I.

Introduction

Discussions on democratic transitions after civil conflict usually cover a vast array of issues that can be approached from a number of perspectives (e.g. law, sociology, political science, and international relations). Transcending these different possible angles are generally two underlying, and related, common features: international intervention and a suspicion against the state. Indeed, it is because there is a growing suspicion against the state, which is seen as the main source of gross human rights violations, that international intervention is seen to be necessary. However, these two dimensions raise a number of conceptual difficulties that will need to be solved by the *jus post bellum* project, most notably in relation to the interaction between the local and the international.

The first premise, that of international intervention, will not be discussed or challenged in the following analysis. The involvement of the international community, at some level or another, is taken as a given. This does not mean that it should not be questioned, as a fundamental dimension of any consideration, both practical and conceptual, of *jus post bellum*, but it would deserve a study in and of itself that is beyond the scope of this contribution. Despite this, accepting international intervention as a methodological starting point is justified, if not necessarily conceptually, at least from a very practical perspective. It is impossible to conceive of a post-conflict situation today existing in isolation of any international involvement, whether as a reality, a wish, or a promise.

This chapter will question the second of these premises, that of the suspicion against the state, through a discussion of the concept of sovereignty. The following sections are a challenge to a dominant approach in the human rights field in relation to sovereignty, which is in large part due to a lack of an adequate theoretical framework to think about the evolving structure of the concept.

The starting observation of this chapter is that while discussions about *jus post bellum* usually focus on a number of interests that need to be catered to (such as justice, reconciliation, reparation for victims, truth, education, etc.), sovereignty of the state is often forgotten or discarded. What is in fact argued here is that one of the main goals of *jus post bellum* should be to *relegitimize* sovereignty rather than *bypass* it. In other words,
Dov Jacobs

while the state is often seen as the target (in the sense of an obstacle), the state and its sovereignty should become a target (in the sense of an objective) of jus post bellum.

It should be pointed out from the outset that this chapter does not purport to be a comprehensive overview of the history of sovereignty or its current framework in international law today. Nor is the aim to provide a systematic discussion of specific case studies in the jus post bellum context. This chapter is rather about a state of mind in relation to sovereignty and states, and an invitation to think of these matters in a more conceptual framework. In this sense, this chapter is the beginning of a reflection on the ways that the evolutions can be perceived and discussed, rather than the end result of such a thought process.

In order to achieve this, the present contribution will first illustrate how sovereignty comes into play in relation to international law applicable to jus post bellum situations (Section II). It will then recontextualize and reconceptualize these examples through a re-reading of Georges Scelle’s theory of the dédoublement fonctionnel (“role-splitting”) (Section III). The conclusion broadens the discussion on the new permanent features of sovereignty today, suggesting that we move towards a theory of integrated sovereignties (Section IV).

II. Sovereignty, International Law, and Jus Post Bellum

This section provides some illustrations of how sovereignty comes into play in two particular areas relevant to post-conflict situations: that of statehood and self-determination (A) and that of prosecutions for international crimes, notably in the case of the International Criminal Court (ICC) (B).

A. Statehood and self-determination

Jus post bellum situations often involve claims to statehood and self-determination, both of which necessarily relate intimately to sovereignty. These claims operate at numerous levels. On the discursive level, they act as justificatory narratives of conflict, and as such require a strong policy response in order for any comprehensive resolution to take place. This resolution takes place more particularly at the level of international law and raises a certain number of questions that can be mentioned briefly here.

