979," in Ernest

C. T. Chew and Edwin Lee (eds.), *A History of Singapore* (Oxford and New York: Oxford University Press, 1991) p.157.

32. See *Dagens Nyheter* (Swedish daily), March 2, 1993, March 3, 1993, and March 5, 1993; see also *The New York Times International*, March 2, 1993 and March 3, 1993.
33. Robert H. Jackson, *Quasi-States: Sovereignty, International Relations, and The Third World* (Cambridge: Cambridge University Press, 1990) p.34. In a similar context, Peterson also mentions "mini-states" (see M. J. Peterson, *Recognition of Governments—Legal Doctrine and State Practice 1815–1995* [London and New York: Macmillan Press Ltd. and St. Martin's Press, Inc., 1997] p.190). As regards "quasi-statehood," see also Carolyn M. Warner, "The Political Economy of 'Quasi-Statehood' and the Demise of 19th Century African Politics," *Review of International Studies* (Vol.25 1999) p.233–255 and A. G. Hopkins, "Quasi-States, Weak States and the Partition of Africa," *Review of International Studies* (Vol.26 2000) pp.311–320.
34. Jackson and Rosberg, "Why Africa's Weak States Persist: The Empirical and Juridical in Statehood," in *World Politics* (Vol.35 1982) p.12.
35. Bosnia-Herzegovina was a member republic of the Yugoslav Federation, while Chechen-Ingushetia was an "autonomous republic" first within the Soviet Union and later within the Russian Federation (see Steven L. Burg and Paul S. Shoup, *The War in Bosnia Herzegovina—Ethnic Conflict and International Intervention* [London, New York: M. E. Sharpe, Inc., 1999] p.40). See also Carlotta Gall and Thomas De Waal, *Chechnya—A Small Victorious War* (London: Pan Books, 1997) p.55; Anatol Lieven, *Chechnya—Tombstone of Russian Power* (London, New Haven: Yale University Press, 1998) p.318.
36. After a referendum Bosnia-Herzegovina declared independence on March 3, 1992, while Chechen-Ingushetia proclaimed itself independent on November 2, 1991 (see S. L. Burg and P. S. Shoup, *The War in Bosnia Herzegovina*, pp.117–118; Lieven, *Chechnya*, p.63; see also Gall and De Waal, *Chechnya*, pp.81–83 and 99–100).
37. See Burg and Shoup, *The War in Bosnia Herzegovina*, pp.101–102, 120, and passim; Lieven, *Chechnya*, pp.63, 93 and passim; Gall and De Waal, *Chechnya*, pp.101, 173–203 and passim.
38. For instance, even after the Bosnian-Croatian summer offensive of 1995 the Serbs controlled slightly less than 50% of the territory of Bosnia-Herzegovina (see Burg and Shoup, *The War in Bosnia Herzegovina*, p.363).
39. For different proposals for the demarcation of the subunits of the Bosnian territory, see ibid., pp.191–193 and passim.
40. Cf. ibid., pp.367–372.
41. Though no precise data is available, it is estimated that between one-third and two-thirds of the total population of Bosnia-Herzegovina were displaced during the war (Ibid., pp.171–181).
42. Cf. Gall and De Waal, *Chechnya*, pp.106–107 and p.369; see also Lieven, *Chechnya*, p.16.

43. See Gall and De Waal, *Chechnya*, pp.113, 305–306 and passim; see also Lieven, *Chechnya*, pp.64–65 and 141–142.
44. See Gall and De Waal, *Chechnya*, pp.116–118.
45. According to the 1989 census, the population of those areas that constitute Chechnya was 1,084,000. By mid-January 1992, that is, one month after the beginning of the Russian invasion, the International Committee of the Red Cross estimated that 400,000 civilians had been displaced, and of these 260,000 had fled to other areas of Chechnya (see Greg Hansen and Robert Seely, *War and Humanitarian Action in Chechnya* [Providence: The Thomas J. Watson Jr., 1996] p.12 and p.30).
46. For a clear exception in this respect see James, *Sovereign Statehood*, p.271.
47. Janice E. Thomson, "State Sovereignty in International Relations: Bridging the Gap Between Theory and Empirical Research," in *International Studies Quarterly* (Vol.39, No.2 1995) p.219.
48. Richard K. Ashley, "The Poverty of Neorealism," in *International Organization* (Vol.38 1984), p.272, footnote 101.
49. See Jackson, "Juridical Statehood in Sub-Saharan Africa," p.7.
50. Murray Forsyth, *Union of States—The Theory and Practice of Confederation* (New York: Leicester University Press, 1981) p.11. See also Paul Taylor, "The United Nations in the 1990s: Proactive Cosmopolitanism and the Issue of Sovereignty," in Robert Jackson (ed.), *Political Studies—Sovereignty at the Millennium* (Vol.47. No.3 Special Issue 1999) p.558; Thomas M. Franck, *The Power of Legitimacy Among Nations* (New York and Oxford: Oxford University Press, 1990) p.112; Stephen D. Krasner, *Sovereignty—Organized Hypocrisy* (Princeton, New Jersey: Princeton University Press, 1999) pp.14–20 and passim.
51. Lassa Oppenheim, *International Law—A Treatise*, edited by H. Lauterpacht (London, New York, and Toronto: Longmans, Green and Co., Eighth edition, 1955) p.286.
52. Ibid., p.126; see also p.125.
53. Georg Schwarzenberger, *A Manual of International Law* (Abingdon: Professional Books Ltd., Sixth edition, 1976) pp.7, 35–36, 52, and 56.
54. Ibid., pp.54–55.
55. See Hans Kelsen, *Principles of International Law* revised and edited by Robert W. Tucker (New York: Holt, Rinehart and Winston, Inc., Second edition, 1967) p.249; for Kelsen's reservations as regards sovereignty see ibid., pp.194 and 243–250.
56. Ibid., p.392; see also p.394.
57. Oppenheim, *International Law*, p.145; see also pp.141–145. See also Hersch Lauterpacht, *Recognition in International Law* (Cambridge: The University Press, 1947) p.413 and Schwarzenberger, *A Manual of International Law*, p.97. Adherents of the declaratory view also adopts similar views. See e.g., Brownlie, *Principles of Public International Law*, p.98; Ti-Chiang Chen, *The International Law of Recognition—With Special*

Reference to Practice in Great Britain and the United States, edited by L. C. Green (London: Stevens & Sons Limited, 1951) pp.411–415.

