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ARTICLE

The paradox of state identification: *de facto* states, recognition, and the (re-)production of the international

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Abstract

The literature on *de facto* states challenges the conventional identification of states by legal recognition, proposing to identify states based on their effectiveness instead. Yet, as I argue in this paper, rather than turning the tables on recognition, the *de facto* state challenge ultimately reveals all state identification in International Relations and international law to be essentially indeterminate. This lacuna, I suggest, is not an accidental omission, but an expression of the foundational paradox of modern political order that is rooted in the intertwined ontology of the state system and the individual states constituting it, with each presupposing the other. As a result, the opposition between empirical facts, political decisions, and legal norms invoked in attempts to identify states cannot but remain irresolvable. This should not be regarded as a problem to be overcome, however, but as a source of social order. Although states cannot be substantively identified, any effort to do so in practice naturalizes the state as the very form through which we articulate and shape political claims, conflicts, and settlements. In performatively enacting states precisely at the contested margins, state identification thus both invokes and (re-)produces the statist international as the central imaginary of modern political order.

Keywords: *de facto* states; recognition; state identity; performativity; international law; state system

Studies of *de facto* (Pegg 1998), unrecognized (Caspersen 2012), or contested (Geldenhuys 2009) states – that is, states in fact but not recognized as such – suggest that the conventional focus on state recognition misrepresents actual states by confusing what is a matter of fact with formally recognized status. As a consequence, unrecognized states are exposed to international isolation, exclusion, and the threat of extinction. Moreover, if read against the background of the literature on *quasi-* (Jackson 1990), collapsed (Zartman 1995), and failed (Rotberg 2004) states, which suggests that some recognized states are not really states, the claim of unrecognized state making challenges the very identification of individual states on which International Relations (IR) rests. Indeed, to the extent to which 'the starting point of international relations is the existence of states' (Bull 1977, 8),

these individual states need to be identified in the first place as the very focal points of an 'international' space, traditionally compartmentalized into bordered territories, sovereign governments, spheres of jurisdiction, and so on.

Curiously, however, the challenge of state identification has rarely been articulated in a theoretically ambitious way. While the literature on *de facto* states remains focused on empirical questions concerning these 'anomalies in a world of sovereign states' (Caspersen 2012, 3), international theory has hardly taken note of the phenomenon as a potential rupture in the conventional identification – or, rather, presupposition – of sovereign states. To the extent to which the emergence of states is addressed in IR beyond the *de facto* state literature, it is still largely assumed to be settled by recognition (Fabry 2010; Ker Lindsay 2012; Coggins 2014). The absence of a serious engagement with the problem of state identification behind the *de facto* state claim is all the more curious since IR is notoriously obsessed with what states *are*, as illustrated by debates about states as reality or convenient fiction, persons or relations, symbolic forms or authentic performances (Biersteker and Weber 1996; Weber 1998; Jackson and Nexon 1999; Jackson 2004; Wendt 2004; Bartelson 2014; Ringmar 2016). What states 'are' seems to be at the same time too evident and too speculative, a matter of commonsense for most researchers, and an object of endless 'academic' discussion for others.

Yet, as I shall argue in this paper, what states are – or are thought to be – is neither evident nor irrelevant. First of all, while states present 'the most common (…) substantialist starting point' (Jackson and Nexon 1999, 293) of IR, their concrete identification is generally shunned or misconstrued. Studies of state recognition as well as studies of *de facto* states ultimately either still bracket the question of state identification proper and focus instead on the impact of recognition or its absence on entities that could or could not be states, or else they attempt to fully identify states by virtue of their legal recognition or empirical effectiveness. Yet, as I shall discuss, identification by recognition neither reflects nor makes effective states, while effectiveness comes only in degrees and does not add up to state status. Further, while both recognition and effectiveness are anchored in international law, I show that even the more developed debates on state creation in international law cannot provide for an objective or conclusive identification of individual states. Beyond untenable reductions to facts, norms, and decisions, individual states remain essentially indeterminate.

As I argue further, however, state identification is not an accidental lacuna of international theory that needs to be filled, but instead expresses a foundational paradox of modern political order: while the international system consists of units that must already be states, for any entity to be a state it must be a unit of the international system. The challenge of identifying individual states and the indeterminacy of domestic and international factors bring this paradox to light. Rather than presenting a problem that requires a substantive solution by recourse to solid state criteria, the paradox of state identification is itself a solution to political claims and conflicts by framing them in statist terms. The social form of the state enables performative state making by actors that claim to represent states and observers who believe that they can, and even must, identify them. From this angle, *de facto* and recognized states are performative state projects enacted by different means and practices. More importantly, by invoking the ontology of the

state and the state system, practices of state identification actively (re-)produce the statist international as the very frame within which states must fit, whether they are formally recognized as such or not.

This paper proceeds in four steps. I first lay out how the *de facto* state literature at the fringes of IR raises the central question of state identification, or 'epistemic recognition' (Bartelson 2013, 108), and expose it as a lacuna in IR. In the section 'Contradictions of the *de facto* state concept: empirical order vs. legal status,' I explore the central claim of the *de facto* state challenge, that is, that states can be identified based on empirical effectiveness, rather than legal recognition. Despite the promise of this move, I show that the criteria of statehood are ultimately indeterminate when applied and that the concept of *de facto* statehood instead reveals the deeper difficulty of identifying states in the first place. In the section 'Beyond recognition and effectiveness: the legal indeterminacy of state creation,' I turn to the classical debate in international law on whether recognition or effectiveness 'make' states and explore legal approaches that have sought to bridge or bracket this opposition by recourse to other legal criteria. As I discuss, far from providing a solid basis for proper state identification, international law is itself indeterminate. Finally, in the section 'From indeterminacy to social form: the paradoxical constitution of states,' I argue that this indeterminacy is not a problem to be overcome, but an expression of a foundational paradox of the modern political order, which derives the state system from individual states and individual states from their status in the system. I then briefly discuss inquiries into the performative enactment of states and the historical reconstruction of statist ontology, which provide, despite their limitations, fruitful avenues for further exploring the constitutive role of the paradox. Ultimately, the paper suggests that the struggles over the identification of states in both theory and practice do not undermine, but actually co-constitute individual states and thereby (re-)produce the statist international as the central imaginary of the modern political order.

