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Daniel Emilio Rojas, Warren Pezé

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# The international order under threat: A historical and political perspective on recognition

Daniel Emilio Rojas (*main author*)  
MCF Grenoble Alpes, ILCEA4  
*with* Warren Pezé  
MCF Paris-Est Créteil, CRHEC

Over the past few years, several international cases and conflicts, such as the Nagorno-Karabagh War, the Palestinian question, the Syrian civil war, the Russian annexation of Crimea, and the Catalan referendum have drawn the attention of both the general public and the specialized literature to the question of international recognition. Beyond these, many other conflicts, such as Taiwan, Aceh, Western Sahara, Abkhazia, Ossetia and Transnistria have, for decades, illustrated the theoretical and practical problems involved in the recognition of governments that lack the sufficient legitimacy to become full-fledged members of the international community.<sup>1</sup> The case of Libya, now ruled by two competing governments both recognized as legitimate by different members of the international community, has shown that the recognition of a government changes the internal political alliances in the context of a civil war (*i.e.* pacts between Khalifa Haftar and groups of armed forces of Zintan, or links between Fayez-Al-Sarraj and parliamentarians close to the Muslim Brotherhood). It highlights, too, the transformations of the international order brought about by a specific recognition process (the loss of prominence of the European Union in the Eastern Mediterranean and the grand return of Russia and Turkey as influential players and mediators in the Middle East conflicts).<sup>2</sup> Given that context, a modern reader not only can instinctively associate the question of international recognition with the notions of threat and order to which we will come back shortly; it is also more necessary than ever to reconsider this issue against the background of its long-term history.

The aim of this collective volume is to take up this challenge. Nearly all the contributors are historians: some of them deal with the modern state in recent history, and others with pre-modern societies and forms of political power that are unfamiliar to most of today's political observers. For this book, all these historians have adopted a common threefold perspective to study international recognition. First and foremost, this book adopts a long-term chronological perspective that bridges the traditional dichotomy between societies with and without the "modern state". The goal is to observe, beyond the institutional discrepancies across various periods and spaces, which common

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<sup>1</sup> *Gëzim Visoka/John Doyle/Edward Newman* (Ed.), *Routledge Handbook of State Recognition*, London 2019; *Francis A. Boyle*, *Palestine, Palestinians and International Law*, Atlanta 2003; *John Quigley*, *The Statehood of Palestina. International Law in the Middle East Conflict*, Cambridge 2010; *Diego Muro/Guillem Vidal/Martijn C. Vlaskamp*, *Does international recognition matter? Support for unilateral secession in Catalonia and Scotland*, in: *Nations & Nationalism* 26, 2020, 176–196; *Phil C.W. Chan*, *The Legal Status of Taiwan and the Legality of the Use of Force in a Cross-Taiwan Strait Conflict*, in: *Chinese Journal of International Law* 8.2, 2009, 455–492.

<sup>2</sup> At the time of writing these pages (February 2020), the European Union is getting ready to host a new summit in Berlin that seeks a ceasefire in Libya. In this scenario, the problem of the recognition of the governments installed in Tripoli and Benghazi not only implies initiating a process of national reconciliation in order to end a civil war, but above all to accept that Russia and Turkey become the new guarantors of the pacts in a regional arena that was previously controlled by the European Union and the United States. *Jean-Pierre Stroobants/ Frédéric Bobin*, *À Berlin, l'UE veut se montrer unie pour contrer l'axe turco-russe en Libye*, in: *Le Monde*, 17.01.2020, [https://www.lemonde.fr/afrique/article/2020/01/17/a-berlin-l-ue-veut-se-montrer-unie-pour-contrer-l-axe-turco-russe-en-libye\\_6026202\\_3212.html](https://www.lemonde.fr/afrique/article/2020/01/17/a-berlin-l-ue-veut-se-montrer-unie-pour-contrer-l-axe-turco-russe-en-libye_6026202_3212.html) (20.01.2020).

patterns of political interaction and which differences emerge; the aim is also to take some distance with a traditional approach of political science and international law, that ignores the diversity of historical contexts in order to build a general vision of what it means to recognize a sovereign entity. Second, they reconsider the question of international recognition through the lens of the conceptual framework of the SFB 923 “Threatened Orders”, especially with the concepts of threat, order, and reordering, in order to break free from a perspective that reduces the general problem of recognition *among sovereign entities* to the international recognition *of sovereign states*. Third, they study international recognition not only as a legal-institutional issue, but above all, as we will soon see, as a political one.

A political scientist was added to this team of historians to bring insight on the debates on international recognition in the political sciences. Therefore, we leave it to Daniel Högger’s final chapter to give this overview and to share his own vision of the question. Instead, this introduction aims to explain our threefold perspective further and to play the role of both an introduction and a conclusion by presenting the various contributions and outlining the thematic coherence of their results. It is structured along the three perspectives sketched above. We will first give a historical overview of the successive international orders in which the recognition of new powers took a specific shape and present how this volume endeavors to cover most of this chronology; then, we will introduce the conceptual apparatus of the SFB 923 “Threatened Orders” and what it brings to a better understanding of international recognition; finally, we will present our mainly political perspective on international recognition and how the various contributions aim to encompass it.

## ***1. History, Politics & Recognition***

Traditional studies on modern and contemporary history have enabled a better understanding of recognition as a legal institution and have clarified the links between the political development of the international society and the doctrinal evolution of legal thought, but they have also tended to limit the problem of recognition to the development of the modern state.<sup>3</sup> This has resulted in a spatially and temporally restrictive perspective, which is only concerned with recognition among sovereign entities since the 17<sup>th</sup> century in the Mediterranean and North Atlantic societies, without considering other periods or latitudes: Ancient and Medieval times have been practically ignored, as have been Southeast Asia and Latin America. For this reason, this book integrates new chronologies and regions into the study of recognition; it shifts the approach away from modern states and seeks to understand how recognition has manifested itself elsewhere in the world.

International recognition has a vast chronological depth that accounts for its largely ignored historical diversity. The form of political groups (from the tribe to the multilateral organization), the nature of the link established between rulers and the governed, the relations between those groups in times of peace and war, and the building-up or collapse of confederations and empires have shaped the particular forms of recognition among sovereign entities throughout history.<sup>4</sup> The form of recognition always depends on a specific two-scaled *order* —that is, patterns of power, action and legitimacy; the “national” scale of the political entity, and that of the “international” order. And yet, despite this diversity, the necessity to recognize power has been a constant element of interaction between human communities, which has its own character and whose recurrence makes it an invariable factor of politics. From the Persians and the Syrians, through the Caliphates, Byzantium,

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<sup>3</sup> For a recent *status quaestionis*, see *Pierre Grosser, État de littérature. L’histoire des relations internationales aujourd’hui*, in: *Critique internationale* 65, 2014, 173–200.

<sup>4</sup> Cfr. *Julien Freund, L’essence du politique*, Millau 2004, 246.

Rome, the Carolingian Empire, the Europe of the Peace of Westphalia, the 19<sup>th</sup> century, the Russian Revolution and the Cold War, the emergence of a new power has led to the problem of having its legitimacy recognized by a forum of sovereign powers.

Some works about recognition have studied its historical evolution in relation to other essential problems of international history and political theory, highlighting the connection between recognition, domination, sovereignty, and war; in other words, the connection between recognition and the existence of a legitimate international order.<sup>5</sup> Historians of international relations have traditionally distinguished several such orders. Between 1494 and 1648, a period that Wilhem Grewe and others have characterized as the international order of the Spanish era, the recognition of new sovereign entities was closely linked to the divine foundation of power, to the right of conquest<sup>6</sup> and to the right to rebellion against kings.<sup>7</sup> Later, between 1648 and 1815, with the rise of the “Droit public de l’Europe” during the international order of the French age, the problem of recognition gradually began to be related to the recognition of the belligerence of insurgents, and between 1815 and 1919, which corresponds to English domination at the international level, to the notions of popular sovereignty and civilized nation.<sup>8</sup> With the advent of the bipolar system and the creation of the United Nations, the link between international recognition, respect for human rights and opposition to non-democratic governments gained momentum.