58. Crawford, *The Creation of States in International Law*, p.16.
59. Brownlie, *Principles of Public International Law*, p.89; Kelsen, *Principles of International Law*, pp.389–390.
60. Chen, *The International Law of Recognition*, p.14.
61. For a detailed review of this controversy see Brownlie, *Principles of Public International Law*, pp.88–91; Chen, *The International Law of Recognition*, pp.13–17; Maria José Ruda, "Recognition of States and Governments," in Mohammed Bedjaoui (ed.), *International Law: Achievements and Prospects* (Dordrecht, Boston, and London: Martinus Nijhoff Publishers, 1991) pp.453–455; Lauterpacht, *Recognition in International Law*, pp.38–66.
62. Cf. Lauterpacht, *Recognition in International Law*, pp.3 and 7.
63. Brownlie, *Principles of Public International Law*, p.90.
64. See Oppenheim, *International Law*, pp.126–127; see also p.131; Lauterpacht, *Recognition in International Law*, p.6 and passim; Kelsen, *Principles of International Law*, p.391.
65. Herbert W. Briggs, "Recognition of States: Some Reflections on Doctrine and Practice," in *The American Journal of International Law* (Vol.43 1949), pp.118–119; E. J. Cohn, "Book Review of 'Recognition in International Law,' " in *The Law Quarterly Review* (Vol.64, No. 255 1948), pp.406–407.
66. Brownlie, *Principles of Public International Law*, p.92.
67. Lauterpacht, *Recognition in International Law*, p.74.
68. Cf. Chen, *The International Law of Recognition*, pp.53–54.
69. See ibid., pp.88–89, 240, and passim.
70. See Oppenheim, *International Law*, pp.149–150; Kelsen, *Principles of International Law*, p.398; Lauterpacht, *Recognition in International Law*, p.59.
71. Lauterpacht, *Recognition in International Law*, p.59.
72. Brownlie, *Principles of Public International Law*, pp.72 and 90–91.
73. In the context of a discussion of the statehood of Biafra, David A. Ijalaye refers to an interconnection between this criterion and recognition as a state: ". . . recognition forms an integral part of that factual situation which must manifest itself before an entity can claim to have attained statehood in international law" (David A. Ijalaye, "Was 'Biafra' at Any Time a State in International Law," in *The American Journal of International Law* [Vol.65 1971] p.552). However, Ijalaye does not develop the general implications that this interconnection has for the logical structure of the declaratory doctrine of recognition.
74. See, e.g., Brownlie, *Principles of Public International Law*, p.91; Ruda, *Recognition of States and Governments*, p.454; Chen, *The International Law of Recognition*, pp.190, 268–269, 289, and passim.
75. Lauterpacht, *Recognition in International Law*, p.45 and p.48.
76. Chen, *The International Law of Recognition*, p.248.

77. Stephen D. Krasner, *Sovereignty—Orgnanised Hypocrisy* (Princeton, New Jersey: Princeton University Press, 1999) pp.5–6, 70–71, and passim.

6 The Problem of Juridical State Sovereignty

1. See Leland M. Goodrich, Edvard Hambro, and Anne Patricia Simons, *Charter of the United Nations—Commentary and Documents* (New York and London: Columbia University Press, Third edition, 1969) p.82; John F. Copper, *Taiwan—Nation-State or Province?* (Colorado: Westview Press, Inc., Second edition, 1996) p.172.
2. See D. P. O'Connell, "The Status of Formosa and the Chinese Recognition Problem," *The American Journal of International Law* (Vol.50 1956) pp.409 and 414. See also James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press, 1979) pp.149 and 151.
3. See Copper, *Taiwan—Nation-State or Province?* p.173.
4. Cf. Deon Geldenhuys, *Isolated States: A Comparative Analysis* (Cambridge: Cambridge University Press, 1990) pp.189–194 and 209–210. See also *World Treaty Index* (Santa Barbara, California and Oxford, England: ABC-Clio Information Services, Second edition, Vol.4 1983) pp.550–552.
5. Crawford, *The Creation of States in International Law* p.151; see also p.145.
6. Cf. ibid.
7. Cf. Copper, *Taiwan—Nation-State or Province?* pp.149 and 162. See also *Keesing's Contemporary Archives* (Vol.X 1955) p.13986 and (Vol.XXV 1979) pp.29533–29536; Crawford, *The Creation of States in International Law* p.145; Simon Long, *Taiwan: China's Last Frontier* (London: MacMillan Press Ltd., 1991) p.119.
8. Copper, *Taiwan—Nation-State or Province?* pp.42, 153, and 162–163. See also Terry J. Emerson, "The Taiwan Relations Act: Legislative Rerecognition of the Republic of China," in King-yuh Chang (ed.), *ROC–US Relations Under the Taiwan Relations Act: Practice and Prospects* (Taipei: Institute of International Relations, National Chengchi University, 1988) p.57.
9. Cf. Copper, *Taiwan—Nation-State or Province?* pp.172–174. For the policy of "dual recognition," see Kay Möller, "Does Flexible Diplomacy Improve Taiwan's International Status?" in Jean-Marie Henckaerts (ed.), *The International Status of Taiwan in the New World Order—Legal and Political Considerations* (London, The Hague, and Boston: Kluwer Law International, 1996) p.54 and Vincent Wei-cheng Wang, "All Dressed Up But Not Invited to the Party: Can Taiwan Join the United Nations Now the Cold War is Over?" in Hecklers (ed.), *The International Status of Taiwan in the New World Order*, p.102. See also Dennis Van Vranken Hickey, "Taiwan's Return to International Organizations: Policies, Problems and Prospects," in Henckaerts, *The International Status of Taiwan in the New World Order*, p.67.
10. See *Keesing's Record of World Events* (Vol.42, No.9 1996) pp.41267–41268.