Unrecognized states? A view from the margins of the international

As illustrated by the long-standing and inconclusive debates on entrenched statism and the replacement of the international by the global, it is part of IR's disciplinary identity to wrestle with the central, yet elusive, categories of the sovereign state and the state system (Walker 1993, 2010; Weber 1995, 1998; Biersteker and Weber 1996; Bartelson 2001, 2014). For most practical purposes, however, IR operates with a fairly shared understanding of states that Bull's (1977, 8) classical definition captures as well as others:

> The starting point of international relations is the existence of states, or independent political communities, each of which possesses a government and asserts sovereignty in relation to a particular portion of the earth's surface and a particular segment of the human population.

However common and intuitive, this 'starting point of international relations' in the shape of distinct states is less tangible when it comes to the identification of individual states, which IR has left either unexamined or else to be determined by international law or political sociology. As such, the identification of the very

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building blocks of the international system or society presents a lacuna in IR that hints at its blurred boundaries and conditions of possibility. In this section, I explore these boundaries by discussing the central place of legal recognition in IR, the heuristic reference to 'state-like' entities beyond recognition, and the central challenge of literal *de facto* state making.

The conventional identification of states: legal recognition in IR

Despite IR's traditional (Neo-)Weberian commitments, the discipline largely depends on legal recognition to identify states. As Strang (1991, 150) points out, although many scholars invoke Weber's (2004, 33) definition of the state and his emphasis on the monopoly over the means of force, in practice '[r]esearchers do not ascertain which organizations continuously patrol a given territory' but rather 'use lists of members of the United Nations' to identify states. Even Tilly, an important inspiration for studies of unrecognized state making (Kingston and Spears 2004; Niemann 2007; Hagmann and Hoehne 2009), ultimately falls back on legal recognition as the marker of individual states (Tilly 1992, 2). Thus, traditionally, state formation is expected to unfold *within* recognized or otherwise already presupposed states (Tilly 1992, 191–225; Clapham 1998; Sørensen 2001).

The literature on *quasi-* (Jackson 1990), failed (Rotberg 2004), or collapsed (Zartman 1995) states builds on the same dichotomy of legal status and empirical order to investigate the fragility or lack of 'internal' statehood within 'externally' delineated states in which such shortcomings can be empirically observed. These '*quasi*-states' (Jackson 1990) are said to exist only on the international legal plane, while lacking the substance of domestic order. Yet, because the spaces in which individual state collapse and state failure can be empirically explored are still delineated as units by virtue of their legally recognized status, the assessment of state failure does not suggest that these recognized entities are no longer states. Indeed, for Crawford (2006, 722), it is a confusion to think states have ceased to exist where governments have failed, including in notorious cases such as Somalia. That there are different 'types' (Sørensen 2001) or 'degrees of statehood' (Clapham 1998) thus does not undermine, but rather reinforces, the reliance on legal recognition for the identification of individual states as the concrete 'starting point of international relations' (Bull 1977, 8), whatever their international ranking, degree of political autonomy, or domestic capacity to govern. The assumption of already given states is thus both the condition of possibility of IR and its inherent limitation (Walker 1993; Bartelson 2001).

Arguably, a burgeoning literature taking a more explicit approach to recognition has recently sprung up within IR (Fabry 2010; Lindemann 2013; Coggins 2014; Lindemann and Ringmar 2014; Daase *et al.* 2015). However, much of this literature is concerned with 'political recognition' between already presupposed states, rather than with the identification of these entities as states in the first place (Bartelson 2013, 113). Where 'legal recognition' is the subject (Fabry 2010; Bartelson 2013; Coggins 2014), the discussion is often informed by a version of the classical debate in international law about whether recognition is 'constitutive' or 'declarative' of statehood (Grant 1999; Crawford 2006), with a distinct interest in normative and political considerations informing practices of recognition, rather than state making

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as such (Fabry 2010; Coggins 2014). The focus on recognition alone, moreover, either simply presupposes states as already there, or else credits recognition with the power to generate them. Indeed, the claim that entities require recognition to be regarded as proper states (Fabry 2013, 165; Coggins 2014, 8) is, if not a mere tautology, an equation of statehood with recognition by definitional fiat, rather than an explanation of state creation, as it shuns the prior question of what states actually are and how they can be identified as such.

If states are not reducible to legal recognition, one cannot be content with an analysis of how candidate entities were or were not recognized by other states, or, in classical English-School parlance, admitted to an expanding international society (Bull and Watson 1984). Instead, the more fundamental question is how we can know the candidate entities in question to be 'states' or 'almost-states' in the first place. The answer requires what Bartelson (2013, 108) calls 'epistemic recognition.' Yet, as he points out (2013, 108–109):

> most theories of recognition within academic international relations are mute when it comes to the conditions of epistemic recognition, implying that the classificatory grounds for recognizing an entity as an actor of a certain kind already are given or at least sufficiently unproblematic.

Thus, although IR is somewhat wary about its central assumption of a state system already delineated by legal recognition, for the most part, it does not divert from this key assumption. Yet, if states are neither simply given nor reducible to recognized status, then they have to be identified prior to and independently of recognition, at least in a rudimentary form. As I shall argue below, this is what the *de facto* state literature tries, but ultimately fails, to do.

Beyond the fringe? Conceptualizing unrecognized state making

The notion of *de facto* states – which I use as a short-hand also for 'contested' (Geldenhuys 2009) or 'unrecognized' (Caspersen 2012) states – directly challenges the conventional presupposition of states in IR and rejects legal recognition as the decisive criterion for determining states. Instead, it approaches statehood from the domestic side, drawing largely on historical sociology and a (Neo-)Weberian understanding of state formation (e.g. Tilly 1992), as well as the notion of effectiveness in international law. What it means to bring 'states' at the margins of international society to the fore, however, depends on how wide the conceptual net of supposed unrecognized state making is cast.

