Sovereignty conflicts and the desirability of a peaceful solution:
Why current international remedies are not the solution

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Abstract As with any kind of conflict, sovereignty issues can be addressed in a variety of ways and—possibly—solved. This paper highlights the main remedies applied at international level and assess why it is reasonable—at least—to doubt the value of their application. Independence, self-determination, the Antarctic solution, and many other remedies are reviewed. Although they may be the answer for some sovereignty conflicts, they present—for the reasons shown in this paper—a certain degree of uncertainty that make us doubt about their value. What I argue and this paper demonstrates is that there is a need for a peaceful solution that the reviewed international remedies cannot offer. What we need is a solution that no party may reasonably reject, whereas what we have is existing solutions that one or more parties may not accept.

Keywords State sovereignty, sovereignty, sovereignty conflicts

There are many cases that can be characterised as sovereignty conflicts in which international agents (namely, two sovereign States and the population of the third territory under dispute) claim sovereign rights for different reasons over the same piece of land. Besides, these conflicts have a particular feature: their solution seems to require a mutually exclusive relation amongst the agents because it is thought that the sovereignty over the third territory can be granted to only one of them. Indeed, sovereignty is often regarded as an absolute concept—i.e. exclusive, and not shareable.[1]

Like any other conflict, sovereignty disputes can be addressed in different ways. The alternatives go from secession (with or without partition) in the form of self-determination and independence to continuing with the *status quo*. In other words, there are several ways of dealing with sovereignty conflicts. Some of them have proven to be effective, others are only theoretical solutions and some are—for whatever reason—not desirable. We will see some of them in this article and assess if it is reasonable—at least—to doubt the value of their

application. That is because I assume we want a peaceful solution that acknowledges—to an extent—the claims of all the agents. So, solutions that imply ignoring claims, unfair policies, use of force or any action that may go against basic human rights will be not viable.

Indeed, I am not claiming that 'one way fits all'. This paper will not offer a solution to these sovereignty conflicts. What I aim is to show that there is a need for a means that secures a pacific solution to sovereignty disputes. Therefore, by addressing the pitfalls of other international remedies that so far have proven to be inadequate in solving the types of sovereignty conflicts we are interested in, we identify both the need of a peaceful solution and an opportunity to offer another way of dealing with them.

Possible solutions in sovereignty conflicts

As there are three agents involved in sovereignty disputes of this kind, the possible solutions can be grouped depending on how they interact amongst themselves: a) unilateral solutions; b) international-multilateral solutions; c) bilateral solutions.[2]

Unilateral solutions

This group of solutions is centred on one of the agents. The decision regarding sovereignty is taken by one of the agents involved, whatever the consequences to the others. The opposition of the other party or parties is not taken into account, and the rights they claim are either reduced or completely ignored. This could happen in three different ways: 1) the successful party denies that the other party has these rights at all; 2) the successful party admits these rights but claims that other rights overrule them; 3) the successful party admits these rights but chooses as a matter of realpolitik to ignore them.

a) Fortress

This term was used in particular in relation to the Falkland/Malvinas Islands, which were called 'Fortress Falkland'.[3] After the 1982 war, the United Kingdom decided to strengthen the defence system of the Falkland/Malvinas Islands. Thus, this policy appears to be an actual reality in the British international agenda.[4] Without entering into specific details in relation to the Falkland/Malvinas Islands case, this approach is characterised by a unilateral decision of one of the sovereign agents to secure the non-sovereign territory against

its international rival in the conflict (and any other aggressor). Although the preeminent feature is the defence system, this approach has direct consequences for the economy of both the third territory and the sovereign State providing the means to defend it.

A direct negative result of this solution is that the basic problem related to sovereignty remains unresolved. Sovereignty is not granted either to the third territory or the sovereign State in charge of the defence. Indeed, the *de facto* sovereignty may rest on the agent that defends the third territory; however, no *de jure* sovereignty is recognised by these means. Moreover, the consequent costs of—mainly but not only—defence and diplomacy are substantial and have to be supported only by one of the agents—the one intending to defend the third territory. Finally, although this approach offers a short-term solution, the long term overall situation is uncertain in two ways: first, the sovereignty issue remains unresolved as discussed; secondly, the defence of any territory is a mutable feature (e.g. the United Kingdom defence power is a factual variable that depends on many factors, one of them being its economy, currently affected by the international financial crisis). In addition to the previously mentioned practical consequences, there is no reason to think this approach is just.

b) Integration and free association

Both integration and free association[5] are in essence ways in which individual political organisations join in a larger whole. The difference depends on the degree of sovereignty they are willing to surrender. For instance, integration implies tighter links between the agents: one of the given political communities becomes part of another one. In contrast, free association does not imply full integration but close links in regards to specific areas (e.g. economy, security, etc.) usually after independence is achieved from another sovereign State (e.g. Cook Islands and New Zealand, Federated States of Micronesia and the United States, etc.).

