frontiers. International law has permeated every facet of international life.

At the same time, we have had a revolution in the subjects of international law. One of the most notable trends in modern international law has been the change in attitude towards the identity of international legal actors. It used to be that States were the only recognized subjects of international law, the only "real" players on the international scene. But, as has already been discussed, the subjects of international law have been broadened to include other kinds of actors. These include international organizations or institutions as collectivities of nations (discussed in Chapter 6) and, perhaps even more importantly, the growing role of individuals as holders of both international rights and duties (considered in Chapter 7).

As international legal actors have diversified and the legitimate topics of international legal regulation have expanded, the dividing line between "subjects" and "objects" has blurred. And that is probably for the best. But it remains essential for international lawyers to fully understand both the "roster" of international legal players, as well as the "playing field" that is the permissible range of international legal regulation. That is accomplished in this Part by first looking at international law actors (the subjects of international law), and then examining the topics of international law administration (the objects).

A. State Identity, Sovereignty and Legitimacy

Despite what I have just said about the extraordinary transformations in international law in the last century, States remain the preeminent actors in international law. Barring a move toward World Government, nations will always be at the center of international law and international law-making. The essence of statehood is *sovereignty*, the principle that each nation answers only to its own domestic order and is not accountable to a larger international community, save only to the extent it has consented to do so. Sovereign states are thus conceived as hermetically-sealed units, atoms that spin around an international orbit, sometimes colliding, sometimes cooperating, but always separate and apart.

If statehood is considered a definite status, membership in the "family" or "community" of nations is highly desired. States are unqualifiedly entitled to the full panoply of rights and duties under international law. Among these is the capacity to enter into treaties, which is essential to the formation of consensual rules of international behavior. (States are also critical in the process of the formation of customary international law, although other types of

international actors, particularly international institutions and non-governmental organizations, may also be involved in the process of developing new rules of conduct.) Likewise, only States are eligible to become full members of international organizations. Nations are also able to claim breaches of international law obligations and to seek redress. Other international actors (including individuals and transnational corporations) are often held to the same standards of conduct as States, even though their avenues for relief when their rights are violated may be more limited. States alone usually enjoy the full range of privileges and immunities from other nations' exercises of jurisdiction (including the significant right to claim sovereign immunity). Lastly, and most importantly, only nations (or insurgent groups aspiring to statehood) have the right under international law to engage in war or armed conflict as an instrument of policy, and even then under prescribed circumstances.

It is this bundle of rights that international lawyers regard as the core of sovereignty. Of course, there are concomitant duties imposed on States by international law, not the least of which is the responsibility not to violate the rights of other nations. All of this leads to the not so surprising conclusion that political entities aspire to statehood, and that such assertions of State identity can often lead to contentious legal disputes.

The classic statement of the elements of statehood under international law can be found in the 1933 Montevideo Convention. Article I of this treaty declared that "The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states." And although this formulation has been criticized, the dominant view is that this remains the customary international law standard of statehood.

Two of the four elements—territory and population—are fairly straight-forward and objective. Territory, which is the paradigmatic "object" of international law (something that is being *acted upon* by international legal players) is an obvious necessity for statehood. The Montevideo Convention requires only that a putative State's territory be "defined," but even this may not be a hard-and-fast requirement. A nation may have territorial disputes with its neighbors, thus its boundaries may not be fully demarcated, and yet that does not disqualify it from statehood. So long as a country's borders are sufficiently consistent, that will suffice. (These issues for territory will be further considered in Chapter 10.)

That still begs two problems having to do with territory and statehood. One arises in the faintly comic circumstance when "nations" are created in some pretty outlandish ways. In two

different cases—one arising in Germany and the other in the United States[1]—some intrepid individuals purported to take over offshore platforms or submerged coral reefs, declare their own independence (calling their States "Atlantis, Isle of Gold" or the "Duchy of Sealand"), elect their own officials, and issue their own passports. This was ruled inadmissible under international law, since territory must be a naturally formed part of the Earth's surface to qualify. But, by the same token, international law has recognized a host of "micro-States," entities of exceedingly small size, like Monaco or the Vatican City (both less than 1 sq. mile) or Nauru (8 sq. miles). Whether such tiny entities can otherwise satisfy the criterion of statehood has sometimes been questioned, but the issue of size appears to be irrelevant.

Likewise, the fact that a putative nation's population is small or widely-dispersed has been disregarded for purposes of statehood. As long as a State's population is a group of persons leading a common life and forming a living community, then it qualifies. Under this standard, the officials and support staff of the Roman Catholic Church at the Vatican City qualify, while the fun-loving folk who created "Atlantis" or the "Duchy of Sealand" did not. But even where a population of an area is largely nomadic, and thus widely transitory, the World Court has indicated that may still suffice for purposes of "permanence."