Many political scientists invoke 'separatist states' (Lynch 2004), 'phantom states' (Byman and King 2011), 'mini-states' (Davies 2009), or 'states-within-states' (Kingston and Spears 2004) to capture a host of different 'state-like features' (Kingston 2004, 6) of potent rebel groups, warlord fiefdoms, or other political communities. This is often done for heuristic purposes to reflect their accomplishments in developing particular levels of territorial control, bureaucratic organization, or public services that are 'state-like' (Kingston 2004, 2). Yet, for all the summoned power of the analogy to state formation, these authors often shrink back from the full-blown claim that these entities *are* or *have turned into* 'actual' states. For

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instance, Spears's 'key elements of a Weberian definition' are merely a 'range of state-like structures' under a definition that 'has intentionally been left imprecise' (Spears 2004, 16–17). Thus, 'states-within-states are often incomplete insofar as they do not have all the substantive attributes of statehood' (Spears 2004, 30) and merely show a 'potential' to ultimately become fully developed states (Kingston 2004, 6). In practice, the permissive nature of the concept makes it difficult to distinguish between 'states-within-states' and *non-state* actors. As pointed out by Reno (2009, 361), some supposed 'states-within-states' would have been 'liberated zone[s]' in '1970s lingo.' Others simply speak of 'rebel rulers' (Mampilly 2011). As a result, this wide notion of unrecognized state making has been criticized as overstretched (Geldenhuys 2009, 27; Caspersen 2011, 3).

By contrast, the research program on '*de facto*' (Pegg 1998), 'unrecognized' (Caspersen and Stansfield 2011; Caspersen 2012), and 'contested states' (Geldenhuys 2009) employs a more restrictive notion of *de facto* states as 'entities which feature long-term, effective, and popularly-supported organized political leaderships that provide governmental services to a given population in a defined territorial area,' but which lack 'widespread juridical recognition' (Pegg 1998, 4). Rather than a vague allusion to statehood, the claim here is essentially literal: these entities *are* states and therefore 'deserve to be called "states"' (Geldenhuys 2009, 26). Faced with 'collective non-recognition' (Geldenhuys 2009, 22), they 'find their very right of statehood being challenged by their parent states and the broader international community' (Geldenhuys 2009, 3). This view is often backed by recourse to the widely cited *Montevideo Convention on the Rights and Duties of States* (1933), which – echoing the Weberian notion of the state – defines states by a permanent population, defined territory, government, and capacity to enter into relations with other states (Pegg 1998, 27; Lynch 2004, 15; Geldenhuys 2009, 8; Caspersen 2012, 17). While I shall illustrate that these criteria are less easily operationalized than some proponents of *de facto* states would suggest, the classical definition of effective statehood *without recognition* gives the literature its conceptual basis. Provided that these criteria are fulfilled, '[t]he defining characteristic of unrecognized states, the factor that determines their position in the international system and predominates in internal debates, is their lack of recognition' (Caspersen 2012, 16).

Contesting legal recognition

The literal claim to statehood differs from mere allusions to state-like features in that the statement of fact expresses a normative demand to acknowledge that the entities in question really *are* states. Misrecognizing them as non-state entities makes a difference both analytically and practically. This position is reflected in diverse issue areas into which the *de facto* research program has ventured, including the global exclusion of populations living in unrecognized territories (Pegg 1998; Geldenhuys 2009; Caspersen 2012), the politics of recognition and secret diplomacy (Ker Lindsay 2012; Pegg and Berg 2016), and the peculiar domestic dynamics of nationalism, democracy, and security in unrecognized states (Pegg 1998; Kolstø and Blakkisrod 2008; Caspersen 2011; Berg and Mölder 2012).

Two implications of unrecognized status are particularly noteworthy. First, the very claim of *de facto* state making suggests an unacknowledged creation of effective

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states, including in areas often deemed unsuitable for state formation. This challenges common views on state failure and fragile *quasi*-states from Sub-Saharan Africa to the rim of the post-Soviet space (King 2001; Kingston and Spears 2004; Niemann 2007; Hagmann and Hoehne 2009). As assessing state formation and state fragility depends on a prior identification of the units within which these processes are to be observed, the *de facto* state claim also challenges these units. Indeed, in this view, the failure of affected recognized states to maintain control in their entire territory might be precisely due to the rise of a *de facto* state in part of that territory.

Second, unrecognized states are legally excluded from the international system and therefore particularly vulnerable to renewed armed conflict. They have not only often 'effectively defeated the armies of recognized governments in open warfare' (King 2001, 526), and thus 'frequently emerge from wars,' but they are also commonly 'sustained by the threat of further fighting' (Byman and King 2011). Indeed, secessionist wars feature among the most devastating armed conflicts since World War II and many remain volatile long after the fighting ends (Coggins 2014, 3). Crucially, the status of separatist entities in conflict situations is itself an object of contestation, with serious consequences. The two types of conflict – that is, intra- and inter-state war – become virtually indistinguishable and can in fact only be distinguished at the cost of making a political choice. Particularly telling illustrations of the implications of denied status are the eventual destructions of the Chechen Republic in Russia, the Republic Krajina in Croatia, and the Tamil Tigers of Tamil Eelam in Sri Lanka (Caspersen 2012, 11). In all these cases, civil wars between the separatists and the official government had ended in peace agreements or permanent ceasefires (Pegg 1998, 66–84; Stokke 2006; Caspersen 2012, 11). Yet, hostilities resumed later in full force, ending with the defeat of the 'rebels' and the complete dismantling or violent re-integration of their polities as a matter of their respective parent state's 'internal' affairs. In this sense, 'state death' (Fazal 2004) might still occur, but since it does not concern recognized states, it remains undetected.

In response, some international law scholars propose to treat all conflicts involving *de facto* states or 'states in *statu nascendi*' as 'quasi-international armed conflicts' (Wills 2012) to extend the legal protection against aggression. In this view, the effective statehood of the entities involved, and not their legally (un)recognized status, should determine whether a conflict is intra- or inter-national (Wills 2012). Others disagree with this as a general rule, but still propose a functional assumption of interstate conflict in specific cases. To take the example of the controversial relationship between mainland China and Taiwan (Mengin 2008), in which the People's Republic maintains that any potential armed conflict with Taiwan 'falls within the domestic affairs of China' (Chan 2009, 492), Crawford argues that although Taiwan cannot formally be regarded as a state, we should assume 'a cross-Strait boundary for the purposes of the use of force' (Crawford 2006, 221). This would put any attack by China under the restrictions of the general prohibition of the use of force in interstate relations.

Both implications of supposed *de facto* state making rest on the assumption that we are in fact dealing with states, albeit in an unrecognized form. Indeed, while the major studies on *de facto* states (Pegg 1998; Geldenhuys 2009; Caspersen 2012)

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paper over the precise definition of the outcast entities, they all converge on the claim that the existence of states is a matter of fact. Although generally treated as a mere starting point for diverse empirical investigations in the *de facto* state literature, this central claim presents itself a potentially audacious challenge to the convenient assumption of a readily demarcated state system composed of recognized states. It is to its supposed substantiation that I turn in the next section.