The first question relates to the scope of the exercise of the right to self-determination. While this right seems to be easily identifiable in international law today,² being consecrated in founding documents of the international legal order³ and having received an erga omnes recognition by the International Court of Justice (ICJ),⁴ its exact scope

remains elusive. Indeed, clearly developed in the post-colonial context, its application as a more general right in international law today, while advocated,\(^5\) is still contested.\(^6\) This lack of clarity in the existing legal framework therefore creates a normative instability in the conditions of the exercise of the right to self-determination. The *Kosovo Advisory Opinion* issued by the ICJ in 2010\(^7\) was an opportunity to clarify these matters, but the judges interpreted the question in a way to avoid these issues. The strongest voice in favor of a more expansive reading of the right to self-determination therefore came from the separate opinion of Judge Cançado Trindade, who developed his thoughts on remedial secession in a context of gross and historical human rights violations.\(^8\) The ICJ did, however, make one interesting finding in the context of *jus post bellum*, considering that the principle of territorial integrity, which is at the heart of international sovereignty, only operated between states, and could therefore not be violated by non-state actors.\(^9\)

The second question relates to the conditions of statehood and their evolution, as one possible outcome of the exercise of the right to self-determination. In this area, the answers provided by international law are most certainly unsatisfying. Debates on this issue often take either of two roads. First, they revolve around discussions of the formal criteria for statehood, as enshrined in the Montevideo Convention on the rights and duties of states,\(^10\) and whether these criteria have evolved to include more substantial values, such as respect for human rights and democracy.\(^11\) Secondly, they revolve around the question of recognition, and its either declarative or constitutive character.\(^12\) Ultimately, these debates, while maybe necessary in the abstract, seem beside the point when one considers the traditional horizontal and decentralized nature of the international legal order. In the framework of such a legal order, the recognition as a member of the (legal) community is an (non-legal) inter-subjective social fact that ultimately relies on the will of the other members of the community, irrespective of any formal criteria that might or might not be put forward.

The real question, therefore, and possibly the most important one, is who or what entity ultimately decides on the matters. This is probably the area where one can trace the most notable evolution in the contemporary international legal order. Indeed, the international community, embodied in international organizations, most notably the UN, plays an ever-growing role in setting the framework for the realization of the right to self-determination, and possibly in legitimizing the acquisition of statehood. Cases of UN territorial administration are typical examples of this.\(^13\) More generally,\

---


\(^8\) Kosovo Advisory Opinion (n. 7), Separate Opinion of Judge A.A. Cançado Trindade.

\(^9\) Kosovo Advisory Opinion (n. 7) 437.


\(^12\) Craven, “Statehood, Self-determination, and Recognition” (n. 2) 240.

international organizations are increasingly seen as key actors in the recognition of statehood. The recent efforts by Palestine to obtain membership in various international organizations illustrates this point. This increasing verticalization of the international legal order might suggest a paradigmatic shift with respect to the implementation of the right to self-determination and the acquisition of statehood, and therefore affects, ultimately, the dynamics of sovereignty.

This does not solve all previously mentioned legal debates surrounding these concepts and their scope, nor does it remove all political considerations from the picture. What this shift does is to centralize, institutionalize, formalize, and proceduralize a process that has until now been completely random. The question is no longer how 200 states react to claims to statehood and self-determination, but rather how these claims are addressed within the legal framework of international organizations. This might lead to more transparency and clarity, and ultimately might make relevant again the debates on the objective criteria of self-determination and statehood.

This vertical shift of course also raises new questions in relation to the role and eventual responsibility of these organizations under international law. Indeed, what are the limits of what the international community can do within the confines of the existing legal framework? For example, in the case of Kosovo, while the ICJ, as mentioned previously, considered that the territorial integrity of a state could not be violated by a non-state actor, it still left open the question of whether the support of the independence movement by the UN could constitute such a violation. This question was not answered by the ICJ, because, as Yannick Radi and I have argued elsewhere, it did not draw the logical conclusion of the presence of the UN in Kosovo, which would have required that the ICJ contemplate whether the declaration of independence could have been attributed to the UN as the entity exercising authority over the territory.

B. Accountability mechanisms: the example of the ICC

A second example that comes into play in the context of jus post bellum is the ever-developing international framework on the prosecution of international crimes, and more generally, on the accountability mechanisms that are discussed in the aftermath of gross human rights violations. Particularly for the purposes of our present discussion, it is interesting to note that international law increasingly constrains the sovereign margin of appreciation of the state in dealing with human rights violations through the development of

14 On the question of the possible responses to alleged violations of international law by the UNSC, see Antonios Tzanakopoulos, Disobeying the Security Council: Countermeasures against Wrongful Sanctions (Oxford University Press 2011).