11. *Keesing's Record of World Events* (Vol.44, No.7/8 1998) p.42440.
12. *Keesing's Record of World Events* (Vol.42, No.9 1996) p.41268 and (Vol.44, No.7/8 1998) p.42440; see also *The Europe World Year Book 1999* (London: Europe Publications Limited, Vol.I, 1999) p.344 and 352.
13. For a definition of the concept of "*de facto* government" see Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* (Oxford: Clarendon Press, 1998) p.227; see also p.231.
14. See www.un.org/terrorism/sc.htm
15. *Keesing's Record of World Events* (Vol.42, No.12 1996) p.41427 and (Vol.43. No.3 1997) p.41570.
16. See O'Connell, "The Status of Formosa and the Chinese Recognition Problem," pp.405–406 and Crawford, *The Creation of States in International Law* pp.144–145.
17. The text of the Peace Treaty between Allied Powers and Japan quoted in ibid., p.145.
18. Ibid.; see also O'Connell, "The Status of Formosa and the Chinese Recognition Problem," p.406.
19. See O'Connell, "The Status of Formosa and the Chinese Recognition Problem," pp.406–414.
20. J. E. S. Fawcett, *The Law of Nations* (New York: Basic Books, Inc., Publishers, 1968) p.44.
21. See H. E. Richardson, *Tibet and Its History* (London, Toronto, and Melbourne: Oxford University Press, 1962) pp.173–176, 185–186, and 221; Tsepon W. D. Shakabpa, *Tibet—A Political History* (New Haven and London: Yale University Press, 1967) pp.255–256, 294, 305; see also the list of Tibetan treaties on the index of this work in p.365. See also Tom A. Grunfeld, *The Making of Modern Tibet* (London: Zed Books Ltd., 1987) pp.94 and 105.
22. Fawcett, *The Law of Nations,* p.44; Richardson, *Tibet and Its History*, pp.218–223 and 286–287.
23. C. R. Bawden, *The Modern History of Mongolia* (London and New York: Kegan Paul International, Second edition, 1989) p.363; see also 362–363.
24. Cf. ibid., p.383.
25. Cf. Louis Henkin, *How Nations Behave—Law and Foreign Policy* (New York: Columbia University Press, 1979) p.304.
26. Cf. Crawford, *The Creation of States in International Law*, p.285.
27. Cf. Henkin, *How Nations Behave*, pp.306–308.
28. Fawcett, *The Law of Nations,* p.50.
29. British Foreign and Commonwealth Office memorandum on "The Status of the Two German States" quoted in Talmon, *Recognition of Governments in International Law*, p.101 (italics and brackets are in Talmon's quotation).
30. Robert W. Macdonald, *The League of Arab States—A Study in the Dynamics of* Regional Organization (Princeton, New Jersey: Princeton University Press, 1965) p.285.
31. Ibid., p.118; see also p.88.

32. See ibid., p.122 and p.88.
33. See ibid., p.99.
34. See ibid., p.87.
35. *The Europe World Year Book 1999* (London: Europe Publications Limited, Vol.1 1999) p.3.
36. South Korea—or the Republic of Korea—did not become a member of the United Nations until 1991 (ibid.) while the German Democratic Republic was admitted to the organization in 1973 (see John Dugard, *Recognition and the United Nations* [Cambridge: Grotius Publications Limited, 1987] p.172).
37. The Charter of United Nations Chapter I, Article 2(1).
38. The Charter of United Nations Chapter II, Article 4(1).
39. See *Yearbook of International Organizations 1989/90*, edited by Union of International Associations (Munchen, New York, London, and Paris: K. G. Saur; Vol.1. Twenty-sixth edition, 1989) pp.554–555 and 843–844.
40. See Samuel S. Kim, "The Two Koreas and World Order" in Young Whan Kihl (ed.), *Korea and the World Beyond the Cold War* (Boulder, San Francisco, and Oxford: Westview Press, 1994) p.34; *Yearbook of International Organizations 1989/90*, edited by Union of International Associations (Munchen, New York, London, and Paris: K. G. Saur; Vol.1 Twenty-sixth edition, 1989) pp.1315, 1323, and 1349.
41. See William Edward Hall, *A Treatise on International Law*, edited by A. Pearce Higgins (Oxford: Clarendon Press, Eighth edition, 1924) p.39 and Hersch Lauterpacht, *Recognition in International Law* (Cambridge: The University Press, 1947) p.175.
42. See e.g., Lauterpacht, *Recognition in International Law* and Chen, *The International Law of Recognition—With Special Reference to Practice in Great Britain and the United States* edited by L. C. Green (London: Stevens & Sons Limited, 1951) passim. For more contemporary studies on the subject, see Crawford, *The Creation of States in International Law*, pp.252–255, 268–269 and Maria José Ruda, "Recognition of States and Governments," in Mohammed Bedjaoui (ed.), *International Law: Achievements and Prospects* (Dordrecht, Boston, London: Martinus Nijhoff Publishers, 1991) pp.461–462 for recognition of insurgency and belligerency; Talmon, *Recognition of Governments in International Law* for recognition of governments; and Dugard, *Recognition and the United Nations* for recognition of states with special reference to collective recognition of states in the context of the United Nations.
43. For instance, in his commentary to Hall's monograph, Higgins uses the expressions "recognition of 'insurgency' " and "partial recognition of belligerency" interchangeably (see Hall, *A Treatise on International Law*, p.46). See also Georg Schwarzenberger, *A Manual of International Law* (Abingdon: Professional Books Ltd., Sixth edition, 1976) p.61; Lassa Oppenheim, *International Law—A Treatise* edited by H. Lauterpacht (London, New York,

and Toronto: Longmans, Green and Co., Eighth edition, 1955) p.128; and Ruda, *Recognition of States and Governments*, p.461.

44. See Lauterpacht, *Recognition in International Law*, pp.270–271, 276–277, and 280–281.
45. See Oppenheim, *International Law*, pp.141–142.
46. See Lauterpacht, *Recognition in International Law*, p.175.
47. Crawford, *The Creation of States in International Law*, pp.268–269.
48. Dugard, *Recognition and the United Nations*, p.6.
49. Ruda, *Recognition of States and Governments*, pp.461–462.
50. Ruda, *Recognition of States and Governments*, p.462.
51. Cf. Brownlie, *Principles of Public International Law*, pp.73 and 92–93. See also ibid., p.73.
52. Talmon, *Recognition of Governments in International Law*, p.67.
53. H. M. Blix, *Contemporary Aspects of Recognition* (Leyden: A. W. Sijthoff, Academy of International Law, Extract from the "Recueil des Cours" Vol. II, 1970) p.619. See also Schwarzenberger, *A Manual of International Law*, p.59.
54. See Lauterpacht, *Recognition in International Law*, pp.279–286.
55. This term derives from Chen's distinction between "local" and "general *de facto* governments" and is also adopted by Blix (see Chen, *The International Law of Recognition*, p.329 and Blix, *Contemporary Aspects of Recognition*, pp.617–618).
56. Talmon, *Recognition of Governments in International Law*, p.67; see also p.76.
57. Ibid., pp.97–98 and 105.
58. Talmon, *Recognition of Governments in International Law*, p.48; see also p.110.
59. Brownlie, *Principles of Public International Law*, p.93.
60. Cf. Talmon, *Recognition of Governments in International Law,* p.102.
61. Moreover, the notion of the precedence of "recognition of government" over "recognition of state" is also supported by the fact that the existence of the former may, under certain circumstances, merely imply the occurrence of the latter (see Schwarzenberger's interpretation of the case of British recognition of Israel in Schwarzenberger, *A Manual of International Law*, p.59).
62. Such cases can be differentiated from instances of empirically weak states by reference to the fact that in the latter type the territories that are not under the control of the central government do not have any specific—and hence, for that government problematic—legal status.
63. Chen, *The International Law of Recognition*, p.39.
64. Ibid., pp.39 and 41.
65. James Leslie Brierly, *The Law of Nations—An Introduction to the International Law of Peace* edited by Sir Humphrey Waldock (Oxford: Clarendon Press, Sixth edition, 1963) p.138; see also Brownlie, *Principles of Public International Law*, p.90.
66. Lauterpacht, *Recognition in International Law*, p.67. See also M. J. Peterson, "Political Use of Recognition: The Influence of the International System," *World Politics* (Vol.34 1982) pp.324–352.