The reader of the contributions that make up this book will find a set of nine chapters covering more than 2,000 years of history. They cannot claim to cover this chronology extensively; they nonetheless study key transition periods in the history of international relations: the building-up of the Roman Empire and the unification of the Mediterranean (E. Baltrusch), the rise of the Carolingian Empire (Ch. Galle) and, soon after, its dissolution (W. Pez ), the Treaties of Westphalia (A. Tischer), the first wave of decolonization (D.E. Rojas), the rise of the Soviet Union (G. Schild), the division of post-war Germany (A. Das Gupta) and the Cold War (P. Bouillon). Not only do these contributions span the gap between pre-modern powers and modern states; but also, by including Latin America and India, they are not limited to the traditional European-Mediterranean sphere.

Moving along these papers, it will soon become apparent to the reader that only a few dominant scenarios lead to the recognition of new political entities. A new superpower may emerge (see Ch. Galle with the Carolingian Empire, or G. Schild with the Soviet Union); an empire may crumble (see W. Pez  with the division of the Carolingian Empire, D. E. Rojas with the Spanish and

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<sup>5</sup> The chronology of the history of international law to which we refer here was first proposed by *Wilhelm Grewe*, *Epochen der V lkerrechtsgeschichte*, Baden-Baden 1983 – a work published in 1983, but drafted in the last months of World War II, whose influence in the milieu of jurists and historians became evident from the 1970s, when its author acquired an unusual notoriety for his participation in the conception of the Halstein Doctrine. Several of the most influential works in this field such as those by Wolfgang Preiser, Stephan Verosta or Karl-Heinz Ziegler reproduce or adapt this chronology. On the relationship between recognition and international order, see: *James Lorimer*, *The Institutes of the Law of Nations. A Treatise of the Jural Relations of Separate Political Communities*, vol. 1, Edinburgh/London 1883; Carl Schmitt’s work must be critically analyzed, but it cannot be ignored in the history of legal thought, see *Carl Schmitt*, *Der Nomos der Erde in V lkerrecht des Jus Publicum Europaeum*, Berlin 1974; *Jean-Fran ois Kerv gan*, *Que faire de Carl Schmitt*, Paris 2011.

<sup>6</sup> The right of conquest was commented by the Spanish Dominican Francisco de Vitoria in his essays *On civil power*. *Francisco de Vitoria*, *Sobre el poder civil; Sobre los indios; Sobre el derecho a la guerra* (Cl sicos del pensamiento), Madrid 2007.

<sup>7</sup> The right to rebellion was evoked, although not fully justified, by *Hugo Grotius*, *Le droit de la guerre et de la paix* (Grands textes), Paris 2012; *M lanie Dubuy*, *Le droit de r sistance   l’oppression en droit international public: le cas de la r sistance   un r gime tyrannique*, in: *Civitas Europa* 32, 2014, 139–163.

<sup>8</sup> *James Sloan*, *Civilized nations*, in: *Max Planck Encyclopedias of International Law*, Article last updated: April 2011, <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1748>.

Portuguese Empires, A. Das Gupta with the partition of post-war Germany); or autonomist movements may undermine the hegemony of the empire or larger entity to which they belong and grow into independent powers (E. Baltursch with the rebirth of a Jewish kingdom in the 2<sup>nd</sup> century BCE, A. Tischer with the independence of the Netherlands and Portugal in 1648, and P. Bouillon with Ceaușescu's Romania).

## ***2. Recognition as a reordering of international relations***

The views and approaches of those who have contributed to this book, beyond their diversity, are articulated around the theoretical concerns of the SFB 923 (Threatened Orders) and around a core question: to what extent can the international recognition be described as a reordering process that reshapes the organization and the rules of the international community in reaction to a threat (an autonomist movement, a war, the collapse of an empire...)?<sup>9</sup> To what extent can the concepts of threat, order, and reordering, among others, be used as hermeneutic tools for the history of international relations? Indeed, most recognition cases are perceived as a threat to the international order, not only because they are almost always correlated with outbursts of war and violence, but also because they represent dangerous cracks in the idealized surface of that order. The rise of new powers creates legal and normative uncertainties and reveals that the good old rules must be rewritten. Leaders no longer know how to interact to stifle instability and violence: they must improvise and mold new patterns of action, thereby reordering the international community of which they are a part. Therefore, the threat we are dealing with is also, if not mainly, a calling into question of the old order's routine.

This volume addresses a series of correlated issues. First, as we saw, legal historians tend to advocate a one-way conception of the history of recognition and focus on the existence of the “modern state” as a key discriminatory factor; this dichotomy between modern and pre-modern is hardly satisfactory. The categories of the SFB 923 “Threatened Orders”—especially its focus on an overarching international order, whatever the institutional status of the political entities that are a part of it—may help us evade the nagging question of whether or not a political entity may be called a “state” in the modern sense. The authors of this volume eluded that trap by using many different denominations for the forms of power they dealt with (E. Baltrusch, “politische Einheiten” or “Gemeinwesen”; W. Pezé, “communautés politiques souveraines”; A. Tischer, “Powers”...); their main focus is not on how “staatlich” these entities are, but how they interact within a specific order.

The recognition process seems to involve what the SFB 923 has labelled the “reflection” process: how a threatened order comprehends itself as a whole, and, in return, how it perceives and gives meaning to a threat (in short, how it “frames” it) through the lens of its own categories or *epistémè*.<sup>10</sup> In that sense, recognition cases give us insight into what the partner entities thought *they* and the international community were. They are telling instances of what a given order thinks it ideally is. This word, “order”, is indeed surrounded by an aura of idealism, and rightly so, because it comprehends the self-representation of an entire human polity. But any such order also has very concrete aims, such as the preservation and reproduction of living conditions and social structures.

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<sup>9</sup> See Ewald Frie/Boris Nieswand, “Bedrohte Ordnungen” als Thema der Kulturwissenschaften, in: Journal of Modern European History 15, 2017, 5–35.

<sup>10</sup> Frie/Neiswand, Bedrohte Ordnungen, 9; on the notion of *epistémè*, Michel Foucault, Les mots et les choses: une archéologie des sciences humaines, Paris 1966.

This tension between the two ends of the political framework (idealism and pragmatism) implies a permanent back and forth between the ideally normative and nearly mathematical domain of law and the more realistic and less clear-cut domain of politics. The practice of recognition is neither a mere legal mechanism, nor is it only a mirror of what group members think they are; it is at the same time a political tool (see below).<sup>11</sup> The chapters of this volume describe the ins and outs of these politics of recognition: the need to legitimize and legally justify *de facto* governments, the consequences of the entry of newcomers on the equilibrium of an international society, the tension between internal and external politics... Recognition must therefore be considered a political resource, among many others, in the hands of decision-makers, either for their foreign policy (see below E. Baltrusch's contribution, where recognition of Judea is a weapon against the Seleucids) or for their internal policy (see, in A. Das Gupta's chapter, how national interest was the main driver behind India's recognition of post-war Germany).

Lastly, recognition is also a matter of discourse. Most recognition cases are the result of war or violence; these situations force their way into the public sphere. Recognition thus becomes a part of what the SFB 923 calls a "communication of threat".<sup>12</sup> The political actors may appeal to recognition of a new power or refer to past treaties of recognition in the public arena in order to mobilize public opinion and put pressure on decision-makers.<sup>13</sup> Therefore, it is crucial to consider how communication takes place practically and how information flows both within the circles of power and to a broader audience: memos, notes, telegrams, books, press articles, letters and emails, private and public meetings, exchange of envoys, telephone calls...