In these cases, independence is either assumed as a starting point or as an ultimate goal. In what is specific to the kind of sovereignty conflicts that are the object of this paper, at least one of the agents is always against this solution (e.g. Argentina has been and still is opposed to Falkland/Malvinas Islands' independence). That is because it is common in any sovereignty dispute that the third territory has tighter links with one of the involved sovereign agents in, for example, cultural background, ethnicity, historical links or geographical location. The direct consequence is that the State that is more distant, in whatever way, from the third territory will see its position worsened in comparison to its opponent. When the

dispute is still in place none of the sovereign States is in a better position to make use of their intended rights over the third territory (at least in terms of *de jure* sovereignty). However, if the third territory becomes integrated with or associated to the sovereign State with which it had previous tighter links, this State will be in a better position than the more distant one, since now the newly integrated/associated territory will not need to consider the more distant sovereign State.

Indeed, there are cases where this may work. For instance, the proposal for some of Israel's West Bank settlements is integration in Israel with compensation in the form of land to Palestine. But, although integration either in its pure form or as free association may encourage equality between the populations participating in the process, this international institution has been designed bearing in mind situations in which there are only two agents—the one being integrated and the one welcoming party. In the cases contemplated here, the agents are three, so integration would mean leaving one of them out of the equation. Ergo, it would be opposed by that one agent unless they agreed to withdraw, with or without compensation. The consequence is an unbalanced relation amongst the agents. At least in a *status quo* all of them are in a similar position; with integration, one of the sovereign States might be completely left outside the picture.

c) Independence

This is the extreme unilateral view, since it entails the absolute separation of the third territory as an autonomous political organisation. The third territory would become a new sovereign State. There are several reasons both to support independence and to oppose it.

The main problem is the constant opposition of at least one of the already sovereign States (e.g. Argentina in the case of Falkland/Malvinas Islands). Against this position it may be argued that the claims of one of the agents should sometimes be overridden. This could be because of: a) the legal position (e.g. the 'New Territories', later part of Hong Kong's territory, had to be returned to China because they were on lease, and the lease came to an end); b) the desires of the inhabitants in a territory that is viable economically and for defence might be enough to make independence the best option (e.g. the wish of the overwhelming majority of the inhabitants of the Falkland/Malvinas Islands to be British).[6]

Undoubtedly, there would be different inhabitants under different circumstances so the question about the legitimacy of which group of inhabitants counts will arise—e.g. past, current of future generations. As a result, there is at least an argument for saying that these

desires do not count fully or without certain controversy. In addition to this, in one or the other case—the legal issue or desire of the inhabitants—the key point that makes independence neither a useful nor a realistic solution is its viability. Although in most cases the third territory may appear viable on its own to some extent, it cannot be to the extent necessary to be granted the condition of fully independent political organisation (e.g. both Hong Kong and Falkland/Malvinas Islands do not have a defence system and must depend upon another agent in case of threat or attack, China[7] and the United Kingdom[8] respectively). In addition to the defence system, sovereignty disputes usually concern a third territory without enough resources, means or development to support their existence in the international arena as a fully autonomous entity (hence, independence is usually replaced by integration or limited by free association).

Against the argument about the viability of the third territory as a fully independent political organisation, it is true that there are sovereign States that do not have their own defence system or a strong economy and possess a small territory and population (e.g. San Marino, Monaco, Vatican City), but are still respected as sovereign. Nevertheless, the similarities they share with the territories whose sovereignty is disputed are only superficial: they are all small pieces of land with a small population, but strong local authorities and law, and this makes this counterargument irrelevant. Also, although these sovereign States would not be independent political communities without aid from another sovereign State, there are historical, geographical, demographical reasons why this is provided. Moreover, in none of these cases is there a third party (or even a second party) disputing sovereignty. But, in sovereignty conflicts that are the object of this paper there are several claimants. Thus, the fact that the third territory has usually tighter links with one of these claimants may imply the consolidation of these bilateral relations if full independence was achieved, leaving aside that sovereign State that was in the first place against it. So independence would be a subterfuge and not a real solution.

One of the ways in which contemporary political literature addresses independence is through the theory of secession. Secession[9] and partition in the context of a sovereignty conflict imply the separation from another sovereign State. The immediate consequence is the birth of an independent political organisation that—if recognised by its peers—may be a new sovereign State. It does not imply a revolution as it does not mean the validity of the central authority of the sovereign State is challenged. What is challenged is the fact that the given

population that wants to secede understands for whatever reason the necessity of having an independent government.

There is a subtle difference between secession in general and secession in the particular case of sovereignty disputes object of this paper. In the first case, secession in general, the ones wishing to secede are actually part of the sovereign State they claim independence from (e.g. Croatia and Slovenia seceded from the Socialist Federal Republic of Yugoslavia in 1991). In contrast, the cases we are analysing have a third territory whose sovereignty has been (and still is) under dispute. Hence its respective population is not actually seceding or separating itself from any sovereign (since there is no uncontested sovereign, either *de jure* or *de facto*, for the third territory yet recognised).