16 More could be said on the specific legal implementation of self-determination claims in post-conflict situations, most notably in the tensions between minority rights and democracy or other human rights. In relation to this, Christine Bell develops the idea of “hybrid self-determination” that emerges from the practice of peace-settlements and analyses the “normative instability” that flows from this practice. See Christine Bell, “Peace Settlements and International Law: From Lex Pacifictoria to Jus Post Bellum” in Nigel D. White and Christian Henderson (eds), Research Handbook on International Conflict and Security Law (Edward Elgar 2013) ch. 15. See also Christine Bell, ch. 10, this volume.
conventional and jurisprudential norms relating to duties to investigate and prosecute.\(^\text{17}\) The ICC is one element of this framework, and illustrates this point.

It is well known that one of the most innovative features of the ICC Rome Statute is the adoption of the principle of complementarity.\(^\text{18}\) In a nutshell, this principle is often presented as respecting the exercise of a state of its right to prosecute first those alleged to have committed international crimes.\(^\text{19}\) With the existence of the principle of complementarity, the ICC is said to be a court of “last resort”\(^\text{20}\) that only steps in when the national authorities have failed to take adequate steps to ensure accountability for the crimes that fall within the jurisdiction of the Rome Statute. In this sense, and superficially, the principle can be seen as being in full respect of state sovereignty in relation to criminal prosecutions.

The implementation of the principle is however more complex and there is some evidence that it constitutes an equally strong challenge to state sovereignty. It is beyond the scope of this chapter to elaborate in detail on the ways in which complementarity limits the capacity of states to adopt and enforce their own post-conflict accountability mechanisms, but some examples can be given by way of illustration.

One way in which complementarity challenges sovereignty is procedural. Indeed, while the Prosecutor has a statutory duty to determine that a case is admissible before opening an investigation or proceeding with a prosecution,\(^\text{21}\) the Chambers have no such statutory duty. While the Chambers “must” determine that they have jurisdiction, they “may” determine whether the case is admissible.\(^\text{22}\) This means, in practice, that challenges to admissibility must originate from a state or an accused,\(^\text{23}\) and that as a result the burden of proof will rest on the challenging party to establish that the case is inadmissible. In other words, there is a presumption of admissibility that is not entirely in line with the general philosophy of the principle of complementarity. Moreover, procedurally, the ICC has a final say in the evaluation of the adequacy of national proceedings for any challenge to admissibility to be successful. This once again removes some discretion from the state to evaluate its own justice mechanisms.

Secondly, the scope of the principle has been narrowly defined by the case law. So far, only one challenge to admissibility has been successful.\(^\text{24}\) This means that there is very little room for national authorities to implement alternative modes of accountability.\(^\text{25}\) I have argued elsewhere that a decision on inadmissibility should not be given too much importance in terms of legal consequences.\(^\text{26}\) Indeed, rejecting an

---

\(^{17}\) For an overview of these developments, see Dov Jacobs, "Puzzling over Amnesties: Defragmenting the Debate for International Criminal Tribunals" in Carsten Stahn and Larissa van den Herik, The Diversification and Fragmentation of International Criminal Law (Martinus Nijhoff 2012) 305, 307–14.


\(^{19}\) For extensive analysis of the principle of complementarity, see Carsten Stahn and Mohamed El Zeidy (eds), The International Criminal Court and Complementarity (Cambridge University Press 2011).


\(^{21}\) Article 53 of the Rome Statute (n. 18).

\(^{22}\) Article 19(1) of the Rome Statute (n. 18).

\(^{23}\) Article 19(2) of the Rome Statute (n. 18).