67. Ibid.
68. See Lauterpacht, *Recognition in International Law*, p.67.
69. Hans Kelsen, *Principles of International Law*, revised and edited by Robert W. Tucker (New York: Holt, Rinehart and Winston, Inc., Second edition, 1967) p.394; see also pp.393–394 and 396; see also Schwarzenberger, *A Manual of International Law*, pp.57–58.
70. Malbone W. Graham, *The League of Nations and the Recognition of States* (Berkeley: University of California Press, 1933) pp.39–40. See also Kelsen, *Principles of International Law*, p.399.
71. Graham, *The League of Nations and the Recognition of States*, p.41.
72. Dugard, *Recognition and the United Nations*, p.78.
73. Ibid., p.80.
74. Fawcett, Waldock, Leech Crawford and Starke quoted in Dugard, *Recognition and the United Nations*, pp.44–45.
75. Certainly, the opposite is not true, as the case of Switzerland unambiguously shows.
76. Cf. Schwarzenberger, *A Manual of International Law*, p.60.
77. See David A. Ijalaye, "Was 'Biafra' at Any Time a State in International Law," *The American Journal of International Law,* (Vol.65 1971) pp.553–554 and 555.
78. Cf. ibid., pp.555, 556, and 558–559.
79. Dugard, *Recognition and the United Nations*, p.60.
80. Brownlie, *Principles of Public International Law*, p.97; see also p.92.
81. Dugard, *Recognition and the United Nations*, pp.62–63.
82. See e.g., Lauterpacht, *Recognition in International Law*, p.371. Hall, *A Treatise on International Law*, p.109; Oppenheim, *International Law*, p.146; Ruda, *Recognition of States and Governments*, p.453; Brownlie, *Principles of Public International Law*, p.93; see also p.95.
83. Talmon, *Recognition of Governments in International Law*, pp.22–23; see also p.42.
84. Ibid., p.42.
85. See Dugard, *Recognition and the United Nations*, p.6; and Brownlie, *Principles of Public International Law*, p.94.
86. Louis Henkin, *International Law: Politics and Values* (Dordrecht, Boston, and London: Martinus Nijhoff Publishers, 1995) pp.13–14.
87. Brownlie, *Principles of Public International Law*, pp.93–94.
88. Ibid.
89. Chen, *The International Law of Recognition*, p.288; see also pp.283 and 283–290.
90. Ibid., p.289.
91. For a notable exception in this respect, see Kelsen, *Principles of International Law*, p.398.
92. Oppenheim, *International Law*, p.136.
93. See Lauterpacht, *Recognition in International Law*, p.345.
94. Ibid., pp.345 and 346.

95. Cf. ibid., pp.345–346.
96. Schwarzenberger, *A Manual of International Law*, p.58. Moreover, the distinction has some implications for "claims to property situated abroad" (see ibid.).
97. This would be due to the above-mentioned contextual nature of the term "recognition."
98. Oppenheim, *International Law*, p.146; see also Chen, *The International Law of Recognition*, p.189.
99. Lauterpacht, *Recognition in International Law*, p.371.
100. Ruda, *Recognition of States and Governments*, p.453.
101. Schwarzenberger, *A Manual of International Law*, p.56.
102. Chen, *The International Law of Recognition*, p.189.
103. Lauterpacht, *Recognition in International Law*, p.367.
104. Lauterpacht, *Recognition in International Law*, p.406; see also Chen, *The International Law of Recognition*, pp.192, 196, and 200; Ruda, *Recognition of States and Governments*, p.452.
105. Copper, *Taiwan—Nation-State or Province?* p.42.
106. Ibid., p.162.
107. See Michael Shea, "Canada and East Germany," *International Perspectives* (July/August 1986) p.10.
108. See Dilip Hiro, *Lebanon, Fire and Embers—A History of the Lebanese Civil War* (London: Weidenfeld and Nicolson, 1993) p.98.

7 Factual State Sovereignty: An Omnipresence that is Allegedly Absent

1. Cf. Stephen D. Krasner, *Sovereignty—Organized Hypocrisy* (Princeton, New Jersey: Princeton University Press, 1999) p.47.
2. Ibid., pp.4, 9, and 20–25. See also Stephen D. Krasner, "Problematic Sovereignty," in Stephen D. Krasner, *Problematic Sovereignty—Contested Rules and Political Possibilities* (New York: Columbia University Press, 2001) pp.2 and 10–12.
3. Krasner, Sovereignty, pp.8, 20, 25, and passim. See also Krasner, "Problematic Sovereignty," p.11.
4. Krasner, *Sovereignty*, p.22; see also Krasner, "Problematic Sovereignty," p.12.
5. Krasner, *Sovereignty*, p.24 and passim. In this context, Krasner also mentions "international legal sovereignty"—another neologism whose referent is apparently identical with that of what has been labeled in this book as "juridical sovereignty"—as being violated. Since the differences between these two concepts are merely terminological, and the theoretical and empirical dispute regarding juridical state sovereignty has been treated in the previous chapters, I have omitted references to "international legal sovereignty" in the quotations in order to focus on the second half of Krasner's argument concerning Westphalian sovereignty.