Is secession justified in sovereignty disputes? Is secession justified at all? If so, under which conditions is secession justified? As in the general case of independence, there are both arguments that justify secession and arguments that oppose it.[10] Some authors consider secession can be a right to be presumed. Some others think it is not permitted unless some requirements are fulfilled. And some others have an eclectic view.[11]

For an extreme interpretation, secession should be applied as a 'rule' in the sense "[…] any territorially concentrated group within a state should be permitted to secede if it wants to and if it is morally and practically possible […]."[12] But, even if we understood secession as a 'rule', the sovereignty conflicts analysed in this paper make it an unreasonable choice: the populations are not large; as a direct consequence of having a small population, they are not able to allow sub-groups to secede—it would simply be unrealistic for, at the most, a few hundreds of people reach an international status of statehood; there is no population wishing to exploit or oppress the minority (at least in the cases of Falkland/Malvinas Islands, Gibraltar, Kashmir and the Kuril Islands); the third territories in all disputes are key for the sovereign States at different levels (highly rich in natural resources, geopolitical location and its relation with strategic defence, cultural and historical homogeneity).

Although it may be argued that the population of the third territories have continuously refused to be part of—at least—one of the sovereign States, in all these cases at least one of the governments (usually the one with *de facto* sovereignty) protects the population of the third territory against human rights' violations; there is no danger for the population of the third territory in terms of their local authorities; their economic interests are only jeopardised to the extent they cannot be fully exercised due to the *status quo* that characterises this kind of sovereignty conflicts; none of the national governments ignores the

population of the third territory—they do not recognise their right to self-determination but accept a certain degree of autonomy.[13]

In situations in which there is a sovereignty dispute but the agents do not have any other issue between them except that they argue in regards to their claimed rights over a given piece of land—and all that it entails—to grant its supreme authority to one of them appears to be a radical decision that guarantees several negative outcomes: the opposition of at least one of the agents; the violation of the principle of territorial integrity; unsettled multilateral relations; unbalanced power given by the fact the third territory—now independent—may give special priority to only one of the sovereign States who took part in the original conflict (e.g. in allowing it to exploit natural resources), and many others. Secession is indeed a contested notion with practical and moral reasons both in favour of and against it. Nonetheless, even if it was considered as a positive international solution for certain conflicts, it does not follow that is the desirable one for the kind of cases analysed in this paper. Otherwise stated, for the kind of conflicts reviewed here, secession is either nonviable or not just.

d) Self-determination

Although it is often thought to be intrinsically linked to independence, self-determination[14] deserves a separate section because: a) there is a vast quantity and variety of documents related to this international institution[15]; b) there are many populations around the world at least considering it as an option for their political status; c) we need to make clear that it may lead to solutions other than independence. In international relations, self-determination can be understood as a principle that allows a certain group of people who live in a given territory to have the right to decide who will govern them. Although both are legal and political concepts, sovereignty gives priority to the State whereas self-determination gives preeminent place to the people.[16] It is not uncommon in sovereignty conflicts that the population of the third territory seeks independence by applying the principle of self-determination. However, the fact that the third territory is granted self-determination—and hence, may become independent—implies always a negative response from at least one of the agents involved in the original conflict (e.g. Argentina in respect to the Falkland/Malvinas Islands).

The point we need to make clear is that independence is not the only way in which self-determination may evolve. Indeed, the population may vote to be administered by, or

integrated into, one of the States claiming sovereignty (e.g. Puerto Rico, where the battle is between statehood and independence). Then self-determination may lead to different results since the population might decide: a) to be independent; b) to be administered by or be part of one party—i.e. integration or free association; c) to have shared sovereignty.

If self-determination leads either to independence or to integration/association, there are reasons why to avoid it is—at least—advisable. First, in cases such as the ones which are object of this paper, to grant self-determination to the third territory would imply an unbalanced situation amongst the involved agents as we have seen in this article. The fact that the third territory was sovereign would mean that its inhabitants had exclusive ownership of the third territory including consequent rights and burdens; the rest of the international agents involved in the dispute would not have any actual or future right or obligation to intervene in its internal or international affairs. So, the sovereign State that had closer relations with the third territory before the self-determination would see its position both *de jure* and *de facto* improved as reviewed when independence as a remedy was discussed before in this article. The same can be said about integration and free association.

To leave aside self-determination as a solution does not have to do with the international institution itself but with the way it may be applied in the sovereignty conflicts that are object of this paper. It might have been useful in historical specific cases due to their own characteristics (e.g. Kosovo). But to use the same international institutions in the same manner in cases in which the interrelation amongst the involved agents is already peaceful—apart from the sovereignty difference—adds an unnecessary element of discord that goes against peaceful international relations.

To recapitulate, self-determination may imply secession from an already sovereign State. In fact, self-determination can be one of the ways to secede but not the only one.[17] However, to obtain independence through self-determination is not a solution that can be taken automatically in sovereignty issues. It is an *ultimum remedium*[18] in situations in which a given sovereign State has a certain tension with a group of people, this group of people is large enough, their human rights are not acknowledged, and they have a common identity and decide to be independent; otherwise, their existence within the sovereign State could be compromised. But secession in the form of self-determination is an extreme remedy that may do more harm than good, in some cases.

To be more precise, this view does not change even if we consider the argument that self-determination is a right, overruling utilitarian considerations. Indeed, this paper is not against this interpretation either. The crucial issue is how we ‘weigh’ self-determination—

even considered as a right—against public good, general welfare, a fair and just environment for all (not only the majority or any minority). Then, it is not that self-determination is good or bad as a right or as an international remedy *per se*. Yet, because of the specific situation in which it is applied and the way in which it is used may be.