### ***3. A political perspective on international recognition***

The conceptual apparatus of the SFB 923, as the few paragraphs above have just sketched, can contribute significantly to a better understanding of international recognition and, by focusing on the big picture with the concept of order, allows us to take some distance with the question of "statehood". It thereby leaves more free space to tackle the third aim of this book, which is to view recognition mainly as a political issue. This, in turn, raises a few questions about the relationship between law and politics. The third and last section of this introduction is an endeavor to outline what a comprehensive approach of international recognition should be. Just like the contributions in the volume, it follows the timeline. It is divided into seven parts that present every chapter, emphasize certain characteristics of recognition, and propose analytical themes: *a*) international recognition: between the political and the legal; *b*) the priority of the political; *c*) authority, religion and recognition; *d*) recognition as a reordering: the construction and destruction of orders; *e*) the concepts of state, international law and diplomacy; *f*) recognition and non-recognition; *g*) an anthropological and sociological approach.

#### ***3.1 International recognition: between the political and the legal***

In his *Principles of International Law*, Ian Brownlie (1932–2010) argues that recognition is an act that has two legal functions: "First, the determination of statehood, a question of law: such individual determination may have evidential effect before a tribunal. Secondly, the act is a condition of the establishment of formal, optional, and bilateral relations, including diplomatic

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<sup>11</sup> Emmanuel Cartier, *Histoire et droit: rivalité ou complémentarité ?*, in: *Revue française de droit constitutionnel* 67.3, 2006, 509–534.

<sup>12</sup> Fries/Nieswand, *Bedrohte Ordnungen*, 7.

<sup>13</sup> Fries/Nieswand, *Bedrohte Ordnungen*, 11.

relations and the conclusion of treaties”.<sup>14</sup> According to this view, recognition is an act that creates legal obligations within the framework of a society of states governed by rules and courts, and a covenant that establishes the legality between two entities that recognize each other, becoming carriers of rights and mutual obligations.

The legal definition is a first step to understanding the phenomenon of recognition today, but it is not enough to understand either the different aspects of the problem or its varied consequences.<sup>15</sup> Even when there is agreement on the legal functions of recognition, the diversity of cases and problems on which the legal literature is based makes it difficult to formulate a coherent doctrine and practice of recognition. The consequence is that the legal definition is inconsistent when contrasted with the practice of states. The reasons that explain this are of various kinds: first, there is no consistent terminology that can be used in official declarations and *communiqués* concerning the recognition of states; second, there is no such thing as a uniform state recognition type; third, the act of recognizing a sovereign entity is not decisive for establishing diplomatic relations and “the absence of diplomatic relations is not in itself non-recognition of the state”.<sup>16</sup>

As a legal category, international recognition has an extra-legal dimension that seems problematic to jurists to the extent that the legal act is based on a political decision. In other words, the initial interaction between two sovereign entities lacks a legal framework. The decision is made according to a political calculation and does not require legitimization through legal criteria. This means that we must go beyond the legal field and incorporate two elements that highlight the political dimension of recognition: first, the legal status of a new sovereign entity is almost always ambivalent, since its creation is the result of exceptional circumstances that disregard a sovereign power and previously-established legality.<sup>17</sup> The examples in this respect are numerous, as illustrated by the contributions to this book: the Maccabean Revolt that founded the Hasmonean dynasty in the 2<sup>nd</sup> century BCE disrespected the laws of the Seleucid Empire; the separation of the Protestant Provinces from the Spanish Netherlands violated the sovereign rights of the Spanish monarch in the 17<sup>th</sup> century; the independence of the United States was an attack on the titles of possession of the British Empire over part of the American continent.<sup>18</sup> Secondly, recognition is a fight between actors who seek to maintain, transform, or increase their power with respect to other actors in the same international order. For the entity that recognizes, recognition is preceded by an intense activity of reflection and calculation based on the achievement of precise external policy objectives. This is what happened, for example, with the decision of India to recognize the German Federal Republic in 1949 or with the French decision to recognize Romania’s political autonomy from the USSR with the visit of Charles de Gaulle to Bucharest in 1968.<sup>19</sup>

### ***3.2 The priority of politics***

This book prioritizes the political dimension of recognition among sovereign entities throughout history. Here, recognition is understood as the key element of the management and distribution of

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<sup>14</sup> *Ian Brownlie*, *Principles of Public International Law*, New York 2008, 89.

<sup>15</sup> *M.J. Peterson*, *Political Use of Recognition: The Influence of the International System*, in: *World Politics* 34.3, 1982, 324–352.

<sup>16</sup> *Brownlie*, *Principles*, 90.

<sup>17</sup> *Schmitt*, *Der Nomos der Erde*.

<sup>18</sup> *Julius Goebel*, *The Recognition Policy of the United States*, New York 1915.

<sup>19</sup> *Beatrice Scutaru*, *La Roumanie à Paris: exil politique et lutte anti-communiste*, in: *Histoire@ Politique* 23, 2014, 154–165.

power in international orders that integrate various sovereign powers in the same space and period. This vision does not in any way ignore the legal content of an act of recognition: any political decision in this field requires a legitimacy that can only be achieved using legal resources. The analytical postulate of this book is that the purpose of recognition among sovereign entities is the pursuit of political objectives. It is therefore impossible to reconstruct the negotiations, processes, and acts that lead to the recognition of a sovereign entity without simultaneously considering the alliances that reshape the international order.<sup>20</sup> Recognition represents an opportunity to push forward your position by appointing arbitrators in a conflict between two different sources of legitimacy; by assuming the role of protector of the rules in front of the other members of a community; by taking a hegemonic position and altering the operating rules of an international order; by activating a system of alliances or validating alternative sources of legitimacy.<sup>21</sup>

In his final chapter, Daniel Högger proposes an alternative and innovative solution that solves some of the debates that recognition has created in the field of legal thinking: the distinction between the requirements of contemporary international law to accept the effective existence of a state and the political additional requirements to recognize it.<sup>22</sup> In the legal international doctrine of recognition of the early 20<sup>th</sup> century, statehood effectiveness plays a key role and was translated into three statehood requirements by the German jurist Georg Jellinek (1851–1911), which were subsequently included in the first article of the Montevideo Convention of 1933: “The State as a person of international Law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government [...]”.<sup>23</sup> Högger establishes a break with this traditional legal theory of international recognition and argues that if the requirements related to statehood are often not sufficient to recognize a state, it is because there are also—and always have been—additional requirements to effectiveness. These additional requirements combine to form “legitimacy”, a concept that is defined solely in relation to the interests and values of the members of the international society. An entity that wants recognition “and consequently access to the privileged and exclusive club of States, must appear fit for recognition by the other States, i.e. the club members”.<sup>24</sup> To illustrate this problem, Högger mentions different examples of legitimacy in various types of international society, among which are, for example, the legitimacy derived from respect for human rights, a necessary criterion for the recognition of new states that emerged during the Cold War.

If the inclusion of legitimacy makes it possible to consider the problem of recognition within international law under a new light, it is important not to lose sight of the fact that recognition among modern states is just one of the historical manifestations of recognition among sovereign entities. The problem of recognizing a sovereign authority is constant and arises even when the regal powers have not been completely centralized by the same institutional structure; Weberian interests or realistic calculations of political leaders to multiply international power or influence do not always depend either on the action of bureaucratic bodies, or on the exercise of political control

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<sup>20</sup> *Stuart J. Kaufman/Richard Little/William C. Wohlforth*, *The Balance of Power in World History*, Hampshire 2007.

<sup>21</sup> *Christopher Daase/Caroline Fehl/Anna Geis/Georgios Kolliarakis* (Ed.), *Recognition in International Relations. Rethinking a Political Concept in a Global Context*, London, 2015.