Contradictions of the *de facto* state concept: empirical order vs. legal status

The disruption and critique of the conventional identification of states depend on the credibility of the *de facto* state notion itself, which supposedly reveals effective statehood underneath the deceptive status of internationally recognized sovereignty. As I show in this section, however, the conceptualization and empirical analysis of *de facto* state making ultimately expose the indeterminacy of state identity between legal status and empirical order. For one, the turn to empirical order promises an objective account of statehood but reveals itself to be arbitrary when applied. For another, and largely as a reaction to the failure to determine statehood empirically, some proponents of the *de facto* state concept eventually shrink back from the literal claim of state making beyond recognition and instead locate *de facto* states in a gray zone between non-state entities and real-because-recognized states. This not only effectively curbs the challenge of the *de facto* state claim, but also reveals the crucial role that international law plays as the final epistemic arbiter of state identification in IR.

Formal criteria applied: the flawed attempt to identify states as objective facts

The *de facto* state concept draws on the established dichotomy of effective order and legal status in IR by maintaining that the '*de facto* state' is 'the flip side of the quasi state coin' (Pegg 1998, 5). While *quasi*-states are supposedly 'not states in the strict sense, but only by courtesy' (Bull and Watson 1984, 430), *de facto* states are considered actual states because of their supposed effectiveness (Pegg 1998; Geldenhuys 2009). However, any attempt to grasp the substance of the state by virtue of its 'effectiveness' calls for the operationalization of criteria for empirical analysis. As debates within the literature show, determining the specific criteria and employing them for empirical analysis only reveals the empirical indeterminacy of state status.

As mentioned in the previous section, scholars drawing on accounts of state formation in historical sociology regard state-like entities beyond recognition as 'Tilly-like states in the making' (Kingston 2004, 2). Invoking 'a Weberian definition of statehood,' Spears (2004, 17–18) argues, one could make the case that 'the processes that Tilly describes with respect to Europe were very much at work in creating and strengthening […] states-within-states.' However, coercion and extraction in populated territories do not necessarily amount to the creation of states (Kingston 2004, 6; Spears 2004, 17) and state formation itself is a continuous process that does not stop at a particular point. In fact, Tilly's (1992) narrative of state formation over a millennium is not primarily concerned with – and is arguably even opposed to – defining a particular benchmark for fully developed statehood

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that could be used for assessing individual cases or measuring an entity's achieved 'statehood.'

Hence, those who advance a literal claim of *de facto* state making generally seek to define a threshold that would 'exclude more ephemeral entities' (Caspersen 2012, 7), that is, 'insurgent states, black spots, and states-within-states' (Caspersen 2012, 8; see also Geldenhuys 2009, 26–27). An empirical operationalization which sets *de facto* states apart from less effective entities seems crucial for making the point of actual state making beyond recognition. For this purpose, Pegg (1998, 27; emphasis added) argues that a '*de facto* state's capabilities' are sufficient to indicate statehood if 'it has an organized leadership; it has reached such a *level* that it is able to provide a *degree* of governmental services; it is able to control a *given* territorial area for *extended* periods of time.' Caspersen (2012, 11) too acknowledges that, in reality, statehood is a question of degree, so that, for instance, '*de facto* independence,' which she regards as a criterion of statehood, does not necessarily entail full territorial control, but should 'cover at least two-thirds of the territory to which it lays claim (…) including its main city and key regions.' Furthermore, since a formal declaration of independence can be strategically disadvantageous, she argues, it is sufficient that the entity has 'demonstrated clear aspirations for independence' (Caspersen 2012, 11). Additionally, Pegg (1998, 32) holds that states should not be 'here today and gone tomorrow,' although he is unsure whether 'one month' or rather 'one year' would be an appropriate threshold. Others set it to 'three years' (Geldenhuys 2009, 4) or 'at least two years' (Caspersen and Stansfield 2011, 3; Caspersen 2012, 11). Pegg (1998, 32; emphasis added) ultimately concedes that setting a specific temporal threshold remains 'somewhat *arbitrary*.' This is no small concession. Rather, as I illustrate below, the entire language of sufficient 'degrees,' 'extents,' and 'levels' suggests a scale on which any specific threshold cannot but appear as arbitrary.

Unsurprisingly, based on their respective specific criteria, Pegg (1998), Geldenhuys (2009), and Caspersen (2012) variously include some entities as supposed *de facto* states while excluding others. For instance, Caspersen's (2012) criterion of control over 'two-thirds of the territory' keeps Somaliland in, but leaves Western Sahara and Palestine out, while Geldenhuys (2009) includes all three cases in his list of 'contested states.' Similarly, while Geldenhuys (2009) counts Taiwan in, for Caspersen (2012, 10–12) it is a 'borderline case' of an unrecognized state because it is recognized by 23 states and maintains informal relations with many others. The criterion of having 'declared formal independence or demonstrated clear aspirations for independence' (Caspersen 2012, 11) also poses problems. For instance, the Kurdish Autonomous Region in Iraq was included although it had not formally declared independence, while South Ossetia and the Turkish Republic of Northern Cyprus, which did declare independence, were included despite their continued dependence on their respective patrons, Russia and Turkey (Caspersen 2012, 8–12). As Mengin (2008) suggests in the case of Taiwan, foreign relations with other countries can also be actively concealed through various legal fictions so as to *evade* the question of independence and avoid provocations. Regarding the hallmark criterion of effective territorial control, even a poster case of *de facto* statehood such as Somaliland has been contested. While often presented as 'maintain[ing] effective control in its territory' (Geldenhuys 2009,

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12; see also Caspersen and Stansfield 2011; Caspersen 2012), a number of scholars have cast serious doubt on the degree of government control and the stability of clan compromises in Somaliland (Zierau 2003; Kolstø 2006, 727–279; Renders and Terlinden 2010). Considering these ambiguities, Crawford (2006, 417) concludes that although 'the notion of the *de facto* regime has been pressed to its ultimate […] Somaliland is still not a state.' As such, it appears that whether Somaliland, Taiwan, Northern Cyprus, and other contenders 'really' are states or not remains empirically indeterminate.