Therefore, in the case of sovereignty conflicts like the ones we are dealing with, a solution between *status quo* and complete independence should be reached. Some scholars have tried to re-define the idea of self-determination making it more inclusive but somehow giving shape to an eclectic international institution:

> "[…] the right to national self-determination must go beyond self- government but to stop short of statehood, and thus I introduce a modified right to self-determination, which states that all national groups have an equal right to self-determination provided that the realization of the right does not require the acquisition of independent statehood as a necessary condition."[19]

Hence, if the relationship between a sovereign State and a large group within its population is already problematic, self-determination leading to independence may in fact be a viable solution. However, in the specific case of sovereignty conflicts in which the involved agents have a peaceful relationship apart from the argument about the sovereignty of the third territory, to apply self-determination in the form of independence or integration/association appears as an inadvisable way of dealing with it. It goes against that relationship and threatens an otherwise peaceful environment. Nevertheless, if self-determination is understood as the collective right a group has to determine their political status[20], and this group is willing to accept the claims of other agents, it can be an institution that may offer a positive outcome.

International-Multilateral approaches

This type of solution involves the inclusion of agents other than the ones originally involved in the dispute. Thus, even regional or international organisations may participate in the negotiations. As the aim is usually to produce peaceful relations amongst the participants in the conflict, they mainly involve a freeze in regard to the sovereignty dispute (usually a step previous to full independence); so no real ultimate solution is obtained. For these reasons, they are usually opposed by at least one of the claimants.

a) A NATO-based Multilateral Security approach

In the hypothetical case of the North Atlantic Treaty Organisation (NATO) intervening in the Falkland/Malvinas dispute, this would be opposed not only by Argentina but by all Latin-American sovereign States, as creating an external threat to the region.

The Monroe, Calvo and Drago doctrines apply here.[21] According to Monroe's doctrine the principle of non-intervention is part of the sovereignty of every State. However, before this policy amongst sovereign States appeared in the 19th century, intervention or mutual interference in internal and foreign affairs of other States was not uncommon. In that period, and with European States trying to recover their colonies in America, the President of the United States proclaimed in one of his speeches (02/12/1823) what later on would be considered basic principles of international public law: a) no colonization; b) non-intervention of European States in the affairs of America; c) reciprocal non-intervention in European affairs. The Calvo and Drago's doctrines are similar in the sense they forbid the intervention of a sovereign State if the purpose of that intervention is only to oblige that State to fulfil its international financial obligations. In these cases, they are also referred to European intervention in American countries and their internal affairs (specifically, Venezuela and its international public debt in 1901).

The main problem with this approach is that the organisation that may be involved is both alien to the sovereignty issue and also to the region in which the disputed territory is located. As a result, it is also usually the case that only one of the involved sovereign States is a member of such an organisation which leads to the opposition of its counterpart in the conflict because of the resultant unbalanced situation in terms of bargaining power.

It may happen though that both claimants might be members and the organisation might be geographically involved—e.g. E.U. Nonetheless, at the moment, in most places where there are disputes, no such organisation exists.

b) United Nations Trusteeship

According to international law, a trusteeship[22] requires the consent of all the involved agents.[23] Originally conceived for territories under specific circumstances after the First and Second World Wars and under the League of Nations, this model can also be used by voluntary agreement and implies that the United Nations Organisation (UN) supervises the

administration. The ultimate goal is the autonomy of the territory in question or its integration with another already sovereign State.

As it implies direct interference from UN in internal affairs of the third territory, the agreement of all the agents involved is difficult to obtain (in particular, that of the already sovereign States) in situations like the ones analysed here. Two main problems immediately arise. First, as discussed when dealing with unilateral approaches, final independence of the third territory could be contrary to the interests of at least one of the agents. Moreover, although UN aims to grant sovereign equality amongst the States[24] its own system reveals a contradiction: veto power in the Security Council is only granted to certain sovereign States. This may be translated—in the perception of at least one of the sovereign States—as an unbalanced and unfair starting point to have negotiations, and with a predictable result: final independence of the third territory and tighter links only with the one sovereign State that supported the independence process. Not only does the Security Council present these problems but also other UN organisations. Even the UN General Assembly, at first glance a fair environment for sovereign States to participate in, has been regarded as ineffective[25] or irredeemably biased because of the different bargaining powers of its members. Also, in cases of contested sovereignty over populated territories, stateless people are not UN members.

c) Is the Antarctic Treaty a possible model?

The Antarctic Treaty[26] mainly refers to scientific exploration of the Antarctica leaving the recognition of territorial sovereignty undecided.[27] In what is important here, the basic sovereignty conflict remains unresolved.

In addition, one of the main differences this case presents in comparison to the sovereignty disputes is the fact that there is no settled population in Antarctica. Although it may be argued that somehow the rights mankind as a whole has over Antarctica are affected—e.g. with regard to exploitation of natural resources and consequent effects in the environment—the fact that there is no settled population means any issue related to human rights is not actual but potential and not related to a particular population. On the contrary, the conflicts contemplated in this paper have to do with a population living in the third territory, who has certain minimum human rights, so that any decision some or all of the agents take in relation to the third territory will affect them.

d) Could one appeal to the International Court of Justice?