<sup>22</sup> *Infra*, Högger, §§.

<sup>23</sup> *Convención sobre Derechos y deberes de los Estados* (Montevideo, 1933)/*Convention on Rights and Duties of States* (Montevideo, 1933) in: *Multilateral treaties*, Department of International Law, Organization of American States (OAS) <http://www.oas.org/juridico/english/treaties/a-40.html> (21.01.2020).

<sup>24</sup> *Infra*, Högger, §§.



of a government over a territory or a population.<sup>25</sup> This is precisely one of the key elements of this book: the recurring need to recognize another sovereign entity transcends the existence of modern states (both imperial and republican), of bureaucracies and of the codification of a customary or international law. Hence it is legitimate to speak of recognition between powers without thinking about the *inter-national* dimension that the modern state presupposes<sup>26</sup>—and this is where, as we have seen, the concept of order proves its utility.

Ernst Baltrusch, in his chapter entitled “Anerkennung als Mittel der Expansion: Das jüdisch-römische Bündnis von 161 v. Chr.”, illustrates quite clearly how, in a historical scenario devoid of modern states, political interests permeated the actions of the entity that granted recognition and the entity that received it. In the process of absorption of the Hellenistic world by the Roman Empire that took place during the second century BCE, the alliance between Rome and the Jews not only made possible the recognition of the Jewish *ethnos* as a sovereign entity independent of the Seleucid Empire, but also allowed Rome to “einen Fuß in der Tür zum hellenistischen Osten erhalten” (gain a foothold in the Hellenistic East).<sup>27</sup>

Baltrusch mentions that the approaches between the Romans and the Maccabees began with the uprising of Jerusalem against the decree by Antiochos IV that prohibited the Jewish religion. The Romans offered to act as mediators to end the conflict, but far from seeking appeasement in the East, their offer was framed in a policy of international influence that aimed to weaken the Seleucid dynasty and build an alliance with its Jewish opponents. From the Jewish point of view, the possibility of an alliance with the Romans meant, on the one hand, having the support of a respected and influential power, and on the other, ensuring that the temple-state of Jerusalem—by then under Seleucid control—was perceived as a sovereign and autonomous entity by the Romans. In the case of the Jews, the rights and obligations subsequent to Roman recognition allowed them access to a new regional and international status.

In this chapter on the Jewish-Roman alliance, two elements should be highlighted because they suggest the fruitfulness of a praxeological approach to recognition among sovereign entities. First, diplomatic relations were not established through the maintenance of legations or permanent embassies (as is the case today), but through regular renewal of alliance and friendship treaties that confirmed that the signatories were valid members of an international order. The alliance between the Romans and the Maccabees did not include military aid at the time of the uprising but confirmed that the Jews were a valid interlocutor of the Romans. The objective of the Jews was not to affirm factual independence or presumptive sovereign equality, but to be seen as an autonomous center of power in the Hellenistic world with which they could then start a dialogue.

Secondly, an interesting aspect is the formal analysis of the treaty signed by the Jewish legation that traveled to Rome in 161 BCE. Its content shows a sacred and symbolic dimension within a normative universe that alluded to the binding effects of sworn friendship between sovereign entities. Friendship was considered to be an alliance based on reciprocity, and thus on mutual recognition. On the other hand, divinity was a guarantee that conferred legal-religious legitimacy to the pact between two sovereign entities.

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<sup>25</sup> Michael W. Doyle, Thucydidean Realism, in: *Review of International Studies* 16.3, 1990, 223–237.

<sup>26</sup> Edmond Frézouls/Anne Jacquemin (Ed.), *Les relations internationales. Actes du Colloque de Strasbourg des 15–17 juin 1993*, Paris 1995.

<sup>27</sup> *Infra*, Baltrusch, §§.

### 3.3 Authority, religion and recognition<sup>28</sup>

A fundamental element to understand recognition in the medieval era, and in general, the formation and interaction of sovereign entities in Christianity and in the Muslim world, was the religious legitimation of political power.<sup>29</sup> The sources of authority were derived from filiation with God (the Emperor and several kings were anointed by bishops or by the Pope, and the Caliph was a descendant of Muhammad) and the management of power depended on a social organization that was dictated and controlled by faith. To that extent, the recognition of political power was inseparable from the acceptance of divine authority and its earthly representatives.<sup>30</sup>

In his contribution, Christoph Galle studies the expansion policy of Charlemagne and seeks to understand the modalities of recognition of political authority in the Early Middle Ages; these were immersed in a complex network of fidelity and faith. If the integration of territories into the Carolingian Empire involved a bold military campaign (as in Saxony), it was also necessary to carry out a parallel process of Christianization without which the new annexed territories and the new imperial population would not have recognized Charlemagne's authority. Galle suggests that the category *international recognition* is inadequate to analyze recognition in the Early Middle Ages, but argues that *both* the internal and external perception of the Carolingian Empire and the symbolic changes that caused its creation are two valid ways to track how new sovereign entities were accepted.

In this chapter, there are several arguments that support this postulate: first, the papal decision to recognize the Carolingians as the new protectors of the papacy (despite the fact that Rome formally depended on Byzantium); second, the fact that the leaders of a rebellion against the Emirate of Cordova sent a delegation to Charlemagne to propose an alliance against Abd al-Rahman I, in addition to offering their loyalty and recognizing his sovereignty<sup>31</sup>; third, at the synod convened by Charlemagne in 794, two events occurred that showed that the new emperor was perceived as the dominant European sovereign: the arrival from Baghdad of a legation sent by the Caliph Harun al-Rashid and the fact that the Patriarch of Jerusalem directly asked Charlemagne (and not Byzantium) to guarantee the protection of the Christians of the Holy Land.

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<sup>28</sup> In the last 30 years, there has been a debate among specialists about the existence or nonexistence of a medieval international law. Some authors oppose it, because in their opinion, the unitary configuration of the Christian republic in European history would have eliminated the possibility of genuine interaction between differentiated sovereign entities. Others have argued that it did exist, but that it did not develop only within Christianity, yet precisely in the interaction between it and other political communities that bordered the Mediterranean Sea. Taking into account that studies on recognition between sovereign entities in the Middle Ages have an exploratory character, and wanting to include the terms of the debate mentioned in the previous paragraph, it is worth asking whether it would be legitimate to outline an interpretive alternative based on two ways of working: first, observing the transformations and adjustments made between the institutions of a Roman *Ius Gentium* that progressively became a Christian intra-imperial law, and second, studying the interaction of three power poles that arose around the Mediterranean Sea and that were consolidated as law for different international communities: Byzantium, the Islamic Caliphate and the Carolingian Empire. Of course, if this scheme cannot answer the essential question of thinking about the autonomy of medieval international law with respect to modern international law, it can constitute a basic guide to understand and to study the parallels and the links that would exist between sovereign recognition inside and outside of Christianity. See *Karl-Heinz Ziegler, Völkerrechtsgeschichte, München 2007 (2<sup>nd</sup> ed.)*.

<sup>29</sup> *Anneliese Nef/Elise Voguet (Ed.), La légitimation du pouvoir au Maghreb médiéval, Collection de la Casa de Velázquez 127, Madrid 2012.*

<sup>30</sup> *Gérard Leclerc. Histoire de l'autorité. L'assignation des énoncés culturels et la généalogie de la croyance, Paris 1996.*

<sup>31</sup> *Infra, Galle, §§; Cfr. Abdurrahman A. El-Hajji, Andalusian diplomatic relations with the Franks during the Umayyad Period, in: Islamic Studies 6.1, 21–46.*

A particularly suggestive scenario to address the problem of the existence of recognition among sovereign entities in the Middle Ages is the division of the Carolingian Empire among the descendants of Charlemagne. In his chapter, Warren Pez  analyzes the interaction between the three Carolingian kingdoms (West and East Francia, and Lotharingia) during a period “marqu e   la fois par une int gration forte, par des partages et par une intense activit  diplomatique [...]”.<sup>32</sup> The interaction between the kingdoms was made up of travels of diplomatic legations, royal encounters, treaties, alliances, and wars, that is, by the interactions between autonomous entities that perhaps may not be classified in a taxonomy based on modern statehood, but nonetheless possessed and exercised *de facto* sovereign powers.