6. Ibid., p.8 and passim. It has to be noted in this context that there is a certain tension in the conception of "authority" adopted by Krasner in his study. He seems to interpret this concept both in juridical (Cf. ibid., p.10) and factual terms (Cf. ibid., p.4).
7. Ibid., pp.24, 26, 69, and passim.
8. Ibid., pp.66 and 9.
9. Since the differences between "Westphalian sovereignty" as the term is used by Krasner and "factual external state sovereignty" as the concept is employed in this book are merely terminological, I shall freely alternate between these terms in the ensuing discussion.
10. Cf. ibid., pp.75, 84, 94, and 104.
11. Ibid., p.85.
12. Ibid., pp.88 and 90.
13. Ibid., p.90.
14. James Crawford, "The Criteria for Statehood in International Relations," *The British Year Book of International Law* (Vol.48 1976–1977) p.130.
15. Owen Lattimore, "Satellite Politics: The Mongolian Prototype," *The Western Political Quarterly* (Vol. IX, No. 1 March 1956) p.36.
16. See e.g., Alan James, *Sovereign Statehood—The Basis of International Society* (London: Allen & Unwin Publishers Ltd., 1986) p.140; Lattimore, "Satellite Politics," p.36.
17. See e.g., James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press, 1979) pp.59–60, 62, 107–108, and passim.
18. Crawford, *The Criteria of Statehood in International Law,* p.131; James, *Sovereign Statehood*, p.140.
19. Ibid., p.140.
20. Cf. ibid., p.142.
21. Ferenc A. Vali, *Rift and Revolt in Hungary* (Cambridge, Massachusetts: Harvard University Press, 1961) p.15.
22. Lattimore, "Satellite Politics," p.39; see also p.37.
23. Vali, *Rift and Revolt in Hungary*, p.15.
24. Zbigniew K. Brzezinski, *The Soviet Bloc—Unity and Conflict* (New York: Frederick A. Praeger, Publisher, Revised edition, 1961) pp.51–58.
25. Zbiqniew K. Brzezinski, "The Organization of the Communist Camp" (*World Politics*, Vol.13, No.2 1961) pp.208–209.
26. H. Gordon Skilling, *Communism National and International—Eastern Europe after Stalin* (Canada: University of Toronto Press, 1964) pp.17–18.
27. H. Gordon Skilling, *The Governments of Communist East Europe* (New York: Thomas Y. Crowell Company, University of Toronto, 1966) p.226.
28. Ibid.
29. Ibid., p.151.
30. For the relevant aspects of the Treaty of Brotherhood, Co-operation and Co-ordination see Dilip Hiro, *Lebanon, Fire and Embers—A History of the Lebanese Civil War* (London: Weidenfeld and Nicolson, 1993) pp.240–245;

Fida Nasrallah, "The Treaty of Brotherhood, Co-operation and Co-ordination—An Assessment" in Youssef M. Choueiri, *State and Society in Syria and Lebanon* (Exeter: The University of Exeter Press, 1994) pp.108–109. For the pertinent features of the Defense Pact see Sholomo Gazit and Zeev Eytan, *The Middle East Military Balance 1990–1991* (Jeruselam: Publ. for the Jaffe Center for Strategic Studies by the Jerusalem Post, 1992) p.169.

31. Lassa Oppenheim, *International Law—A Treatise* edited by H. Lauterpacht (London, New York and Toronto: Longmans, Green and Co., Eighth edition, 1955) p.243.
32. Cyril E. Black et al., *Neutralization and World Politics* (Princeton: Princeton University Press, 1968) p.xi.
33. Georg Schwarzenberger, *A Manual of International Law* (Abingdon: Professional Books Ltd., Sixth edition, 1976) p.47.
34. Oppenheim, *International Law—A Treatise*, p.244.
35. Ibid., p.25.
36. Black et al., *Neutralization and World Politics*, p.29.
37. Ibid., p.11.
38. Insofar as its logical structure and its main elements are concerned, this argument is similar to Krasner's argument about the impact of "invitation" and "voluntary actions" on "Westphalian" or factual state sovereignty.
39. William Wallace, "The Sharing of Sovereignty: The European Paradox," in Robert Jackson (ed.), *Political Studies—Sovereignty at the Millennium* (Vol.47, No.3 Special Issue 1999) p.503.
40. Ibid., p.521.
41. Ibid., p.506.
42. Shirley Williams, "Sovereignty and Accountability in the European Community," *The Political Quarterly* (Vol.6, No.3 1990) p.299.
43. Koen Lenaerts, "Constitutionalism and the Many Faces of Federalism," *The American Journal of Comparative Law* (Vol.XXXVIII, No.1 Winter 1990) p.220.
44. Ibid., p.231.
45. Neil MacCormick, *Questioning Sovereignty—Law, State, and Nation in the European Commonwealth* (Oxford: Oxford University Press, 1999) p.133. See also Robert O. Keohane, "Hobbes's Dilemma and Institutional Change in World Politics: Sovereignty in International Society," in Hans-Henrik Holm and Georg Sörensen (eds.), *Whose World Order? Uneven Globalization and the End of the Cold War* (Boulder, San Francisco, and Oxford: Westview Press, 1995) p.175.
46. Cf. Michael Newman, *Democracy, Sovereignty and the European Union* (London: Hurst & Company, 1996) p.13.
47. Alan James, "The Practice of Sovereign Statehood in Contemporary International Society," in Robert Jackson (ed.), *Political Studies—Sovereignty at the Millennium* (Vol.47, No.3 Special Issue 1999) p.456.

48. This is the set of terms used to depict this putatively new phenomenon. See Oeter quoted in Kjell Goldmann, *Transforming the European Nation-State: Dynamics of Internationalization* (London: Sage Publications Ltd., 2001) p.87.
49. A. V. Dicey, *Introduction to The Study of The Law of The Constitution* (Wade's Introduction, Parts I and III) (London: Macmillan & Co. Ltd., and New York: St. Martin's Press, Tenth edition, 1959) p.141.
50. K. C. Wheare, *Federal Government* (London, New York, and Toronto: Oxford University Press, Fourth edition, 1963) p.40.
51. C. Schmitt quoted in Murray Forsyth, *Union of States—The Theory and Practice of Confederation* (New York: Leicester University Press, 1981) p.151; see also pp.146–159.
52. Neil MacCormick, *Questioning Sovereignty*, p.104.
53. Ibid., p.106; see also pp.106–110.
54. Ibid., p.131.
55. See ibid., pp.99–101. For the special case of Netherlands, see p.110. See also Trevor C. Hartley, *Constitutional Problems of the European Union* (Oxford and Portland, Oregon: Hart Publishing, 1999) p.148; see also pp.149 and 179.
56. Ibid., p.110.
57. Ibid., p.102.
58. Diarmuid Rossa Phelan, *Revolt or Revolution—The Constitutional Boundaries of the European Union* (Dublin: Round Hall Sweet & Maxwell, 1997) pp.369–370 and passim. See also MacCormick's interpretation in MacCormick, *Questioning Sovereignty*, pp.110–113.
59. MacCormick, *Questioning Sovereignty*, pp.110–111.
60. H. W. R. Wade, "The Basis of Legal Sovereignty," *The Cambridge Law Journal* (Nov. 1955) p.189.
61. Salmond referred to in ibid.
62. Ibid.
63. Newman, *Democracy, Sovereignty, and the European Union*, pp.4–5.
64. Daniel H. Deudney, "The Philadelphian System: Sovereignty, Arms Control, and Balance of Power in the American States-Union, Circa 1787–1861," *International Organization* (Vol.49, No.2 Spring 1995) p.193.
65. Deudney uses the term "negarchy" to depict the Philadelphian system. See ibid., p.208.
66. For instance, de Tocqueville and Hegel's doubts about whether the American Union could be regarded as a state. See ibid., p.193.
67. For instance, both California and Texas were independent states, and they were recognized as such by both the United States and European powers (see ibid., p.217).
68. Webster referred to in Murray Forsyth, *Union of States—The Theory and Practice of Confederation* (New York: Leicester University Press, 1981) p.118.
69. Webster referred to in ibid., p.119.