The International Court of Justice (ICJ) has international jurisdiction and is multi-competent. However, two main problems make sovereignty conflicts of the kind that are object of this paper difficult to be acknowledged by the ICJ: that there are not only legal but also political issues involved and that the agreement of all the parties in the conflict is needed.[28] Sovereignty entails several different elements that are not only legal (e.g. society, economy, etc.). Even though sovereignty claims as a right may be resolved—for example—by granting sovereignty to one, several or all the involved agents, the questions related to specificities in regard to government, population and territory remain unanswered. The solution, even if it was considered to an extent fair and just, cannot comprehend the whole complexity a sovereignty conflict offers; rather, it deals just with one of its components. Also, to obtain the agreement of all the claimants to its decision—as has been shown to be the case with other proposed remedies—would be very difficult. Even if was obtained, it would be very limited.

Bilateral approaches

The two sovereign agents involved are included in the negotiations (the population of the third territory is not necessarily represented). Arguably, at the starting point they are equal international agents in relatively equal comparative circumstances in relation to the third territory. Although this may not be translated into real terms (i.e. one of the sovereign States may be considerably more powerful, making its bargaining position stronger and giving it an advantage in the negotiations), the main problem with this approach is the fact that the population of the third territory may see their interests being completely overlooked. A bilateral approach of any kind—in its narrow sense—will only bear in mind the interests of the two sovereign States; hence, to acknowledge those of the population of the third territory would be left to the good will of these sovereign States. To see this we will consider possible bilateral ‘solutions’.

a) A condominium

International condominium implies that two or more sovereign States share their respective *dominium* over a specific territory. There are several examples of this international institution.[29] Although *dominium* under these circumstances is interpreted by some as equivalent to sovereignty, its real meaning is much narrower. *Dominium* appears to be similar

to sovereignty but is only linked to one of the elements that characterise a State: its territory. Despite the fact that sovereignty in modern and contemporary legal and political literature is also mainly related to the territorial element, it has a broader content so as to include population, government and law—and all that each of these elements implies. That is to say, the sovereignty conflicts that we are interested in present a populated territory under dispute. Therefore, an international condominium would be a very inadequate way of addressing these conflicts, dealing with the territorial element but leaving aside all the other elements. So, to use an international condominium may be a reasonable solution for those particular cases in which the dispute is only related to a non-populated territory or one that although being populated, has certain characteristics that makes the territory the only element actually to be shared—e.g. it may be economically advantageous for two States to share the sovereignty over a river that acts as a natural border since they both have inhabitants in either side and there is a strong commercial interchange.

Moreover, some of its particular features make this model either not stable or not feasible specifically for the type of sovereignty conflicts analysed here. There are several reasons to avoid it: first, sovereignty may not be shared simultaneously but alternately (e.g. Pheasant Island, an uninhabited river island condominium between Spain and France, alternating sovereign every six months); second, condominiums are mostly temporary (e.g. the Anglo-Egyptian Sudan 1899-1956); third, in most cases, they cover a territory—land or maritime—without a settled population (e.g. Paraná River, Lake Constance); fourth, the condominium has to do with special geographical circumstances (e.g. Gulf of Fonseca, part of the coastline belonging either to Honduras, Nicaragua or El Salvador).

In brief, international condominiums have characteristics that make the model an undesirable solution when applied to a populated third territory claimed by two sovereign States. There are many issues that international condominium cannot deal with. First, it is mainly referred to uninhabited territories. Additionally, even though the territory is inhabited, a crucial pitfall is that sovereignty changes every few years. And this variable feature has several negative consequences: it does not offer a solution for many implications (e.g. law applicable in case of a crime); it is in fact a temporal way of addressing the problem which translates in avoiding the ultimate discussion about sovereignty; it is a volatile approach because it depends on factual variables (e.g. the co-owned river changes its course, the portion of land granted to one claimant becomes useless due to environmental change); it is easy to see how it may work in cases in which the claimants are territorial neighbours but it is hard to see how it could work in those in they were distant—geographically speaking. All

these reasons make international condominiums an unstable solution for most—if not all—the involved agents in the conflict and in particular for the inhabitants of the third territory.

b) Leaseback with guarantees

This model involves a sovereign State that agrees to transfer the sovereignty over a territory to another sovereign State and leases it back for a certain time—i.e. the licensor will have the right to 'use' the territory until the agreed time finishes. It is often the case that the State that is granted the final sovereignty offers certain guarantees, in particular if the territory in question is populated—e.g. language of the inhabitants, applicable law, nationality, etc. Also known as the Hong Kong model of 'one country-two systems'[30], this formula is in-between a sovereignty conflict and final full independence or integration as part of another sovereign State. In other words, it does not offer a definitive solution. It is a stage towards a definitive solution—whether final independence or integration, but one which overrides one of the States in dispute (unless, like the United Kingdom, it had accepted this final solution in advance).

Once again, this particular remedy does not guarantee either an equal starting point or result: as detailed, it is the usual case the third territory has tighter links—for whatever reasons—with one of the sovereign States and its final independence or integration would simply be a way to legitimise *de jure* that situation. Besides, to agree upon the length of the leaseback and the way in which the guarantees will be fulfilled is often very controversial.[31] Also, the population of the leased territory rarely gets a say.

c) A Sovereignty freeze

This institution is similar to the one analysed under the heading 'Antarctic Solution' (when discussing international-multilateral approaches before in this article). The only difference is that the dispute between the two original sovereign claimants remains. However, the negative consequences are the same. No other international agent has a right to a claim or involvement in the dispute, the original participants are the only ones involved, the third territory is assumed to be populated, but sovereignty is not given to any of the agents, it is not shared amongst them or distributed in any way.