\(^{24}\) ICC, Prosecutor v. Gaddafi and Al-Senussi, Decision on the admissibility of the case against Abdullah Al-Senussi, Case No. ICC-01/11-01/11, PTC I, 11 October 2013.

\(^{25}\) For an analysis of the ICC framework on this, see Jacobs, "Puzzling over Amnesties" (n. 17).

\(^{26}\) Jacobs, "Puzzling over Amnesties" (n. 17) 332–5.
admissibility challenge in a particular case does not necessarily invalidate the whole
national accountability mechanism, it just means that it cannot be opposed to the court
to avoid the exercise of jurisdiction. However, while the importance of a decision on
admissibility should not be overstated from a legal point of view, it certainly has a
psychological effect that cannot be ignored, and debates surrounding the involvement
of the ICC in a number of African countries illustrate this point.27

III. Contextualizing and Conceptualizing Sovereignty

The previous section has provided some examples of how international law, sovereignty,
and *jus post bellum* can interact on a number of different levels. While these examples
could be multiplied, and each of the cases would deserve fuller developments, the idea
of this chapter is to contextualize these occurrences within the current conversation
on sovereignty (A) and to propose a conceptual framework to think of the evolving
interactions between the national and the international level that are at the heart of the
matter (B).

A. The transformation of sovereignty and its limits

It is a terse statement to make that the international legal order is traditionally founded
on the concept of sovereignty. From its modern foundations, attributed to the Treaty of
Westphalia,28 to the “constitutional” moment of the UN Charter, the international legal
order has been conceived of as the interaction between sovereign states. Indeed, the
UN Charter stresses the point that “[t]he Organization is based on the principle of the
sovereign equality of all its Members.”29 The different aspects of this principle are well
known and cover a certain number of principles, such as sovereign equality, territorial
integrity, and non-intervention.30

It is unoriginal to point out that both these sovereignties have been challenged in
past decades, following a number of overlapping and self-reinforcing phenomena. One
of these phenomena is the paradigm shift to the individual as the main object of interest
of international law.31 This is reinforced by the multiplication of international obligations
that not only regulate the conduct of states in their mutual relations, but also regulate
the conduct of states within their national legal order. This has as a consequence an
increased porosity between the international and the national level, where erosions
of external sovereignty directly lead to the erosion of internal sovereignty. An addi-
tional factor is the emergence of norms that, while in theory relying on traditional law

27 Sarah Nouwen and Wouter Werner, “Doing Justice to the Political: The International Criminal Court
In Uganda and Sudan” (2010) 21 *European Journal of International Law* 941.
International History Review* 569.
29 Article 2(2) of the UN Charter (n. 3).
30 For some critical takes on these dimensions, see Gerry Simpson, *Great Powers and Outlaw
States: Unequal Sovereigns in the International Legal Order* (Cambridge University Press 2004); Stephen
31 On this, see Theodor Meron, *The Humanization of International Law* (Martinus Nijhoff 2006) and A. A.
formation mechanisms based on consent, increasingly emerge as quasi-constitutional norms that only remotely relate to the consent and practice of states, or at the very least do not require demonstrating the consent of any particular state at which the norm is directed. An obvious example of these norms are those of *jus cogens*, which under the guise of being just another category of customary rules, appeal to other considerations for their existence, such as community interests of various sorts.\(^{32}\)

This reappraisal of sovereignty has led to a reconceptualization of the notion as a balance between rights and obligations, as illustrated by what remains in the current state of international law a policy consideration rather than a “hard” norm, that of the Responsibility to Protect.\(^{33}\)

Two remarks need to be made in relation to this transformation of sovereignty. First, from a descriptive point of view, this transformation does not mean that sovereignty has lost all its relevance in the international legal order as some would like to believe. While the reality of the international legal order today would appear to make the point obvious, it seems nonetheless necessary to recall that sovereignty, and its corollaries, are still key components of the current system of international law, notably relating to issues that are being considered in the *jus post bellum* framework. For example, territorial sovereignty and its sanctity remain important in discussions relating to *jus ad bellum* and the definition of aggression. This attachment can also be found in the Rome Statute, which recalls the right of a state to defend its unity and territorial integrity.\(^{34}\) In the same way, the dividing line between conflicts that “concern” the international community and conflicts that remain outside the scope of international law, while having been increasingly blurred, still exists, as illustrated by the Rome Statute, which provides that the war crimes provisions do “not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.”\(^{35}\)