70. Calhoun referred to in ibid., p.125.
71. See ibid., pp.125–126.
72. See Deudney, "The Philadelphian System," pp.206 and 218.
73. Forsyth, *Union of States*, pp.4, 15, 70.
74. Wade, *The Basis of Legal Sovereignty*, p.191.
75. Ibid.
76. Cf. ibid., p.196.
77. Duncan Sandys referred to in James Barber, *Rhodesia: The Road to Rebellion* (London and New York: Oxford University Press, 1967) p.68.
78. See ibid., p.72.
79. Ibid., pp.177–178.
80. Claire Palley, *The Constitutional History and Law of Southern Rhodesia 1888–1965* (Oxford: Clarendon Press, 1966) p.747.
81. See Barber, *Rhodesia: The Road to Rebellion*, pp.178, 179, and 183.
82. See Palley, *The Constitutional History*, p.747. For the details of the 1965 Constitution see ibid., pp.747–752; see also Barber, *Rhodesia: The Road to Rebellion*, p.300.
83. Palley, *The Constitutional History*, pp.756–759.
84. Cf. H. J. Robert, *Quasi-States: Sovereignty, International Relations, and The Third World* (Cambridge: Cambridge University Press, 1990) p.31.
85. Ibid., p.22.
86. Ibid., p.21.
87. Brownlie, *Principles of Public International Law* (Oxford: Clarendon Press, Fourth edition 1990) pp.73–74.
88. Robert H. Jackson and Carl G. Rosberg, "Why Africa's Weak States Persist: The Empirical and the Juridical in Statehood," *World Politics* (Vol.XXXV No.1 1982) p.1.
89. Brownlie referred to in ibid., pp.5–6.
90. Ibid., p.12. See also Joshua Bernard Forrest, "State Inversion and Nonstate Politics," in Leonardo A. Villalòn and Phillip A. Huxtable (eds.), *The African State at a Critical Juncture—Between Disintegration and Reconfiguration* (Colorado and London: Lynne Rienner Publishers, Inc., 1998) p.45.
91. Cf. James, *Sovereign Statehood*, pp.123–127.
92. Cf. Christopher Clapham, "Degrees of Statehood," *Review of International Studies* (Vol.24 1998) p.146.
93. Catherine Boone, " 'Empirical Statehood' and Reconfigurations of Political Order," in Villalòn and Huxtable (eds.), *The African State at a Critical Juncture,* pp.130–131.
94. Ibid., p.131.
95. Ibid., pp.129–130. See also Clapham, "Degrees of Statehood," pp.156–157.
96. Krasner, *Sovereignty—Organized Hypocrisy*, p.10.
97. Ibid., pp.4 and 9.
98. Mathews Thomson and Wriston referred to in ibid., p.12. I do not suggest that Krasner agrees with this view.

99. David Held, "The Transformation of Political Community: Rethinking Democracy in the Context of Globalization," in Ian Shapiro and Casiano Hacker-Cordon (eds.), *Democracy's Edges* (Cambridge: Cambridge University Press, 1999) pp.91–92.
100. John Burton referred to in John A. Vasquez, *The Power of Power Politics: A Critique* (London: Frances Pinter, 1983) p.119.
101. Obstfeld, Taylor, Thomson, Krasner, and Williamson referred to in Krasner, *Sovereignty—Organized Hypocrisy*, p.13.
102. See *Dagens Nyheter* (Swedish Daily) January 11, 2000.
103. http://www.ex.ac.uk/politics/pol-data/undergrad/rowlands/casestudies.htm
104. See *Dagens Nyheter* (Swedish Daily) July 8, 2001.
105. See *Dagens Nyheter* (Swedish Daily) July 17, 2001.
106. See *Dagens Nyheter* (Swedish Daily) March 15, 2001 and March 16, 2001.

8 The Problem of Factual State Sovereignty

1. In this study, the term "control" is used in the sense of "effective control" which, in turn, refers to "the ability to pronounce, implement, and enforce commands, laws, policies, and regulations" (Robert H. Jackson and Carl G. Rosberg, "Why Africa's Weak States Persist: The Empirical and Juridical in Statehood," *World Politics* [Vol.35 Oct. 1982] p.6).
2. John Austin, *The Province of Jurisprudence Determined* edited by Wilfrid E. Rumble (Cambridge: Cambridge University Press, 1995) p. 172–173.
3. Ibid., pp.173–174. See also Giovanni Sartori, "Guidelines for Concept Analysis," Giovanni Sartori (ed.) *Social Science Concepts: A Systematic Analysis* (Beverly Hills: Sage Publications, 1984) pp.42–44 and H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, Second edition, 1994) p.4.
4. Christopher Clapham, "Degrees of Statehood," *Review of International Studies* (Vol.24 1998) p.157.
5. Ibid., p.144.
6. Ibid., p.153.
7. K. C. Wheare, *Federal Government* (London, New York, and Toronto: Oxford University Press, Fourth edition, 1963) pp.80–81.
8. Joshua Bernard Forrest, "State Inversion and Nonstate Politics," in Leonardo A. Villalòn and Phillip A. Huxtable (eds.), *The African State at a Critical Juncture—Between Disintegration and Reconfiguration* (Colorado, London: Lynne Rienner Publishers, Inc., 1998) p.45.
9. See *The Beirut Review* (No.1 Spring 1991) p.282.
10. See the text of the Taif Agreement Dilip Hiro, *Lebanon*, *Fire and Embers—A History of the Lebanese Civil War* (London: Weidenfeld and Nicolson, 1993) pp.238–239.
11. As shall be seen later, Lebanon is also a problematic case insofar as the collective sovereign agent is concerned.