At first glance it may be argued that a peaceful relationship amongst the agents is achieved. However, at what cost? First, none of the agents is allowed to put into practice any claimed right over the third territory. Second, even if they intended to put in practice their

claimed rights, they would need to agree upon each and every action, since this would imply a break in the sovereignty freeze. Third, the population of the third territory would remain in a legal and political limbo, with both local and international implications (e.g. defence, representation in international organisations, etc.).

d) Abandonment

The two sovereign States would withdraw their claims in regards the sovereignty of the third territory. An immediate consequence for the third territory seems to be either a political and legal limbo or independence. In either of these cases, this solution offers negative outcomes not only for the third territory but also for the sovereign States. In the case of the third territory, its internal and international position would be precarious (e.g. defence, international credit, etc.). For instance, in the best case scenario, the third territory could be fully independent, or associated with or integrated in another sovereign State (several negative consequences have been already analysed in each case). In the worst case scenario, the third territory could be left in a legal and political limbo, making it an easy target for any other State. In what is of interest to the sovereign States, each would withdraw any actual or potential claim. So, its peer in the conflict, and any other agent, would have a free path to act as they wished in relation to the third territory.

e) Titular Sovereignty and autonomy

The case of the Aland Islands[32] is the leading example: a non-sovereign autonomous territory under the umbrella of an already sovereign State. This self-governing community has a separate and independent administration from that of Finland. This includes having a separate executive power and an autonomous parliament. Yet, they are under the sovereignty of Finland. This solution is possible and desirable for the third territory and for one of the involved sovereign States. However, the other State sees its claimed rights disappear. It is for that reason this type of solution appears to be—at least—not desirable for the kind of conflicts analysed in this research. It assumes one sovereign State and one populated territory arguing about sovereignty. Hence, the starting point is different from the one reviewed here.

The *status quo*

As this is both theoretically possible and what often actually happens in sovereignty conflicts, I will briefly focus on the possibility of simply maintaining the *status quo*. Obviously, this would mean only postponing the decision; the main question in regard to sovereignty would remain unanswered. A further problem under these circumstances is that none of the involved agents are able to put their rights fully into practice. On the one hand, even in the best possible scenario, if the relations amongst the agents were peaceful it could only be expected they continue to be that way. On the other hand, reality shows that more often than not the *status quo* is broken by at least one of the agents trying to put their claimed rights into action—e.g. by exploitation of natural resources. So, the *status quo*'s main feature is contradictory: volatility. Since rights and obligations are not clearly defined for any of the agents because sovereignty remains undefined, none of them has the actual power to make use of them fully, but at the same time they do not have any more legal restrictions than those of international public law, or any more political ones than those caused by the presence of the other agents.[33]

Conclusion

The first lines of this article made clear that our goal was to see if any of the current proposed international remedies for sovereignty conflicts could be a reasonable solution to the ones we are interested in here. We have seen that in all cases there are reasons that make their application somewhat controversial—if not more problematic by threatening an otherwise peaceful relation between the claimant States.

Precisely, we have seen that here are various possible solutions for sovereignty conflicts. We have reviewed independence, self-determination, the Antarctic solution, and many others. Although they may be the answer for some sovereignty conflicts, they present—for the reasons shown in this paper—a certain degree of uncertainty that make us doubt about the value of their application.

Indeed, I have not claimed that these other remedies are of no use. In fact, if the parties accept them and they result in a peaceful understanding amongst them, there is no question about their reasonability. What I have argued and this paper demonstrates is that there is a need for a peaceful solution that the reviewed international remedies cannot offer. What we need is a solution that no party may reasonably reject, whereas what we have is existing solutions that one or more parties may not accept. Therein, the question whether such

a reasonable solution can be offered to these parties leaves the path clear for its full assessment through subsequent research.