In addition to offering an analysis of the speeches and practices related to recognition among the kingdoms, Pez  studies the way in which the political actors forced the Carolingian kings to respect the diplomatic pacts. The Treaty of Verdun (843), which divided the empire among the sons of Louis the Pious, created a political and territorial order to which one returned again and again through legitimate or illegitimate attempts at change, but also an order from which a new norm was released that escaped the power of the sovereigns. From 858, the bishops and the Pope became the *gendarmes of the treaties*, not only through the presence of the pontifical legations in the meetings between the monarchs, but above all by using excommunication to maintain the territorial divisions established by the treaty. The maintenance of these divisions constituted an “obstacle d cisif   la r unification du monde franc”, led to the emergence of the European kingdoms, and allowed the papacy to establish unprecedented authority among the sovereigns of Western Europe.

Galle and Pez ’s works emphasize the importance of the notions of empire and priesthood in the political order of the Middle Ages and in the modalities of recognition of authority, without reducing them to the figures of the Emperor and the Pope alone. The relevance of individual figures in the recognition process of a sovereign entity is undeniable (we will refer to them later on), but it would be pointless to reduce the problem of religious legitimation of political power to an issue of individual interactions. The great public assemblies, synods, receptions, marriages, and other mass events, properly ritualized, granted a divine dimension to power. Baptisms, anointings and coronations were a gateway to the political community, while excommunication was the most abrupt and feared exit gate. Does the recognition of a sovereign entity require a symbology tied to divinity able of conferring legality and legitimacy on it? Several of the examples cited in the works of Baltrusch, Galle and Pez  lead us to think so: the sacred is a guarantor of political agreements, and therefore, one of the aspects of recognition.<sup>33</sup>

### ***3.4 Recognition as a reordering: the construction and destruction of international orders***

Since it is a political institution that legitimizes the entry of a sovereign entity (city-state, commune, nation, state or federation of states) into a wider political community, international recognition has profound implications for the international order (*V lkerrechtliche Ordnung*) of a given period. By provoking the outbreak of a civil or international war, territorial fragmentation or acceptance of the existence of an independent nation, recognizing a new sovereign entity can lead to trauma and periods of destabilization or, conversely, lead to a period of peace under an agreement that restores institutional and diplomatic normalcy. We must now sketch in further detail the considerations made above on what it means to reorder an international order through recognition.

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<sup>32</sup> *Infra*, Pez , §§.

<sup>33</sup> Even in social and political contexts in which the secularization processes are quite developed, the celebration of masses and other types of religious manifestations continue to accompany official bilateral celebrations, the signing of treaties or the recognition of sovereign and independent states (as usually occur with such frequency in the countries of Catholic majorities with the *Te Deum*). Examples in this regard are numerous.

Between the periods of destruction and construction of international orders, the cycle of meetings that took place in the cities of Osnabrück and Münster in 1648 (better known as the Westphalia Congress) has special meaning for the history of the international system.<sup>34</sup> In the first place, it was the culmination of the Thirty Years' War (1618–1648), which originated in the divergences between the supporters of the Reformation and the Counter-Reformation, but in which all the powers of the region were later involved for reasons that were not necessarily related to religion, such as the need to maintain a favorable balance of power in the European context or to reach a hegemonic position against rival powers. Secondly, this set of alliances, this arena of competition for the prominence of principalities, duchies, kingdoms and empires, and this birthplace of new sovereign entities (the Netherlands and Portugal) ended with French hegemony being imposed over the rest of Europe. France used all possible political, military, and diplomatic mechanisms to weaken her powerful Spanish neighbor.<sup>35</sup> Finally, the Peace of Westphalia represented a profound reorganization of the Holy Roman Empire, a reorganization that not only curbed the Emperor's power, but also empowered its various entities through a common denominator: the emergence of the concept of sovereignty in political and diplomatic language.<sup>36</sup>

In her contribution to this book, Anuschka Tischer studies how the recognition (and non-recognition) of sovereign entities became one of the facets of the negotiations that took place during the Münster and Osnabrück meetings. One of the most interesting aspects of this work is the way in which she deciphers the complex links between the search for independence and the desire for political autonomy without reducing the latter to the former, since

not every quest for autonomy was a quest for independence, not every quest for autonomy or for independence was successful, not every recognition of a new status was the recognition of a new state, and finally not every recognition made in 1648 was actually a result of the Thirty Years' War.<sup>37</sup>

One of the most suggestive examples addressed in this work has to do with the status of Basel, one of the cantons of the Swiss Confederation. Tischer explains that during the Westphalia negotiations, Basel sent an agent to remind delegates that the canton belonged to the confederation and was not under the jurisdiction of the Holy Roman Empire, an argument that was rejected by the Emperor because he had accepted judicial proceedings against citizens of Basel, which amounted to considering them as subjects to the Empire's jurisdiction. As the Emperor wished to maintain good relations with the Swiss, and to the extent that they had the support of France and Sweden, Basel obtained a favorable result that did not force it to accept imperial jurisdiction and that confirmed its membership in the confederation. Tischer is emphatic in stating that this case cannot be interpreted as a recognition of independence—a legal status that was not clearly defined at the time—but underlines that in the context of the political reordering that the congress produced, the fact that the Emperor did not insist on Basel's belonging to the Holy Roman Empire was enough to guarantee the political autonomy of the canton.

As much as the Westphalia Congress, the transition between the 18<sup>th</sup> and 19<sup>th</sup> centuries has particular significance for the study of recognition among sovereign entities. Associated with a deep-reaching reorganization of the international order (as a result of the Atlantic revolutions) and

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<sup>34</sup> *Jean Beranger*, *Guerre et paix dans l'Europe du XVII<sup>e</sup> siècle*, Paris 1995.

<sup>35</sup> *Grewe*, *Epochen*, 325.

<sup>36</sup> *Infra*, *Tischer*, §§. See *Klaus Malettke*, *Les traités de paix de Westphalie et l'organisation politique du Saint Empire romain germanique*, in: *Dix-septième siècle* 210, 2001, 113–144.

<sup>37</sup> *Infra*. *Tischer*, §§.

the progressive and unquestionable rise of Great Britain as the dominant world power<sup>38</sup>, the transition was the moment when a new doctrine of international recognition emerged and an unprecedented expansion of the international community of sovereign states occurred.<sup>39</sup>

In the contribution of Daniel Rojas to this volume, entitled “The recognition of Latin American independences. A major transformation in the history of the Law of Nations”, he maintains that the recognition of the independent governments of Latin America was the key antecedent for understanding a new historical manifestation of recognition among sovereign entities. From the independence, the recognitions made in the Western Hemisphere were made by virtue of the political legitimacy conferred by the sovereign people to independent governments, as opposed to a dominant conception in the law of nations according to which the legality of any government depended on respect for the right of royal succession.<sup>40</sup>

Latin American independence represented a before and after in the history of international recognition. According to the argument that Rojas develops in this chapter, in the law of nations of the modern era, the fragmentation of a sovereign entity and the emergence of another created an exceptional situation that could only be solved with the transfer or renunciation of the rights of the preceding sovereign. To that extent, the legal existence of a new sovereign entity depended “on the continuity established with the internal political order of the previous political community”.<sup>41</sup> However, as long as there was no waiver or transfer of sovereign rights, the question arose as to whether “third States could recognize the sovereignty and independence of the separate territories and whether such recognition was valid under the international law of the time”.<sup>42</sup> This doubt was dispelled when a new practice was established to recognize independent governments headed by Portugal, the United States and Great Britain, who reinterpreted old tools of the law of nations or created new ones to accept the *de facto* existence of Colombia, Buenos Aires and Mexico.