Expanding or erasing the gray zone? De facto *'states' in conceptual limbo*

The contested effectiveness of many *de facto* states and the difficulty of establishing an objective threshold for a sufficient degree of material statehood also poses a problem for distinguishing *de facto* states from non-state entities. This is important because, conceptually, the *de facto* state claim depends on a double move. While erasing the difference between *de facto* states and recognized states 'above' them as artificial and merely a product of recognition, rather than effectiveness, it simultaneously establishes a difference *vis-à-vis* other entities 'below,' which lack sufficient effectiveness for statehood. Yet, if *de facto* states cannot be clearly shown to be states by virtue of their effectiveness, the difference between them and entities without a sufficient degree of political organization and effective territorial control, such as the various rebel rulers and 'states-within-states,' also remains fuzzy. As I discuss below, this threatens the *de facto* state concept by either expanding or erasing it.

Although they '*are* generally weak, poor, and very corrupt,' unrecognized states are supposedly still not to be confused with 'anarchical badlands,' since this situation is 'not all that different from the countries of which they are formally part' (Caspersen 2012, 22). Indeed, many recognized states also lack full control, are minuscule (Geldenhuys 2009, 10; Caspersen 2012, 5), or have their independence regularly compromised (Geldenhuys 2009, 15–18; Caspersen 2012, 5). This is, in Krasner's (1998) terminology, part of the 'organized hypocrisy' of international relations. Yet, acknowledging that deficits in actual control are not limited to *de facto* states only shows that all 'states' are effective only to some degree, and sometimes hardly at all. It does not help us draw a line between *de facto* states and other, less effective entities. In fact, the threshold of effectiveness is so vague that supposed unrecognized states are themselves regarded to 'move in and out' of other, non-state categories, including the aforementioned 'black spots' and 'insurgent states' (Caspersen 2012, 12). The difficulty of distinguishing alleged *de facto* states from non-state groups therefore puts their genuine state character further into question (Byman and King 2011).

In short, *de facto* states are not determined by a particular level of effectiveness – but neither are recognized states. As a result, recognition itself is sometimes brought back in to find a way out of the conceptual quagmire. Caspersen (2012, 150), for instance, links some deficits of *de facto* states to their lack of recognition and even provides an argument for why recognition, rather than effectiveness *per se*, makes the difference:

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> Unrecognized states are (…) not simply "states in waiting," identical to recognized states aside from their lack of recognition. No matter where they fall on the spectrum between "failed" and "strong" unrecognized states, they are subject to specific tensions that lend them an almost transient quality. Whereas recognized states are characterized by a certain rigidity, unrecognized states are characterized by their fluidity. This does not mean that statehood without sovereignty is not possible, but it takes a specific form.

This attempt to square the circle in the face of the empirical indeterminacy of state status leaves *de facto* states in a conceptual limbo and returns us to the classical choice between simply presupposing states or identifying them via legal recognition. If recognition provides a 'certain rigidity' to statehood, while *de facto* states remain characterized by 'fluidity' (Caspersen 2012, 150), this distinction is either essential for state status, in which case recognition reemerges as the actual marker of proper states, or else the lack of recognition is an accidental condition of *de facto* states that may hamper their development and endanger their survival but has no bearing on their essential state character.

In the latter case, however, it is not by crossing a particular threshold of effectiveness that *de facto* states are identified as states. Instead, by studying their 'domestic' politics and 'foreign' relations, Somaliland, Abkhazia, Taiwan, and others are invoked as states for analytical purposes, despite the difficulties in properly identifying them as such. This allows for these 'anomalies in a world of sovereign states' (Caspersen 2012, 3) to be empirically investigated as unrecognized states, but at the price of simply presupposing their state character, rather than substantiating it. This effectively curbs the challenge posed by the *de facto* state concept. Rather than turning the tables on legal recognition as the marker of states, the *de facto* state claim exposes a more radical uncertainty about the ontological status of states between recognition and effectiveness since neither can make a solid case for state identification.

Beyond recognition and effectiveness: the legal indeterminacy of state creation

Whether in studies of state recognition or in the *de facto* state literature, international law commands remarkable epistemic authority in questions of state identification in IR. While empirical studies of the impact of power politics and norms on state creation seek to explain the pivotal dynamics of legal recognition (Fabry 2010, 5–6; Ker Lindsay 2012; Coggins 2014, 28–32), approaches to *de facto* states justify their claim of unrecognized state making based on the principle of state 'effectiveness' under international law (Pegg 1998, 27; Lynch 2004, 15; Geldenhuys 2009, 8; Caspersen 2012, 17). Although the respective focus on recognition and effectiveness suggests contradictory readings of international law, the actual debates within international law are rarely seriously considered. Many seem to believe, as Geldenhuys (2009, 20) suggests, that 'there is no need to join what Crawford calls "the great debate" over the nature of the recognition of states,' because the study of contested states is 'not a study in international law *per se*.' Yet this is to shun an engagement with state identification in international law, while still relying on its apparent epistemic authority.

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In this section, I examine the relevant debates on state identification in international law, focusing on two important insights in particular. First, recognition and effectiveness have been opposed since the emergence of modern international law in the 19th century, and attempts to bridge them have remained fraught with irresolvable difficulties ever since. International law thus mirrors the indeterminacy of state identity which emerges from the *de facto* state challenge to recognition. Second, moving to proper legality in international law invokes additional factors of state creation, such as rights and prohibitions, but it cannot supplant the more basic question of state identification. Revisiting these debates thus shows that, far from providing a solid basis for identifying states, international law is equally caught between the presumption that states exist, and can be individually identified, and the difficulty of determining them by recourse to any specific facts, norms, or decisions.

Circling around state identification: the constitutive and declaratory doctrines

Like IR, public international law traditionally operates on the presumption of an international system that is neatly divided into states. In contrast to IR, however, international law has been seriously grappling with challenges of state creation and recognition for more than a century (Kohen 2004; Crawford 2006; French 2013). The two principal approaches took shape during the long 19th century in response to the decline of earlier doctrines based on dynastic legitimism and imperial sovereignty (Alexandrowicz 1958; Anghie 1999; Grant 1999). The constitutive theory, which holds that 'through recognition only and exclusively a State becomes an International Person and a subject of International Law' (Oppenheim 1905, 110 cited in Crawford 2006, 15), emerged as an expression of legal positivism and standard-of-civilization discourse to tell fully sovereign states from other entities in the nascent statist international system. The counter-position, maintaining that states are a matter of fact and recognition is only declaratory, has its antecedents in the Latin American bids for independence from the Spanish Empire, where it was eventually articulated in the principle of *uti possidetis juris* (Fabry 2010, 50). Thereafter, the emphasis on 'effectiveness' found its paradigmatic expression in the aforementioned Montevideo Convention of 1933 (Grant 1999), which enumerates the material criteria of statehood and stipulates that states exist independently of recognition. Their long history of opposition notwithstanding, international law does not clearly privilege either recognition or effectiveness as the marker of successful state creation. Instead, today it is widely held that '[n]either theory of recognition satisfactorily explains modern practice' (Crawford 2006, 5; see also Vidmar 2012, 701–704).