Aside from the population and territory factors, the most contentious issues of State identity arise from the last two of the Montevideo elements: government and a capacity to enter into international relations. These are often combined into a single inquiry of whether an entity has sufficient independence to exercise international rights and to discharge international responsibilities. Some polities have delegated responsibility for the conduct of their international relations to other countries, and questions have arisen whether they can independently engage in international relations. The Principality of Liechtenstein, tucked away in the Austrian Alps, has assigned its foreign relations to Switzerland, and was thus disqualified from membership in the League of Nations, even though it was later allowed to sign the ICJ Statute (open only to States) and has, in fact, litigated cases before the World Court.

Entities that are in a position of dependence to other nations, whether as colonies or protectorates, are also notionally barred from statehood. Self-governing territories of metropolitan governments (think of Puerto Rico or French island colonies in the Caribbean) may not be regarded as States. Yet, entities that are in a position of "association" with other countries—and may have also

1. See *In re Duchy of Sealand*, 80 International Law Reports ["Int'l L. Rep."] 683 (Admin. Ct. Cologne 1978) (Ger.); *United States v. Ray*, 423 F.2d 16 (5th Cir. 1970).

delegated substantial security functions to another nation—can be admitted to statehood. (One example of this is the Federated States of Micronesia, a former trust territory of the U.S. in the Pacific, which was admitted to United Nations membership.)

An ever-present problem for international law is what to do with entities that are created in violation of legal norms. This often arises from impermissible military conquests in which the victorious State declares a sham entity in order to gain some kind of political or diplomatic advantage. One notorious illustration of this was the creation by Japan of the "puppet" state of "Manchukuo" in northern China after the illegal Japanese invasion of that country in 1931. The League of Nations refused to accept Manchukuo as a State, and this incident prompted the United States to enunciate a principle (known as the Stimson Doctrine) that it would not accept the forcible creation of entities in violation of international law. This same principle motivated the United Nations to refuse to accept the membership applications of "Transkei," a black homeland or "bantustan" created by the white minority government in South Africa in the 1970's as a way to deflect criticism of that government's racist policies.

Finally, there are some *sui generis* or special political entities that do not aspire to statehood. International law has accepted the creation of a host of "internationalized territories," in which disputed areas are placed under the nominal sovereignty of one nation but with the actual supervision by an international organization. For example, the cities of Danzig and Memel were placed under an internationalized status by the old League of Nations. Tangier and Berlin were similarly treated by agreement of certain States. (Proposals are periodically made to place Jerusalem or Kashmir under such a scheme.) Although the status of these entities was litigated before the World Court, in no instance were any recognized as a full-fledged State, despite otherwise having the criteria of statehood. Likewise, the government of Taiwan has, to date, disclaimed any intention of asserting statehood, adhering instead to the fiction that there is but one China.

In all of this discussion of statehood, one thing to keep in mind is that the legitimacy of a State system based on sovereignty is the principle of self-determination. In order for nation-States to have any meaning and validity, they must be truly representative of peoples and of national aspirations. If international law is going to privilege States as the critical actor in international relations, then statehood had better mean that each State and its institutions are supported by some form of national consensus.

This does not currently mean that the government of each State must be supported by popular sovereignty or democratic

principles in order to be legitimate under international law, although there may well be an emerging norm to that effect. Rather, self-determination is a principle related to the rights of peoples and distinct nationalities to have a State that is representative of their national aspirations. And as principles go, this has developed only since the early 1900's,[2] accelerating in the aftermath of World Wars One and Two and the process of decolonization in the 1960's and 1970's.

Despite this customary international law norm of self-determination as an implicit qualification of statehood and sovereignty, there are many notable conflicts in the world today based on separatist and irredentist movements around the world. (Consider the Basques in Spain, the break-up of the former Yugoslavia, Québecois separatists in Canada,[3] or the Kurds in the Middle East.) Likewise, international law has come to recognize a role for national liberation movements (like the Palestine Liberation Organization) as actors in international relations. Even so, international law remains conflicted because while it supports self-determination as a litmus test of State legitimacy, it also opposes the forcible dismemberment of existing States.

B. Recognition of States and Governments

There is, of course, an unspoken assumption in the criterion for statehood enunciated in the Montevideo Convention—that other nations are prepared to treat a particular entity as a member of the family of nations. Issues revolving around the recognition of States and the governments of States have proven to be some of the most contentious in international relations. Unfortunately, the international law on these topics has been unsatisfactory, to say the least. The doctrines surrounding recognition of political entities as States are distinct from the question of whether the government or particular leadership of a State should be dealt with diplomatically. For example, no one questions that Cuba is a State satisfying all the Montevideo qualifications, and yet the United States refuses to extend recognition to the Castro regime and to normalize diplomatic relations. Conversely, whether Palestine can be said to be a State has more to do with the nature of the political entity, its territory and people, rather than relations with a particular government or leader.

Recognition of States has been bedeviled by a theoretical construct that can fairly be described as arcane. At one extreme are

2. See Aaland Islands Question, LEAGUE OF NATIONS OFFICIAL JOURNAL Spec. Supp. 3 (1920).

3. See *Reference re Secession of Québec*, [1998] 1 S.C.R. 217 (Sup. Ct. Canada).