With the recognition of Latin American independences, the principle of the normative force of the facts was affirmed as a source of legitimization in the creation of new sovereign entities and in international changes. This was not an entirely new phenomenon, since the need to deduce the legality of a government from its *de facto* establishment had already been present with the French recognition of the United Provinces and the United States. However, in both cases, the forum of European powers criticized the behavior of the French and doubted the validity of their actions because they disregarded the rights of the Spanish and British sovereigns. On the other hand, with Latin American independences, the factual validity of the recognition was imposed on the validity of *de iure*, approving an alternative source of popular legitimacy and laying the foundations for what would be a new type of recognition of sovereign entities based on popular support granted to a government.

### ***3.5 State, international law, and diplomacy***

Since the state structure constitutes the predominant form of political organization in our day, many academics have tended to give the concept “state” an abusive extension, using it to characterize any

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<sup>38</sup> Armelle Enders/Fabrice Bensimon (Ed.), *Le siècle britannique, variations sur une suprématie globale au XIXe siècle*, Paris 2012.

<sup>39</sup> Ziegler, *Völkerrechtsgeschichte*; Denis Alland, Anzilotti et le droit international public. Un essai, Paris 2012.

<sup>40</sup> *Infra. Rojas, §§.*

<sup>41</sup> *Infra. Rojas, §§.*

<sup>42</sup> Jochem A. Frowein, *Die Entwicklung der Anerkennung von Staaten und Regierungen im Völkerrecht*, in: *Der Staat* 11.2, 1972, 145–179.

type of sovereign entity in any period of history.<sup>43</sup> Moreover, many works of history and international law fall in the trap of equating the concepts of politics and the state, circumscribing the first to the second and suggesting that it would not be possible to conceive of politics as an independent sphere of the state. We have already seen how the concept of order can help us get out of this trap.

Several contributions to this book bring to light the interpretative limitations of studying the international dimension of sovereign entities based on a restrictive conceptualization of the state according to the criteria of the Montevideo Convention (*i.e.* government, territory, and people). Ernst Baltrusch demonstrates that the category *modern state* does not account for either the internal configuration of sovereign entities or their external interaction in the second century BCE, to which it should be added that the use of the category *state*, even in the 20<sup>th</sup> century, covers deeply dissimilar and hardly comparable realities such as protectorates, transitional governments and internationally unrecognized governments. The works of Galle and Pezé allow us to understand that the interaction between sovereign entities in the Early Middle Ages was in the hands of actors that did not possess statehood, such as the aristocracy and the clergy. Finally, when examining the diversity of problems related to the recognition and non-recognition of sovereign entities during the Westphalia Congress, Tischer asserts that participation within the international system did not really depend on being recognized as a state, because the varying degrees of integration and participation depended on the different degrees of sovereignty attributed to the kingdoms, duchies, and empires.

There is, of course, a connection in the critical use of *state* as category and others such as *international law* and *diplomacy*. Although almost all legal theories take as a general hypothesis the existence of the state to demonstrate other hypotheses (and to deduce the legality of the institutions), no conceptualization of public or private law can resolve the contradictions generated by the interaction between political powers in the international system: the final sovereign decision is not legal, but political.<sup>44</sup> Now, beyond the conceptual problem, it is not possible to maintain that the state is the sole basis of legal thought. The existence of an international order does not depend on the existence of states, just as the validity of a rule does not depend exclusively on its codification: it is enough to think of the Roman *Ius Gentium*, based on different normative sources that include natural law, customary law and the set of rules consigned in agreements or alliances. Contemporary international law is an important starting point for thinking about the history of the law of nations, but turning it into a model to understand any past type of law can, as in the case of the use of the concept of state, restrict the understanding of historical and political phenomena.

The case of *diplomacy* is analogous. Not all forms of diplomacy have a state dimension (prior to the 18<sup>th</sup> century there is a diversity of intra-imperial, infra-state and local diplomatic relations) and not all diplomatic interactions are carried out by career diplomats or are governed by legal, diplomatic, or consular instruments.<sup>45</sup> The rather recent idea of career diplomats as technicians and practitioners of international relations is closely linked to the development of bureaucracies and modern states of the late 18<sup>th</sup> and early 19<sup>th</sup> centuries<sup>46</sup>, which makes it necessary to accept that diplomatic activity has not always had a social field of its own, and was not always handled by diplomats *stricto sensu*. Thus, the transferability of the categories of state, international law and diplomacy before the 18<sup>th</sup>

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<sup>43</sup> Freund, L'essence du politique, 555.

<sup>44</sup> Carl Schmitt, Der Begriff des Politischen. Text von 1932 mit einem Vorwort und drei Corollarien, Berlin 2015.

<sup>45</sup> Nathalie Duclos/Nathalie Rivière de Carles (Ed.), Formes de la diplomatie (XVIe-XXIe siècle), Toulouse 2015.

<sup>46</sup> Gilles Ferragu, La diplomatie est-elle modernisable au XIXe siècle?, in: Marc Belissa/Gilles Ferragu (Ed.), Acteurs diplomatiques et ordre international fin XVIIIe siècle-XIXe siècle, Paris 2007, 100.

century can broaden the analyses of the historical evolution of recognition, but it can also limit them.

In coming across the categories of state, law of nations/international law or diplomacy in the following pages, readers should bear in mind three words of caution: *a)* the diversity of interactions between members of an international order cannot be arbitrarily assimilated to international relations between modern states; *b)* the history of international law cannot be treated solely through legal categories drawn from theories that justify the power of a sovereign; and *c)* diplomacy – that is, the set of procedures that allow the foreign policy of a sovereign entity to be defended – has diverse definitions that cannot be assimilated to the defense of the interests of a state by diplomats.

### **3.6 Recognition and non-recognition**

Recognizing one authority implies ignoring another. This is one of the essential political features of recognition among sovereign entities throughout history. It is why the reasons and justifications for the non-recognition of other powers often come together with political reasons and legal justifications for recognition. The contributions to this book show that every time a new power emerges, a binary space is created in which the other entities may or may not recognize it: the Hasmonean dynasty was recognized by the Romans, but not by the Seleucid kings; the United Provinces of the Netherlands were recognized by France, but not by Spain; the Latin American republics were recognized by Portugal, Great Britain and the United States, but not by the members of the Holy Alliance...

In the 20<sup>th</sup> century, the doctrines of non-recognition sought to gain legitimacy through the *ex injuria jus non oritur* principle, according to which the right cannot be deduced from an illegal act (*i.e.* invasion of the territory of a state to exercise sovereignty by another state).<sup>47</sup> But no legal argument can object that the main motives for the execution of such doctrines were the individual interests of the states and the execution of their foreign policy.<sup>48</sup> The Tobar Doctrine, for example, enunciated by Ecuadorian Foreign Minister Carlos Tovar in 1906 and addressed to the states of the American continent, stated that Latin American governments should avoid recognizing unconstitutional governments installed *de facto* in power.<sup>49</sup> On the occasion of the Japanese invasion of northern China and the creation of Manchukuo, the American Chancellor Henry Stimson formulated in 1932 the Stimson Doctrine, whereby the United States would not recognize territorial changes made by force<sup>50</sup>; this doctrine was used again in 1940, when Washington did not recognize the annexation and incorporation of the Baltic States into the USSR.<sup>51</sup> In 1959, Venezuelan President Romulo Betancourt proclaimed in his inaugural address (what later became known as the Betancourt Doctrine) that he would work for cooperation between the democratic governments of the American

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<sup>47</sup> Frederick A. Middlebush, Non-Recognition as a Sanction of International Law, in: Proceedings of the American Society of International Law at Its Annual Meeting (1921-1969), 1933, 40–55.