On the one hand, the constitutive theory has been rejected because it appears 'unacceptable' that 'an entity otherwise qualifying as a State' would be treated 'as if it was not a State' by states not formally recognizing it (Crawford 2006, 27). In terms of the classical critique launched by the declarative position, if a 'State, (…) exists in fact, [it] must exist in law' (Chen 1951, 38) too. For if the identification of states was left exclusively to the discretion of other states, international law would be merely 'an attorney's mantle artfully displayed on the shoulders of arbitrary power' (Brierly 1944, 13 cited in Grant 1999, 3). Premature or otherwise

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unjustified recognition is therefore also considered invalid (Crawford 2006, 21), although to determine prematurity obviously requires taking criteria of statehood other than recognition itself into account. Many international law scholars also doubt whether recognition, without consideration of effectiveness, would actually constitute real states (Kunz 1950, 718; Kreijen 2004; Peters 2010). Recognition, in other words, already presupposes their prior identification as entities ready to be recognized as proper states.

On the other hand, the declaratory doctrine mirrors the problems encountered by the *de facto* state claim when put to the empirical test. It rests on the view that in order to capture actual states beyond recognition, international law requires '"objective" criteria for statehood' (Crawford 2006, 45). Yet even Ti-Chiang Chen (1951, 59), the great advocate of the declarative position, admits that the conditions for statehood 'can only be stated in general terms,' preventing their uncontestable application to specific circumstances. In particular, '[t]here is no bright line between effective and ineffective' (Peters 2010, 3) and 'no specific requirements as to the nature and extent of this control, except that it includes some degree of maintenance of law and order and the establishment of basic institutions' (Crawford 2006, 59). As the attempts to empirically determine a sufficient degree of effectiveness of *de facto* states illustrate, the purely declarative position is 'epistemologically naïve' (Koskenniemi 2001, 385). If situations of supposed effectiveness require an interpretation, and in the decentralized international system this interpretation is conducted by other states, then (non-)recognition as the expression of such interpretations has returned 'by the back door' (Crawford 2006, 28).

Thus, recognition by other states is an expression of their political preferences, rests on contestable interpretations of both law and facts, and does not necessarily create effective states on the ground. However, effective statehood is in turn not an obvious fact and interpretations of whether it is actually present or not legitimately differ (Koskenniemi 2005, 272–281). Hence, although both doctrines seek to determine statehood, they are eventually forced to silently assume states that neither of them can actually grasp (Grzybowski 2017).

Bridging or escaping the gap: in search of solutions by legal regulation

Modern international law has sought to overcome this predicament in two different ways. First, many scholars have argued that 'the differences between declaratory and constitutive schools are less in practice than has been depicted' (Crawford 2006, 28). This has led to various formulas for compromise which emphasize the joint impact of the two factors, so that recognition requires a degree of effectiveness on the ground, while the effective statehood of any given entity is in turn enhanced by recognition (Wright 1955, 324; Crawford 2006, 27; Peters 2010, 5). The intuition that in practice different factors play a role in state making is essentially correct, as I shall argue in the next section, but within the constraints of international law these compromises are still geared toward determining states in terms of definite status, which reproduces the opposition between declaratory and constitutive approaches. Either the degree of effectiveness necessary for an entity to become a state upon recognition can be objectively assessed, then recognition is supplementary and withholding it appears to disregard actual statehood, or the entity's effectiveness

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is open to contestation but becomes sufficient upon recognition, in which case recognition is thought to determine statehood. It thus still appears that 'at a fundamental level a choice has to be made' (Crawford 2006, 27), one that is somewhat arbitrarily privileging one side over the other.

Second, legal scholars insist that statehood is a *legal* status and should therefore neither simply derive from facts nor from what are, ultimately, political decisions. The state is 'not a fact in the sense in which a chair is a fact,' but rather 'a legal status attaching to a certain state of affairs by virtue of certain rules and practices' (Crawford 2006, 5). Genuine legal rules in state creation include, for instance, the right to self-determination, the protection of territorial integrity of existing states, and the general prohibition of the use of force. That Palestine and Western Sahara have a right to statehood is neither a question of effectiveness nor of recognition, and the same holds true for the denial of this right to Southern Rhodesia between 1965 and 1979. Territorial disputes, self-determination conflicts, and questions of state dissolution and succession have thus inspired a vast body of legal knowledge and regulation that goes beyond a simple opposition between effectiveness and recognition (Kohen 2004; Crawford 2006; French 2013).

However, the shift toward proper legal regulation does not deliver any objective ground for identifying states either. For one, the question of whether or not specific rights or prohibitions related to state creation are applicable at any point gives rise to controversial legal debates in its own right. The dispute over the status of Kosovo and the advisory opinion of the International Court of Justice is an illustrative case in point (Milanović and Wood 2015). For another, even where legal considerations align, regulation eclipses but does not replace state identification. For example, many *de facto* states have persisted for decades without legal entitlement, while the acknowledged right to self-determination and widespread recognition of Palestine and Western Sahara have not ended debates about their actual statehood that still revolve around questions of effectiveness and recognition (Crawford 2006, 434–448).

As international law is premised on both regulating a social reality of statehood outside of its own normative confines and deciding on the state status of individual entities by resorting to the interpretations and decisions of other states, it remains caught between indeterminate arguments about effectiveness and recognition. There is no escape from this circle, which revolves around the basic assumption that states really exist and must be individually identified, although any attempt to pinpoint the essence of states reveals its indeterminacy.

From indeterminacy to social form: the paradoxical constitution of states

The analysis so far has examined the apparent difficulty in identifying individual states as the concrete 'starting point of international relations.' While empirical facts, political decisions, and legal norms are variously invoked to argue that any specific entity is or is not a state, none of them ever fully grasps the essence of states. In this section, I argue that the indeterminacy of state identification is not a problem that needs to be resolved, but rather a paradox invoking the primary distinction between states and the state system that is foundational of the modern international order. Indeed, the system of states presupposes that its individual units are states, while political entities are thought to be states only when they

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are units of the state system. As a result, individual states can only be assumed. Yet, as becomes visible precisely in the contested cases at the margins of the international, it is the very presupposition of the possibility of substantive identification that produces and reproduces states and the state system in practice.