Secondly, from a normative point of view, there is a tendency to believe that because sovereignty has been used in the past as an excuse for human rights abuses, it should be disregarded altogether as a relevant concept in thinking of post-conflict situations. In essence, because the state cannot be trusted, at a quasi-ontological level, its functions should be exercised by other entities, both at the supra and infra national levels. This tendency, however, misses two fundamental points. The first one, very pragmatically, is that of the importance of institutions in ensuring a stable transition in the post-conflict context. The second one is more sociological: the challenge raised against the state ignores the fact that all societies, when reaching a critical size, will develop in vertical organizational structures that will involve an exercise of power from one level over another. Whether one calls it a “state” or conceptualizes it under the umbrella notion of “sovereignty” is in fact irrelevant and cannot remove this sociological reality. As a result, the reliance on the UN, international NGOs, or local civil society cannot replace, in the long term, the establishment of state institutions capable of allowing a country to

---


\(^{34}\) Article 8(3) of the Rome Statute (n. 18).

\(^{35}\) Article 8(2)(d) of the Rome Statute (n. 18).
function with some level of autonomy in the future. The key discussion should therefore not so much be on challenging sovereignty per se, but rather on the conditions in which sovereignty can be effectively exercised.

What is required is therefore a reconceptualization of sovereignty, rather than a Manichean rejection of the notion. Extensive work has been done in various social sciences on this conceptualization, from a number of philosophical, political, linguistic, or anthropological angles that cannot be elaborated on here.\textsuperscript{36} These studies, while comprehensive, do not fit the more specific and possibly less ambitious aim of the current chapter, that of understanding and reconceptualizing sovereignty in a more narrowly international legal sense, and more specifically in the relationship between the international and the national. Therefore, the remainder of the chapter will borrow from the work of Georges Scelle in ways that are relevant for the present discussion, as will be now developed.

**B. Reversed role-splitting as a conceptual framework**

In order to rethink sovereignty and the relationship between the national and the international, inspiration can be found in Georges Scelle's theory of \textit{dédoublement fonctionnel} ("role-splitting") and how it can be readapted to the reality of today's international legal order.\textsuperscript{37} This section will therefore briefly describe the mechanics of this \textit{dédoublement fonctionnel}, before explaining how it can be rethought in relation to the core point of this chapter, that is, to aim at the relegitimization of the state in post-conflict situations and highlight the questions that this reconceptualization raises.

How does Scelle present this \textit{dédoublement fonctionnel}? His starting point is the absence in the international legal order of a centralized system to ensure the basic functions of the order, which are law-making, adjudication, and enforcement. For him, it is national authorities that ensure these functions by acting in a dual capacity, both as organs of their national systems and as organs of the international system. Scelle's theory was elaborated within a profoundly monist approach to the interaction between the international legal order and national legal orders, with the former being hierarchically superior. It should be pointed out in that respect that by proposing to reverse Scelle's logic, I am not really being faithful to his underlying philosophy. He was indeed very skeptical of sovereignty, which he described as archaic and dangerous. He promoted


\textsuperscript{37} While there has not been any theoretical discussions on the reversal proposed of Georges Scelle's \textit{dédoublement fonctionnel} theories, the developments in this section are inspired from the numerous writings of Georges Scelle. See, in particular, Georges Scelle, \textit{Règles Générales du Droit de la Paix} (1933) 46 \textit{Recueil de Cours} 331; Georges Scelle, \textit{Théorie et Pratique de la Fonction Exécutive en Droit International} (1936) 55 \textit{Recueil de Cours} 91; Georges Scelle, \textit{Précis de Droit des Gens: Principes et Systématiques} (Dalloz 2008). See also for commentaries in English: Hubert Thierry, "The Thought of Georges Scelle" (1990) 1 \textit{European Journal of International Law} 193 and Antonio Cassese, "Remarks on Georges Scelle's Theory of 'Role Splitting' (\textit{dédoublement fonctionnel}) in International Law" (1990) 1 \textit{European Journal of International Law} 210.
laying emphasis on the individual and any other entity that might challenge sovereignty in this sense. However, I am not in complete betrayal of his thoughts, because he did recognize the importance of state institutions in regulating social behavior.