<sup>48</sup> There is an unresolved debate regarding the usefulness of this principle in international law, because in practice and despite the fact that the International Court of Justice considers it to be a well-established principle, the normative force of the facts, that is, the effectiveness, tends to prevail as a preponderant principle over the *ex injuria jus no oritur* principle. To this we must add that once a situation of fact established, the other states tend to accept it without questioning the illegal act(s) leading to the creation of a new sovereign entity. Anne Lagerwall, *Le principe ex injuria jus non oritur en droit international*, Brussels 2016.

<sup>49</sup> Leonidas García, La doctrina Tobar, in: Revista de la sociedad jurídico-literaria, Enero-febrero 1913, 25–71; Charles Stansifer, Application of the Tobar Doctrine to Central America, in: The Americas, 23.3, 1967, 251–272.

<sup>50</sup> Juan Pablo Scarfi, The Hidden History of International Law in the Americas. Empire and Legal Networks, New York 2017.

<sup>51</sup> John Hiden/Vahur Made/David J. Smith (Ed.), The Baltic Question During the Cold War, London 2008.

continent, the breaking off of diplomatic relations with dictatorial governments, and the exclusion from the Organization of American States (OAS) of governments that did not respect free elections or human rights.<sup>52</sup>

The set of extra-legal factors involved in the formulation and execution of non-recognition policies are based on political decisions that can lead to international interventions and wars. As had already occurred with the doctrines of non-recognition elaborated in the different congresses of the Holy Alliance in the early 19<sup>th</sup> century, the revolutions of the early 20<sup>th</sup> century again raised the question of whether the form of government was a prerequisite for recognition: this is what happened with the government installed in Russia after the October Revolution of 1917. In his chapter, Georg Schild reconstructs the set of positions and the international environment that led the Woodrow Wilson administration to deny diplomatic recognition to the new Bolshevik regime.

The US first remained on the sidelines of the First World War, but eventually supporting the Allies with troops and military resources in 1917. Very soon, the main international goal of the Wilson government became to avoid the triumph of the central powers in Europe, something that required the maintenance of the war effort on the western and eastern fronts. However, while a part of the new government in power in Russia wished to continue the war, Lenin and the Bolsheviks viewed it as an “imperialist predatory war” between capitalist powers in which the Russians should not intervene.<sup>53</sup> Wilson rejected the ideology of the Bolsheviks as being contrary to the democratic ideal that all nations should pursue in their foreign policy, but their main reason for not recognizing them was the fact that once they had consolidated their power; they would leave the eastern front, something that would strengthen the central powers and have dire consequences for the US troops on the western front.<sup>54</sup>

The United States’ refusal to recognize the new Russian government left open the possibility of military intervention. Thanks to a thorough study of diplomatic cables, Schild demonstrates that in December 1917, the Wilson administration was fully aware of the political and territorial power of the Bolsheviks; however, the need to guarantee Russia’s steadfast engagement in the war and the deep rejection of communism had led him to give technical and economic support to the provisional governments of Alexander Kerensky (who, unlike the Bolsheviks, was in favor of keeping Russia in the war) and to send 5,000 American soldiers who fought in the “North Russia Expeditionary Force” between 1918 and 1919. In this and other cases, non-recognition represented the possibility of foreign military intervention.

The Cold War brought about new changes in recognition among sovereign entities.<sup>55</sup> The struggle between the two blocs had consequences for the political and spatial organization of the international order, such as the internal division of Germany, Korea, China and Vietnam. These cases have been widely commented in the legal and historical literature because they created

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<sup>52</sup> *Luis García Arias*, La desaparición de la doctrina Betancourt sobre no reconocimiento de gobiernos “de facto”, in: *Revista española de Derecho internacional* 22.1, 1969, 104–106.

<sup>53</sup> *Vladimir Lénine*, Thèses d’avril, in: *Œuvres choisies en 2 volumes*, vol. 2, Moscow 1947.

<sup>54</sup> *Infra*, *Schild*, §§.

<sup>55</sup> This period, which occurred between the end of World War II and the fall of the Berlin Wall, was characterized by the rivalry between the blocs headed by the United States and the Soviet Union, by the emergence of the atomic arsenal as a new geopolitical variable and by the consequences of the emergence of the “Third World” on the international scene. *Grewe*, *Epochen*; *Ziegler*, *Völkerrechtsgeschichte*, 213.



completely unprecedented situations in the international system and were propitious for applying doctrines of recognition and non-recognition.<sup>56</sup>

In his contribution to this book, Amit Das Gupta explains that the decision by the new independent Indian State not to recognize the German Democratic Republic (GDR) was based on the defense of its own interests. Delhi hoped to preserve ties with the western countries to ensure technology transfers and industrial assistance that would make the country's modernization possible in the years to come. The decision taken in 1949 not to recognize the GDR as an independent government was postponed for 23 years and had consequences that went beyond the scope of Indian foreign policy: "Delhi's non-recognition of the GDR set the example for many African and Asian governments and willy-nilly massively contributed to the [German Federal Republic's] campaign to keep its hostile twin isolated".<sup>57</sup>

Das Gupta explains that India's international position before 1947 is an illustrative case to understand that the independence of a sovereign entity is not a *sine qua non* condition for participating in the international system.<sup>58</sup> In fact, India had gained an outstanding experience in the world before its separation from the British Crown: "It had been the only non-sovereign full member of the League of Nations and other international organizations", in addition to having sent a large number of diplomatic missions to the whole world under Nehru's provisional government (when the country was still under British rule). In addition, due to the colonial heritage and its participation in the Second World War, Delhi had inherited a military mission in the British sector of Berlin and was to receive 2.9% of German war reparations, something that somehow made the new country an actor with a certain weight in the delicate German question.<sup>59</sup>

Throughout his paper, Das Gupta offers various analyses of Delhi's decision-makers and diplomatic actors who were in the German Federal Republic to explain the motivations and orientations of Indian foreign policy towards the two Germanies in 1949. That anthropological and sociological prism is important to understand, first, what reasons motivated the appointment of certain people in the diplomatic mission of Bonn; second, why the decision was made not to open a mission in the Soviet occupation zone of Berlin; and third, how the policy of Indian neutrality was built against the blocs facing off in the Cold War.

The expansion of the capitalist and communist blocs not only created internal divisions such as in Germany or Korea, but also meant that sovereign concessions were made within the framework of the political and military pacts to guarantee the internal consistency of the blocs and the hegemony of the two superpowers. In the case of the Soviet bloc, as Raymond Aron studied in one of his works, the Warsaw Pact (1955) represented the passage from bilateral diplomacy based on treaties to multilateral diplomacy based on Moscow's military control, thanks to the legalization of the presence of Soviet troops stationed on the territory of the different members of the communist bloc.<sup>60</sup> If, in general, the policy of the communist bloc towards the capitalist bloc was dictated by Moscow, there were also differences with the eastern people's republics about the form and terms in

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<sup>56</sup> The Hallstein Doctrine, for example, popularized by Walter Hallstein and Konrad Adenauer, but conceived by Wilhelm Grewe, argued that with the exception of the USSR, the German Federal Republic would not establish or maintain diplomatic relations with any country that recognized the German Democratic Republic.

<sup>57</sup> *Infra*, Das Gupta, §§.

<sup>58</sup> See also *Sumit Ganguly*. *Engaging the world: India's foreign policy since 1947*, Oxford/New Dehli 2015; *Misra Kashi*, *India's Policy of Recognition of States and Governments*, Bombay 1966.

<sup>59</sup> *Infra*, Das Gupta, §§.