In what follows, I first argue that the separation between the political and the legal concepts of the state is actually superficial, before sketching the constitutive paradox of the statist international that underpins it. I then turn to two lines of research that promise to escape the reproductive circuits of the statist international, that is, studies of state making as performative practice and historical reconstructions of the emergence and diffusion of the ontology of the statist international. As I suggest, despite important limitations, they provide avenues for exploring both the constitutive functions and the resilience of the paradox of state identification.

The foundational paradox of state identification

That IR and international law arrive at the same paradox is not accidental. While the two disciplinary perspectives have set different priorities and developed distinct approaches to come to terms with state creation, their shared predicament results from a prior distinction between individual states and the state system. It is this fundamental distinction which in the last instance generates all problems of state identification in international theory and practice, since it paradoxically grounds the state system on pre-existing states while regarding political entities as proper states only once they are part of the system. This essentially presents a 'chicken and egg' problem of whether individual states preceded the state system or *vice versa* (Coggins 2014, 21). Irresolvable at its root, the intertwined ontology of the state system and its component states renders the identification of individual states simultaneously necessary and impossible. As I explain below, however, we should not understand the paradox as a problem that requires a substantive solution, but rather as a foundational predicament that drives the (re-)productive dynamic of the state system itself. Before turning to the productive function of the paradox, I briefly explore how it has been rendered invisible by the division between legal and sociological approaches to the international and the state.

It might be tempting to trace the predicament of state identification between legal principles and political facts back to the disciplinary divide between international law and IR in the early 20th century, as paradigmatically articulated by Lauterpacht and Morgenthau (Koskenniemi 2001). However, both authors already presume an international system made up of states, as did Weber (1978) and Kelsen (1928, 2005) before them in their respective sociological and legal approaches to the state. Both had developed rigorously disciplinary perspectives to overcome what they regarded as 'metaphysics' in state theory, that is, the unfounded presupposition of the state's existence. For Weber, it was in legal constructions of statehood that state metaphysics could be detected, whereas sociology as an 'empirical science of behavior' (Weber 1978, 4) identified states with the 'human community that (successfully) claims the *monopoly of legitimate physical violence* within a particular territory' (Weber 2004, 33). Conversely, for Kelsen (1928), such a monopoly could not exist as a matter of fact, but only as a legal assumption or 'basic norm' (Kelsen 2005, 201). Ironically, when faced with the challenge of deciding *which* legal order applied in case of

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conflicting basic norms, Kelsen (1928, 98–99; 2005) himself invoked empirical *effectiveness* as the determinate criterion. This effectively closes the circle, as the factual state depends on the legal state, and *vice versa*. Thus, rather than overcoming the 'metaphysical' presupposition of the state, the division between legal and sociological views not only further perpetuated but also concealed it.

In fact, the paradox of state identification emerges from the prior distinction between the domestic and the international as two sides of the same coin in the political order of modernity (Walker 1993; Bartelson 2001). Within this order, political entities can only become part of the state system if they are states, while in order to be states, they must be part of the state system. States cannot be reduced to either their international or their domestic side, they ontologically combine both. State identification confronts a paradox because any attempt to originally identify states – by either international status or domestic effectiveness – must presuppose these states as evidently already there. 'Epistemic recognition' is thus impossible, and yet necessary as the 'starting point' of the international.

Instead of regarding this paradox as a problem, we should see it as a fundamental driver of social order. In system-theoretical terms, paradoxes generate order by allowing for differentiations that reduce complexity by imposing particular forms of observation (Luhmann 1993, 770). In this sense, the social form of the state reflects the imagined distinction between the domestic and the international that cannot be in turn reduced to anything else. Conversely, it has itself shaped social reality in such a way that states and the state system have become the primary lens through which political claims and conflicts are articulated, assessed, and settled. Indeed, the perceived need of international law and politics to identify individual states as well as the resilience of problems of state identification testifies to the continued dominance of the social form of the state. From this angle, state identification has never been the problem, but was always part of the solution, not because it identifies states out there, but because it enables their constitution, and that of the international, in diverse practices of 'state' making, recognition, and legal contestation.

In the everyday of international affairs, the foundational paradox of state identification has arguably become invisible behind routine practices. In most 'international' settings, practices appear as 'competent' precisely because they reflect a 'background knowledge' (Adler and Pouliot 2011) that is premised on given state identities and the distinction between domestic and international law and politics. By contrast, contested states mark the indeterminate or undecidable line of distinction between the inside and the outside, and thus bring the foundational paradox back to the fore. What is significant about attempts to identify states via recognition or effectiveness is therefore not whether they appear to be right or wrong, but that they share a commitment to the form of the state and thus, in their competing attempts at state identification, inevitably contribute to the delimitation of the statist international order.

Unfolding the paradox: performative state making and the reconstruction of statist ontology

The paradox of state identification circumscribes the scope and limits of substantialist approaches to the state in international law and IR, but it does not mark

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the end of critical inquiries into how the paradox unfolds. Two important lines of research in this respect are the study of performative state making and the reconstruction of the ontology of the statist international. I consider each in turn before discussing how they shed light on their respective blind spots, and how they can jointly contribute to further explorations of state making and the paradox of state identification in international theory.

First, if states have no essence grounded in either material facts or normative principles and yet adhere to an ontological form of the state, then they can be said to be performatively enacted, even without ever becoming fully 'present.' This has been variously argued in IR both with regards to state making (Visoka 2018) and in other contexts (e.g. Weber 1995, 1998; Jackson and Nexon 1999). Such performative state practices include, for instance, the constitution of agency in diplomatic relations and at international conferences (Wille 2017; Visoka 2018), where the state represented by a delegation can become tacitly accepted and hence co-produced by other states and international organizations. Legal constructions and decisions can have a similar effect (Grzybowski and Koskenniemi 2015). This can be observed, for instance, in the accession of Palestine to the Rome Statute after having been granted the status of a 'non-member observer state' by the General Assembly of the United Nations (International Criminal Court 2014), or in the confirmation of the right of Western Sahara to its territorial waters, despite Moroccan occupation, that was reiterated by the European Court of Justice with respect to the EU–Moroccan fishery agreement (Court of Justice of the European Union 2018). Precisely because statehood is a comprehensive social order irreducible to any single attribute, the various legal, political, social, economic, and diplomatic practices interact with each other across different fields, from diplomatic representation through taxation and border controls to the display of symbols such as flags and uniforms.