12. Hiro, *Lebanon, Fire and Embers*, pp.183–185, Norton, A. R.; *Lebanon after Tai'f*, p. 468.
13. Hiro, *Lebanon, Fire and Embers*, pp.188 and 194.
14. USNI/Military Database—produced by the U.S. Naval Institute and United Communications Group (1995); see also *Dagens Nyheter,* July 29, 1992 and August 10, 1993.
15. Hiro, *Lebanon, Fire and Embers*, pp.185 and 194; see also *Dagens Nyheter* July 12, 1991 and July 15, 1991.
16. For details see Hiro, *Lebanon, Fire and Embers*, pp.191, 196; Norton, *Lebanon after Tai'f*, p.468.
17. Sholomo Gazit and Zeev Eytan (eds.), *The Middle East Military Balance 1990–1991* (Jerusalem: Publ. for the Jaffe Center for Strategic Studies by the Jerusalem Post, 1992) p.289.
18. See USNI/Military Database; see also *Dagens Nyheter,* September 26, 1992.
19. See Gazit and Eytan (eds.), *The Middle East Military Balance*, p.289; see also *Middle East Rapport* (January–February 1990; No.162) p.25.
20. See http://memory.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+co0157).
21. See http://www.guardian.co.uk/international/story/0,3604,631544,00.html.
22. See http://www.guardian.co.uk/international/story/0,3604,214264,00.html.
23. See http://memory.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+co0156).
24. Cf. http://www.guardian.co.uk/flash/0,5860,635714,00html.
25. http://memory.loc.gov/cgi-bin/query/r?frd/cstdy :@field(DOCID+co0155).
26. Cf. http://www.guardian.co.uk/international/story/0,3604,178646,00.html.
27. See file://\\bodiam\sir\enk\My%20Files\Colombia%20Crime.htm.
28. Cf. http://www.guardian.co.uk/international/story/0,3604,178646,00.html.
29. Cf. http://www.guardian.co.uk/international/story/0,3604,360890,00.html.
30. Cf. http://www.guardian.co.uk/international/story/0,3604,178646,00.html.
31. See e.g. http://www.guardian.co.uk/international/story/0,3604,631544,00.html.
32. For such a distinction between "control" and "influence" in an empirical context see, e.g., Gordon H. Skilling, *Communism National and International—Eastern Europe after Stalin* (Canada: University of Toronto Press, 1964) p.17 fn.1.
33. See Robert Alan Dahl, "Power as the Control of Behaviour," in Steven Lukes (ed.), *Power* (Oxford: Basil Blackwell Ltd., 1986) pp.39 and 40.
34. Austin, *The Province of Jurisprudence Determined*, p.168.
35. Ibid., p.175.
36. Cf. ibid., 174. For a discussion about the distinction between influence and control, see also Skilling, *Communism National and International*, p.23 and 25; James, *Sovereign Statehood*, p.140; see also pp.171–177; James Crawford, "The Criteria for Statehood in International Law," *British Yearbook of International Law* (Vol.48 1976–1977) p.129; Brownlie, *Principles of Public International* Law, p.76.

37. Crawford, *The Criteria for Statehood in International Law*, pp.132–133.
38. James, *Sovereign Statehood*, p.140.
39. Such instruments may range from *ad hoc* interventions on the part of the dominant entity to political organizations or powerful individuals within the elite of the exposed state that are affiliated to that entity.
40. See http://lcweb2.loc.gov/cgi-bin/D?cstdy:4:./temp/~frd_pmsm::
41. Quoted in http://lcweb2.loc.gov/cgi-bin/query/D?cstdy:1:./temp/~frd_ pmsm::
42. http://lcweb2.loc.gov/cgi-bin/query/D?cstdy:1:./temp/~frd_pmsm::
43. http://lcweb2.loc.gov/cgi-bin/query/D?cstdy:4:./temp/~frd_pmsm::
44. http://lcweb2.loc.gov/cgi-bin/query/D?cstdy:4:./temp/~frd_pmsm::
45. Cf. http://lcweb2.loc.gov/cgi-bin/query/D?cstdy:1:./temp/~frd_pmsm::
46. http://lcweb2.loc.gov/cgi-bin/query/D?cstdy:4:./temp/~frd_pmsm::
47. http://lcweb2.loc.gov/cgi-bin/query/D?cstdy:9:./temp/~frd_pmsm::
48. Cf. http://lcweb2.loc.gov/cgi-bin/query/D?cstdy:1:./temp/~frd_pmsm::
49. Austin, *The Province of Jurisprudence Determined,* pp.27, 127, 132–134, 136, and passim.
50. Geoffrey Sawer, *Modern Federalism* (London: C. A. Watts & Co. Ltd., 1969) pp.106–107.
51. C. A. W. Manning, *The Nature of International Society* (London: Bell, 1962 and Macmillan, 1975) p.49.
52. Ibid. Manning applies the same logic to the concept of "electorate" and refers to Austin's expression "the Sovereign number" in that context (ibid., p.50).
53. Sawer, *Modern Federalism,* pp.107–108.
54. K. W. B. Middleton, "Sovereignty in Theory and Practice," in Wladyslaw Josef Stankiewicz (ed.), *In Defence of Sovereignty* (London, New York, and Toronto: Oxford University Press, 1969) p.137.
55. Louis Henkin, *Foreign Affairs and the Constitution* (Mineola, New York: The Foundation Press, Inc., 1972) p.27.
56. Cf. ibid.
57. Owen Lattimore, "Satellite Politics: The Mongolian Prototype," *The Western Political Quarterly* (Vol. IX, No. 1 March 1956) p.39; see also p.37.
58. F. C. Jones, *Manchuria Since 1931* (London: Royal Institute of International Affairs, 1949) p.19; see also Owen Lattimore, *Manchuria: Cradle of Conflict* (New York: The Macmillan Company, 1935) pp.27 and 304–305.
59. Jones, *Manchuria Since 1931*, p.20.
60. Ibid., pp.21–22.
61. See ibid., pp.22–23, 63–66, 68, 72, 77, 80, and 81.
62. Ibid., p.23.
63. Ibid., pp.4, 69, 77, and passim.
64. Ibid., p.23. By 1900 some 80% of the population of Manchuria was Chinese, and the proportion of the Chinese had grown to over 90% in 1931 (ibid., p.5).