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Notes

1. The concept of State sovereignty has raised and is still linked to fervent debate. For an insight into the discussion see Robert Jackson, ed., *Sovereignty at the Millennium* (Oxford: Blackwell Publishers, 1999) and . For an eclectic view of the topic see Neil MacCormick, *Questioning Sovereignty: Law, State, and Nation in the European Commonwealth* (Oxford: Oxford University Press, 1999) and Neil MacCormick, "Beyond the Sovereign State," *The Modern Law Review* 56 (1993): 1-18. See also J.E. Núñez, "The Origins of Sovereignty in the Hellenic World" in *International Law, Conventions and Justice* (Athens: ATINER, 2011); J.E. Núñez, "About the Impossibility of Absolute State Sovereignty. The Early Years" in *International Journal for the Semiotics of Law* (Springer, 2013); and J.E. Núñez, "About the Impossibility of Absolute State Sovereignty. The Middle Ages" in *International Journal for the Semiotics of Law* (2014, Springer).
2. This section is inspired by Peter Beck's works. He analyses the Falkland/Malvinas Islands conflict in detail and offers a clear way of presenting different approaches. In particular, refer to Peter Beck, *The Falkland Islands as an International Problem* (London and New York: Routledge, 1998). See also Peter J. Beck, "The Future of the Falkland Islands: A Solution Made in Hong Kong?," *International Affairs, Royal Institute of International Affairs* 61 (1985): 643-660; Peter J. Beck, "Looking at the Falkland Islands from Antarctica: the Broader Regional Perspective," *Polar Record* 30 (1994): 167-180; Peter J. Beck, "Britain's Falkland Future-the Need to Look Back," *The Round Table* 73 (1984): 139-152; and many others.
3. Cyril Pickard, "Fortress Falkland? The Real Lessons of the Franks Report," *The Round Table* 72 (1983): 233-237.
4. Recent tension between Argentina and the United Kingdom in relation to the Falkland/Malvinas Islands resulted in militarisation of the South Atlantic. See The Telegraph 08/02/12 http://www.telegraph.co.uk/news/worldnews/southamerica/falklandislands/9068315/Argentine-president-to-appeal-to-UN-over-Falkland.html accessed on 13/02/12 and The Guardian 08/02/12 http://www.guardian.co.uk/uk/2012/feb/10/falkland-islands-argentina-formal-protest-un accessed on 13/02/12.
5. Integration and free association are both defined in the Res. 1541 (XV) of UN General Assembly. In what is of interest to this thesis Principle VII declares that: "(a) Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes […]. (b) The associated territory should have the right to determine its internal constitution without outside interference […]." Principle VIII declares that: "Integration with an independent State should be on the basis of complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated. The peoples of both territories should have equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms […]." And Principle IX states that: "Integration should have come about in the following circumstances: (a) The integrating territory should have attained an advanced stage of self-government with free political institutions […]; (b) The integration should be the result of the freely expressed wishes of the territory's peoples […]."
6. See Falkland Islands government position available on http://www.Falkland.gov.fk//International_Relations.html (accessed on 14/02/12) where it is stated that: "The Falkland Islands Government (FIG) is content for relations between Britain and Argentina to strengthen, on the basis that its right of self-determination is not

compromised"; and Chapter I, art. 1 of the Falkland Islands Constitution Order 2008 states that "[…] all peoples have the right to self-determination and by virtue of that right they freely determine their political status."

7. The Basic Law of Hong Kong states in its Chapter II, article 14.1: "The Central People's Government shall be responsible for the defence of the Hong Kong Special Administrative Region." The complete text of the Basic Law is available on http://www.basiclaw.gov.hk/en/basiclawtext/images/basiclaw_full_text.pdf accessed on 25/04/12.

8. According to Chapter II, art. 25 of the Falkland Islands Constitution Order 2008 "The Governor shall consult with the Commander British Forces before exercising any function which appears to the Governor to relate to defence or internal security […]." For an argument related to British cuts in regard defence system for the Falkland/Malvinas Islands see The Guardian 10/11/10 http://www.guardian.co.uk/uk/2010/nov/10/falkland-islands-defence-cuts accessed on 13/02/12 and the Daily Mail 19/02/10 http://www.dailymail.co.uk/debate/article-1252149/Its-bitter-truth-We-send-task-force-Falkland-today.html accessed on 13/02/12. For an insight of the British defence plan of the Falkland/Malvinas Islands see House of Commons Library, British Parliament available on http://www.parliament.uk/briefing-papers/SN06201 accessed on 13/02/12.

9. Although secession as a concept has been treated in Mediaeval and Modern Ages, it has been more developed–at least in legal and political fields-contemporarily. For instance, see Beran's *A Liberal Theory of Secession* and Buchanan's *Toward a Theory of Secession*.

10. Allen Buchanan, "Toward a Theory of Secession," *Chicago University Press* 101 (1991): 322-342.

11. See Robert W. McGee, "A Third Liberal Theory of Secession," *The Liverpool Law Review* XIV (1992): 45-66. McGee analyses Beran's *A Liberal Theory of Secession* and Birch's *Another Liberal Theory of Secession*, arguably the first two publications in contemporary times that refer to the idea of secession in detail. In particular, Beran mentions previous ideas on the topic with names like Grotius and Pufendorf. Refer to Harry Beran, "A Liberal Theory of Secession," *Political Studies* XXXII (1984): 21-31; and Anthony H. Birch, "Another Liberal Theory of Secession," *Political Studies* XXXII (1984): 596-602.

12. Beran, *op. cit.*, p. 30.

13. Falkland/Malvinas Islands are considered in Argentina as one of the autonomous provinces (its official name is Province of Tierra del Fuego, Antarctica and South Atlantic Islands); in the United Kingdom they are considered a British Overseas Territory.

14. See Chapter 1, Article 1, part 2 of the UN Charter states amongst its purposes: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace"; and UN General Assembly Resolution 1514 Article 2: "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development"; UN General Assembly Resolution 2649 Article 1: "*Affirms* the legitimacy of the struggle of peoples under colonial and alien domination recognised as being entitled to the right of self-determination to restore to themselves that right by any means at their disposal"; UN General Assembly Resolution 2625 Article e: "The principle of equal rights and self-determination of peoples"; and others.