Still following this idea that the goal should be the relegitimization of the state, the second part of my article will propose an original inversion of Scelle’s *dédoublement fonctionnel* by discussing how international institutions should be conceptually analyzed as organs of the national legal order, rather than the opposite. This allows a more subtle discussion of how international institutions interact with national institutions and ultimately contribute to the reaffirmation of national sovereignty. There are of course tensions between requirements under international law and national law that would need to be explored, as the model is elaborated on, but the conceptual framework proposed here provides an interesting theoretical context and starting point to think of the way *jus post bellum* can be situated within this proposed interaction between the international and national legal orders.

As a result, the reversal that is proposed here is that rather than seeing how national authorities contribute to the consolidation of the international legal order and act as agents of the international community, we should analyze how international institutions act as agents of the national legal order, and, consequently, how it affects the reconsolidation of that legal order. This reversal is justified by the same logic that has justified the theory in the first place in its original form. Indeed, in certain circumstances, the international legal order, while remaining primitive in a number of respects, is far more developed and functioning than the legal orders of states in post-conflict situations, which will be devoid of the basic state institutions.

In addition, examples of this reversed *dédoublement fonctionnel* already exist. Kosovo and East Timor, where the UN exercised all state functions, are the most typical examples. In fact, discussions of the legal status of international entities involved in territorial administration, particularly in relation to the question of sovereignty, is certainly not absent from the literature. A number of authors have discussed how international territorial administration affects the question of responsibility and sovereignty. What the *dédoublement fonctionnel* theory allows is to cover a broader spectrum of phenomena, not just of formal administration, but also of situations where some of the state functions might be in part or in whole dealt with by international organs. In this sense, the principle of complementarity, at least in theory, might be analyzed in this light, as might be the practice of hybrid tribunals.

With this framework in mind, two series of comments appear necessary. The first one relates to the practical difficulties that arise. It is striking to observe that the difficulties envisioned by Scelle also apply when you reverse the theory. Indeed, he saw this theory as only a temporary solution to the deficiencies of the legal order (in his case, the international one, in our case the national one). He also points out the unilateral decisions

that might be taken by the “dual agent” (thus, in the reversed approach, raising issues of local legitimacy and ownership), and the difficulties in the law-making process and identification of the appropriate adjudicatory forum. All these issues find an echo in the *jus post bellum* context. Another difficulty is establishing, in the relation between the national and international legal order, the capacity in which the “dual agent” acts. This question arose sharply, if slightly indirectly, in relation to the Kosovo advisory opinion, where the ICJ had to determine the relevant international law and whether regulations adopted by the provisional administration could be deemed as such. As developed elsewhere, the ICJ made what can only be called a mess of the analysis, and a more subtle discussion is warranted in that respect.39 Another practical question that arises is that of “shared responsibility.”40 If functions are exercised by different entities, who bears the consequences, notably on the international plane, of failure to adequately perform? Again, the Kosovo example is noteworthy, as it gave rise to discussions on the responsibility of the UN in relation to peacekeeping forces that exercise police powers, or the UN Secretary-General special representative in his legislative function. The question might have even arisen in relation the declaration of independence, had the ICJ addressed the issue correctly.