<sup>60</sup> *Raymond Aron*, *Paix et guerre entre les nations*, Paris 1992.

which such relations were to be built: as in the Romanian case, these divergences were reflected in the exercise of political autonomy within the bloc and questioned the leadership of the Soviets.<sup>61</sup>

Pierre Bouillon studies the problem in “La diplomatie française face à la revendication roumaine d’indépendance par rapport à l’URSS: une remise en cause ambiguë de l’ordre de la Guerre froide”, the last historical contribution of this volume. The approaches between Bucharest and Paris corresponded to the Romanian will to exercise its autonomy with respect to Moscow, while the objective of France was to modify the order of the Soviet bloc “en transformant en outil de subversion la reconnaissance attendue sur le plan diplomatique”.<sup>62</sup> In that way, the real wager for Romania was not to obtain recognition of its sovereignty, as it was already an independent sovereign state, but to demonstrate that, despite its alliances with the communist bloc, it was a fully sovereign state.

The diplomatic recognition of political autonomy reached its paroxysm with the presidential visits of De Gaulle to Bucharest in 1968 and of Ceaușescu to Paris in 1970. The symbolic dimension of presidential visits cannot be ignored when studying the general problem of recognition since these trips represented the exercise of the political autonomy of both countries in relation to their respective blocs: by visiting Bucharest, De Gaulle distanced himself from Washington’s policy regarding the eastern bloc and created a French approach to dealing with its countries. That approach was not an isolated factor, since Bouillon explains that it was framed in the context of the *détente*, the *Neue Ostpolitik* and the policies followed by the United States and Italy to approach the people’s republics. On the other hand, aware of the precedents of the Hungarian Revolution (1956) and the Prague Spring (1968), Ceaușescu relied on cooperation with French diplomacy, on its contacts with the Security and Cooperation Council of Europe, and on his visit to Paris to keep some leeway with respect to Moscow. In the short term, this leeway took the form of positions that generated discomfort among the Soviets such as the Romanian refusal to participate in the invasion of Czechoslovakia, and the distancing of the “Pacte de Varsovie dans la crise opposant l’URSS à la République Populaire de Chine”.<sup>63</sup>

### ***3.7 An anthropology and a sociology of recognition practices***

The political content of the category “international recognition” can be expanded or limited depending on the particular orientation of a work or its position in an analytical school, but it cannot be ignored. All contributions to this book prove that the entry of a new sovereign entity into an international order is never reduced to pure technical or legal issues; it is also a practical process that contributes to the political reordering of a community of powers. We would like to conclude this introduction by proposing a new angle of observation of recognition among sovereign entities, which – in addition to using tools of international law, political science and history – also includes Anthropology and Sociology.<sup>64</sup>

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<sup>61</sup> *Vladimir Tismaneanu*, Gheorghiu-Dej and the Romanian Worker’s Party: From De-Sovietization to the Emergence of National Communism, Woodrow Wilson International Center for Scholars, Working Paper no. 37, Cold War International History Project, Washington D.C. 2002.

<sup>62</sup> *Infra*, *Bouillon*, §§.

<sup>63</sup> *Infra*, *Bouillon*, §§.

<sup>64</sup> *Raymond Scupin*, Anthropology, Conflict and International Relations, in: Steve A. Yetiv/Patrick James (Ed.), *Advancing Interdisciplinary Approaches to International Relations*, Cham 2017, 153–187.

To speak of an *anthropology of recognition* means to analyze the interactions between human actors that occur during the recognition process of new sovereign entities in the long run.<sup>65</sup> By studying cases so temporally and spatially distant and keeping an eye on the praxis of politics, the various contributions that make up this book clarify recurring problems and their inductive analysis makes it possible to establish transhistorical patterns and rules of a political and normative game. Among these recurring problems is, for example, the strong anchorage on specific persons that the new sovereign units require in their search for legality and legitimacy. Whether they are city-states, monarchies, tyrannies, republics or empires, the new regimes not only lack legitimacy at the level of their relations with other sovereign entities, but also institutional strength. This explains why, in different circumstances and places, the emergence of depositary figures of authority can reduce the complexity and contingencies of political changes (Judas Maccabeus, Charlemagne, Simón Bolívar or Lenin). The phenomena related to the personalization of power, which are inconsequential for legal studies, nevertheless have an undeniable importance to understand the creation of new forms of power based on relationships of personal subjection, dependence and loyalty.

The anthropological dimension of recognition also makes it possible to understand the symbolic aspect that legitimizes political transformation through national holidays, or spatial and moral codes that reproduce a political order through the sacralization of places or the exaltation of a pantheon of heroes. An anthropological perspective allows us to reconstruct a grammar of recognition practices: the swearing of solemn oaths when concluding a treaty; the management of distance and travel (a meeting halfway is a frequent scenario); the public reception of envoys, and all the gestures and rituals that come with it. Contrary to what we often believe, modern societies did not totally outperform these pre-modern forms of political agency; the press comments on every detail of such an apparently casual gesture as a handshake between two presidents still demonstrate this regularly.<sup>66</sup>

Thinking about a *sociology of recognition* implies studying the personnel involved in the recognition processes through the lens of their official status, agency, and strategies.<sup>67</sup> Decision-makers do not make these decisions alone: they are surrounded by officials, by counsellors, by experts. The human interactions within these circles of power are not mechanic and a legal-institutional approach fails to grasp them. We tend to assume that Modernity and the development of state has highly rationalized the division of tasks among experts in the circles of power (in our perspective, this is particularly true for the creation of a permanent and specialized diplomatic personnel); that is certainly true, but, as the contributions to this volume show, it does not mean that the rationale of anthropological politics no longer plays its part. As G. Schild shows, Woodrow Wilson listened with special care to the advice of Colonel House, who was neither an expert nor in a high position of power.

In virtually all recognition scenarios, we find non-state actors such as corporations, clerics, social elites, or civil service bodies. As can be seen in Antiquity or the Middle Ages, when regalian competencies were not assimilated to state structures with well-defined contours, the management and distribution of power were mixed with personal domination networks or with ritualized and sacralized dynamics. In the contributions on the pre-modern period (E. Baltrusch, Ch. Galle, W. Pezê), we see that those whom we would deem to be “non-state” actors, such as aristocrats or

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<sup>65</sup> See Georges Balandier, *Anthropologie politique*, Paris 1967.

<sup>66</sup> Katie Rogers, *All the President's Handshakes*, New York Times, July 14, 2017.

<sup>67</sup> George Lawson/Robbie Shilliam, *Sociology and international relations: legacies and prospects*, in: *Cambridge Review of International Affairs* 23, 2010, 69–86.

clerics, not only were involved in a recognition process, but also shared a part of what we now call “sovereignty” or “statehood”. This fact significantly blurs the line between what we see as internal and external recognition (see in particular the contribution of Ch. Gall on the “ internal” recognition of Charlemagne). However, in the 18<sup>th</sup> century, as the political increasingly assimilated to the emerging modern states, new military and diplomatic actors appeared. This personnel was responsible for managing and negotiating the distribution of power among the different poles that make up the international order. But their strategies of action were not unambiguous; they may have aimed at strengthening a public or private power, at defending a group or social class, or at pursuing an external policy objective. The social and political domains are still narrowly intertwined.

A purely institutional or jurisprudential perspective of recognition would fail to capture all the phenomena we seek to clarify with a political, anthropological, and sociological approach. A purely historical perspective would establish an insurmountable distance between periods and spaces that could not be compared without falling into the trap of anachronism. Hence the methodological utility of this book is twofold: on the one hand, it is an invitation to think about the long-term continuities to extract the recurring patterns that arise when recognizing new sovereign entities. On the other hand, it is a guide to examine the phenomena of international recognition under a renewed perspective, taking account of a great diversity of cases and scenarios from Antiquity to the 20<sup>th</sup> century.