15. The list of books and articles referred to self-determination is cumbersome. For an overview about self-determination in the context of Falkland/Malvinas Islands see H. E. Chehabi, "Self-determination, Territorial Integrity, and the Falkland Islands," *The Academy of Political Science, Political Science Quarterly* 100 (1985): 215-225; Denzil Dunnett, "Self-

determination and the Falklands," *International Affairs, Royal Institute of International Affairs* 59 (1983): 415-428.

16. P.H. Kooijmans, "Tolerance, Sovereignty and Self-determination," *Netherlands International Law Review* XLIII (1996): 211-217.

17. Beran, *op. cit.*, 22 *in fine* and 23 *supra*.

18. *Ibid*.

19. Anna Moltchanova, *National Self-determination and Justice in Multinational States* (Springer, 2011), in partic. p. xvi and Chapter 5.

20. *Ibid*., in partic. Chapter 2 and Moltchanova's interpretation of Hart's condition for the existence of moral rights. Refer also to Herbert L. A. Hart, "Are There Any Natural Rights?," *The Philosophical Review* 64 (1955): 175-191.

21. See Elihu Root, "The Real Monroe Doctrine," *American Society of International Law* 8 (1914): 6-22; Mark T. Gilderhus, "The Monroe Doctrine: Meanings and Implications," *Presidential Studies Quarterly* 36 (2006): 5-16; Amos S. Hershey, "The Calvo and Drago Doctrines," *The American Journal of International Law, American Society of International Law* 1 (1907): 26-45; Luis M. Drago and H. Edward Nettles, "The Drago Doctrine in International Law and Politics," *The Hispanic American Historical Review, Duke University Press* 8 (1928): 204-223; Crammond Kennedy, "The Drago Doctrine," *The North American Review, University of Northern Iowa* 185 (1907): 614-622; and many others.

22. For more details about the Trusteeship Council refer to http://www.un.org/en/mainbodies/trusteeship/ and http://www.un.org/en/decolonization/its.shtml

23. Art. 79 UN Charter: "The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85."

24. W. Michael Reisman, "The Constitutional Crisis in the United Nations," *The American Journal of International Law* 87 (1993): 83-100.

25. Jack E. Vincent, "Predicting Voting Patterns in the General Assembly," *The American Political Science Review* 65 (1971): 471-498; Axel Dreher, Peter Nunnenkamp and Rainer Thiele, "Does US Aid Buy UN General Assembly Votes?," *Public Choice* 136 (2008): 139-164; T. Y. Wang, "U.S. Foreign Aid and UN Voting: an Analysis of Important Issues," *International Studies Quarterly* 43 (1999): 199-210; and many others.

26. For a complete version of the Antarctic Treaty see http://www.ats.aq/documents/ats/treaty_original.pdf

27. Article IV of the Antarctic Treaty refers to territorial claims: "1. Nothing contained in the present Treaty shall be interpreted as: (a) a renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignty in Antarctica; (b) a renunciation or diminution by any Contracting Party of any basis of claim to territorial sovereignty in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica, or otherwise; (c) prejudicing the position of any Contracting Party as regards its recognition or non recognition of any other State's right of or claim or basis of claim to territorial sovereignty in Antarctica. 2. No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty shall be asserted while the present Treaty is in force." See J. Peter A. Bernhardt, "Sovereignty in Antarctica," *California Western International Journal* 5 (1975): 297-349.

28. See ICJ Statue, in particular art. 36: "1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force. 2. The states parties to the present Statute may at any time declare that they recognise as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: a. the interpretation of a treaty; b. any question of international law; c. the existence of any fact which, if established, would constitute a breach of an international obligation; d. the nature or extent of the reparation to be made for the breach of an international obligation […]."

29. Lake Constance (Germany, Austria and Switzerland, however there is no agreement in place), Paraná River (Argentina, Brazil and Paraguay, with many bi-lateral and multilateral projects and agreements in place), Sudan (Egypt and the United Kingdom between 1899 and 1955), and many others. See The New York Times 23/01/12 http://opinionator.blogs.nytimes.com/2012/01/23/the-worlds-most-exclusive-condominium/ accessed on 14/02/12.

30. Lorenz Langer, "Out of Joint? –Hong Kong's International Status from the Sino-British Joint Declaration to the Present," *Archiv des Volkerrechts* 46 (2008): 309-344.

31. For the specific case of the Falkland/Malvinas Islands and the application of the leaseback with guarantees see Guillermo A. Makin, "Argentina 1983: Elections and Items for Negotiations with the United Kingdom," *Bulletin of Latin American Research* 3 (1984): 110-118.

32. Tore Modeen, "The International Protection of the National Identity of the Aland Islands," *Scandinavian Studies in Law* 17 (1973): 176-210; Holger Rotkirch, "The Demilitarization of the Aland Islands: a Regime 'in European Interests' Withstanding Changing Circumstances," *Journal of Peace Research* 23 (1986): 357-376; Finn Seyersted, "The Aland Autonomy and International Law," *Nordisk Tidsskrift International Ret.* 51 (1982): 23-28; and many more.

33. In the case of Falkland/Malvinas Islands, it is common practice for Argentina to protest in international forums when the United Kingdom acts upon natural resources.

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