The second series of comments is more conceptual. Once one applies the reversed *dédoublement fonctionnel*, one accepts that certain functions (if not all) are exercised by entities other than the state, thus bringing into question the unity of the concept of sovereignty, whereby the state would exercise sovereignty over some functions but not others. This ties into the first two sections of the article. Indeed, whereby the first section has shown that the exercise of sovereignty by a state is no longer absolute and may be “contingent” or “conditional,” under the *dédoublement fonctionnel* theory, sovereignty may also be “shared” or “split” among several entities (states and IOs in our case). This has also been called “fragmented”41 sovereignty or “fuzzy”42 sovereignty. Moreover, once this sovereignty is split in this way, questions arise as to how it affects the criteria of statehood and the recognition of states, especially if the split sovereignty is not only temporary, but in some cases permanent, which leads us to the concluding section of the chapter.

**IV. Conclusion: From Sovereignty to Integrated Sovereignties**

If one pushes the reasoning a little further and tries to combine both the original version of *dédoublement fonctionnel* (which aimed at providing a strengthening of the international legal order) and the reversed one (which aims at a strengthening of the national legal order), we arrive at a complex situation where the interests of states and the international community as a whole need to be combined. These interests justify that both entities exercise functions that enable their realization. This leads us to accept

39 See n. 15.
42 Christine Bell, ch. 10, this volume.
that sovereignty is not just a feature of the state, but can also be a feature of the international community when it exercises functions that are legitimately of international concern. This means that we escape the traditional monist/dualist dichotomy, as well as the top-down/bottom-up dichotomy, all levels becoming mutually reinforcing in reaching their own goals. In essence, this means that we have to discuss not just how the state can be relegitimized in its exercise of sovereignty, but how this relates to the increased permanent devolution of functions to an emerging international sovereign. This would be a fundamental shift in the way of thinking about sovereignty in the international legal order, especially in relation to *jus post bellum*. Indeed, this calls for thinking of models of sovereignty that take into account the possible permanence of international exercise of sovereign powers in certain areas, such as peacekeeping or the prosecution of international crimes. What makes the elaboration of such models more complicated is that both levels might exercise sovereignty over the same fields or activities, even if technically they wouldn’t be applying the same sovereign power.

Several consequences arise from this invitation to define a new model. First, this means, from a semantic point of view, that terms used until now (“fragmented sovereignty,” “fuzzy sovereignty,” etc.) do not work anymore, because they imply a single sovereignty that is shared. What we end up with are in fact several sovereignties that interact, overlap, or compete, in the same way that two states may exercise criminal jurisdiction over the same crime for different reasons (territoriality principle, nationality principle, etc.). This is why the ambition of the model must be to describe a system of “integrated sovereignties,” a more adequate idiom to analyze this new situation. In that system, some sovereignties would be shared and others separate.

Secondly, a theory of integrated sovereignties, grounded on a double *dédoublement fonctionnel*, implies, as the name says, a more differentiated functional approach, depending on the subject area under consideration. This of course raises once again the question of how you now combine these sovereign powers in defining the sovereign entity. Indeed, the functional approach has as a consequence that it is increasingly difficult to have a “checklist” approach whereby sovereignty over a certain number of fixed issues (territory, population, etc.) implies sovereignty as a quality of the entity. There are three possible solutions: (1) adopt a corresponding functional definition, whereby for each function there is a corresponding sovereign exercise. As a consequence, this would have to explode completely the concept of sovereignty as traditionally defined; (2) define a more flexible list of fields that in combination would identify a distinct sovereign entity; (3) accept that as a consequence of the evolutions of statehood as explained previously, sovereignty is attributed from above (through the UN for example) through compliance with a number of criteria.

Whatever solution one adopts, this complex web of integrated sovereignties shows that beyond the identification of the “jus” in *jus post bellum*, the overall understanding of the concept requires that more theoretical developments, along the lines of those

---

proposed here, be elaborated on, so that post-conflict situations can be adequately understood within the general framework of the modern evolutions of the international legal order, the reconfigurations of the interaction between the national and the international, and, ultimately, the transformations of sovereignty as a changing but still fundamental principle at the heart of the social contract, be it international or national.