65. Cf. Reuven Avi-Ran, *The Syrian Involvement in Lebanon Since 1975*, translated by David Maisel (Boulder, San Francisco, and Oxford: Westview Press, 1991) p.148.
66. See ibid., p.166; R. A. Norton, *Amal and The Shi'a—Struggle for the Soul of Lebanon* (Austin: University of Texas Press, 1988) pp.68 and 76; Avi-Ran, *The Syrian Involvement in Lebanon since 1975*, pp.213–214 and Hiro, *Lebanon, Fire and Embers*, pp.126–127 and 132–133.
67. See Michael C. Hudson, "Democracy and Social Mobilization in Lebanese Politics," *Comparative Politics* (Vol.1, No.2 1969) s.258; and Daniel Pipes, *Greater Syria—The History of an Ambition* (New York: Oxford University Press, 1990) pp.49–50, 125, and 186–188.
68. See Avi-Ran, *The Syrian Involvement in Lebanon Since 1975*, p.212 and Hiro, *Lebanon, Fire and Embers*, pp.116 and 121.
69. See ibid., p.25 and Pipes, *Greater Syria*, 124.
70. Such as Nabih Berri, the leader of the Amal Movement (who was previously a member of the Baath Party (Avi-Ran, *The Syrian Involvement in Lebanon Since 1975* p.167), Isam al-Mahayiri who leads the pro-Syrian faction of the SSNP, Elie Hobeika who, until his death in a car bomb explosion in 2002, led the Wa'ad Party, and Asim Qansu, the leader of the pro-Syrian Baath Party.
71. Such as the Franjiyyeh family from Zgharta and the Karami family from Tripoli (Cf. ibid., pp.85, 148, and 189 and Hiro, *Lebanon, Fire and Embers*, pp.38,47, 187, and passim).
72. Such as the former president Elias Hrawi, Michel Murr, Faris Bouez (one of Hrawi's sons-in-law), Michel Daher (the presidential candidate in 1988 election supported by Syria) and Sami Khatib. These individuals were first ministers in the Karami government that came to power two months after the expulsion of Michel Aoun and were later appointed as members of the parliament in June 1991 (see ibid., pp.187 and 193 and Avi-Ran, *The Syrian Involvement in Lebanon Since 1975*, p.220).
73. Hiro, *Lebanon, Fire and Embers*, p.192.
74. See the wording of the Treaty of Brotherhood, Co-operation and Co-ordination in Hiro, *Lebanon, Fire and Embers*, pp.242–244.
75. See the wording of the Treaty of Brotherhood, Co-operation and Co-ordination in Hiro, *Lebanon, Fire and Embers*, p.243. See also Fida Nasrallah, The Treaty of Brotherhood, Co-operation and Co-ordination—An Assessment in Youssef M. Chouieri (ed.), *State and Society in Syria and Lebanon* (Exeter: The University of Exeter Press, 1994) pp.108–109.
76. See Pipes, *Greater Syria*, p.122 and 123; Norton, *Lebanon after Tai'f*, p.466; *The Beirut Review* (No.1 spring 1991) pp.281 and 281; see also *Dagens Nyheter* December 5, 1994 and December 6, 1994.
77. Elie Kedouri, *Politics in the Middle East* (Oxford and New York: Oxford University Press, 1992) pp.234–235.
78. Ibid., p.235. See'also John P. Entelis, *Pluralism and Party Transformation in Lebanon -Al-Kata'ib, 1936–1970* (Leiden: B. J. Brill, 1974) p.4.

79. Cf. Hudson, *Democracy and Social Mobilization in Lebanese Politics*, p.259.
80. Entelis, *Pluralism and Party Transformation in Lebanon -Al-Kata'ib, 1936–1970*, p.60.
81. Pipes, *Greater Syria*, pp.49 and 104.
82. Kedouri, *Politics in the Middle East*, p.239.
83. Cf. ibid.
84. Hudson, *Democracy and Social Mobilization in Lebanese Politics*, p.259.
85. Kedouri, *Politics in the Middle East*, p.243.
86. See Hiro, *Lebanon, Fire and Embers*, pp.16, 55, 206, and 208.
87. Cf. Arnon Soffer, *Lebanon—Where Demography is the Core of Politics and Life, Middle Eastern Studies* (Vol. 22 1986) p.197. See also Norton, *Amal and the Shi'a*, p.7; David R. Smock and Audrey C. Smock, *The Politics of Pluralism—A Comparative Study of Lebanon and Ghana* (New York, Oxford, and Amsterdam: Elsevier Scientific Pub. Co. 1975) p.328; Kedouri, *Politics in the Middle East*, p.223; Hiro, D *Lebanon, Fire and Embers*, p.163 and Pierre Rondot, "The Political Institutions of Lebanese Democracy," in Leonard Binder and Edward Shils (eds.), *Politics in Lebanon* (New York: Wiley, 1966) p.129.
88. In other words, what is involved here is not an attempt to estimate the *historical* effects of an independent variable if it *did* exist, but the *future* effects of an independent variable that *does not* exist at the moment but may do so in the future.
89. For a discussion of counterfactuals see Niall Ferguson, "Virtual History: Toward a 'Chaotic' Theory of the Past," in Niall Ferguson, (ed.), *Virtual History: Alternatives and Counterfactuals* (Basingstoke: Macmillan Publishers Ltd., 1997) pp.18, 85, 89, and passim; Thomas J. Biersteker "Constructing Historical Counterfactuals to Assess the Consequences of International Regimes," in Volker Rittberger (ed.), *Regime Theory and International Relations* (Oxford: Clarendon Press, 1995) p.25; James D. Fearon, "Counterfactuals and Hypothesis Testing in Political Science," *World Politics* (Vol.43, No.2) pp.170–173 and passim.
90. Cf. Biersteker, *Constructing Historical Counterfactuals to Assess the Consequences of International Regimes*, p.338. See also Steven Lukes, *Power: A Radical View* (London: Macmillan Press Ltd., 1974) pp.46–47.
91. The Scotland Act quoted in Vernon Bogdanor, *Devolution in the United Kingdom* (Oxford: Oxford University Press, 1999) p.202.
92. Vernon Bogdanor, "Devolution and the British Constitution," in David Butler, et al. (eds.), *The Law, Politics, and the Constitution—Essays in Honour of Geoffrey Marshall* (Oxford: Oxford University Press, 1999) p.56.
93. The Government of Ireland Act quoted in ibid., pp.56–57.
94. Cf. ibid., pp.59–60.
95. Ibid., p.61.
96. Ibid.
97. Ibid.

98. Ibid., p.62.
99. Ibid., p.64. See also Bogdanor, *Devolution in the United Kingdom*, pp.287–294.

9 Conclusion

1. In this context, I would have to emphasize that I am using the expression "ought to" in a methodological sense rather than in a political-normative sense.

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