Any turn to the enactment of states should take a multitude of such practices into account, and investigate how they inform each other and become *identified* with a particular state, say Kosovo or Somaliland, by both participants and outside observers. Identification thus goes hand in hand with various practices of state making, is multi-sited, and concerns state projects ranging from routinely uncontested Sweden or the United States to variously contested Palestine, Somaliland, or Kosovo. On this methodological basis, the particular effect of recognition, or the lack thereof, can be studied beyond the misleading focus on whether particular aspirants really are states or not, while findings about various state practices of *de facto* states can be considered without either assuming or trying to determine their state status. It is important to note, however, that while in this perspective the ontology of the state becomes visible in its performative effects, it is at the same time reproduced as the very frame through which we understand political claims and conflicts. Thus, even an inquiry into how the state form is enacted in practice reproduces this form intellectually.

The second major line of research I consider reconstructs the theoretical texture and historical diffusion of the political ontology of the state and the state system. It draws on two different strands of research that have recently become more closely tied together. First, critical international relations scholars have noted in mainly theoretical elaborations that it is extraordinarily difficulty to think of alternative

political orders to the modern international because the distinctions between inside and outside, modern and pre-modern, state and state system, are too deeply entrenched in modern political thought (e.g. Walker 1993, 2010; Bartelson 2001, 2014; Prozorov 2009). Second, the work of legal and conceptual historians on political formations predating modern nation states and international relations contributes to grasping how the political ontology of the state emerged, took hold, and diffused (e.g. Bartelson 1995; Koskenniemi 2001; Benton 2010; Armitage 2013; Benton and Ford 2016). Together, these two strands of work lend themselves to a historical reconstruction of the political ontology that underpins the paradox of state identification.

Ideally, such a reconstruction would include inquiring into how the vocabulary of the state and the international came to shape concrete political and legal claims, conflicts, and solutions over time. The history of the American declaration of independence, and its global diffusion as a template, is a prominent case in point (Armitage 2013, 215–232). Another is the emergence of new states in Latin America in the first decades of the 19th century. As the Spanish empire imploded, elites in the colonies pushed for change, first under and then against the Crown. Despite inspirations from the American revolution and European enlightenment, they had no ready-made design for instituting such new states (Adelman 2006). Rather, the division between inside and outside emerged progressively through constitution-drafting, border struggles (Adelman 2006), and the development of the legal principle of *uti possidetis juris* in international law, which privileged 'effectiveness' over dynastic title (Fabry 2010, 50–70). To be sure, the episode indicates neither the beginning nor the end of a long process of constituting the statist international, but it illustrates how the forms of the state and the state system gradually became the self-evident conceptual lens through which we understand political disputes and solutions.

Although history may illuminate the emergence of the statist international and our predicament with state identification, it does not explain its current resilience. In fact, as the analysis above shows, the endurance of statist ontology in international theory is tied to the very practices of state identification, which in turn mostly react to claims of state creation. Indeed, advancing alternatives to statist ontology can only go so far, if the concrete problems posed and the proposed solutions reproduce the form of the state. As disputes over the status of Palestine, Kosovo, Western Sahara, Taiwan, or Abkhazia indicate, both observers of and participants in these conflicts continue to invoke the form of the state, whether to articulate secessionist claims or reject them in favor of the parent states. Hence, just as studies of the performative enactment of states cannot move outside of the ontology of the state, the study of political ontology cannot ignore the enactment of states in practice.

While the two broad lines of inquiry pursue different objectives, they are intimately connected and can be analytically interwoven to capture routines of, and potentially ruptures in, the (re-)production of states and the international. As such, the state form might have proved resilient in international theory not so much because of the impossibility of thinking beyond the state and the international *per se*, but rather because of its prevalence and reproduction in practice. Conversely, states might be re-enacted in practice not so much because social reality

naturally consists of separate communities and territories, but because political actors and legal regulations invoke the form of the state for the satisfaction of political claims and the settlement of political conflicts. The difficulty of articulating political alternatives, both in concrete practices and in ontological reconstructions, is thus likely due to the multi-layered and multi-sited enactment of states and the state system, where practices tend to become entangled in the naturalized ontological form of the state.

Conclusion

The apparent international exclusion of supposed *de facto* states exposes an all-too convenient image of a neatly delineated state system composed of formally recognized states that is neither justified in IR nor grounded in international law. The challenge of *de facto* states problematizes the supposed boundaries of the international, where state status might be claimed without recognition, based on territorial conquests, provision of services, popular support, or other features of 'statehood,' but where the formal rejection of that status has far-reaching consequences, including potential extinction. Yet, irrespective of the empirical insights yielded by the *de facto* state literature, its main claim of literal state making falters when scrutinized. Instances of effectiveness melt into ambiguous degrees, and the final threshold for achieving statehood reveals itself to be contested and ultimately arbitrary. This does not justify the return to legal recognition as the decisive mark of statehood, however. Instead, the underlying debate in international law shows that effectiveness and recognition are ontologically intertwined and indeterminate. In fact, any state identification ultimately rests on the ontological commitment to some entities as states, and the relegation of all others to 'non-state' status.

In light of the indeterminacy of state identification, the insights and inherent limitations of both the study of recognition in IR as well as the *de facto* state literature can be clearly stated. Investigating the patterns and impact of normative reasoning and political interests in recognition practices shows how formal membership in the system of states is regulated, and that recognition plays an important role as an instrument of ordering the international (Fabry 2010; Ker Lindsay 2012; Coggins 2014). However, recognition as such neither makes nor breaks states, nor does it tell us what 'states' are or how they emerge in the first place. Conversely, research on *de facto* states helps to understand the emergence of local political order in statist terms, and the impact of non-recognition and contestation on the entities concerned, but it does not tell us how they become *states* either. Both approaches implicitly assume states to be either already there or determined elsewhere. By implicit design, state identification itself thus remains outside of their scope.

As I have argued, the problem of state identification expresses a foundational paradox of the modern political order: the system of states is constituted by entities that are states, but in order for entities to be states, they must be part of the system. This renders the identification of states in the sense of 'epistemic recognition' both necessary and impossible. I thus suggest that rather than substantively grasping or determining individual states, state identification should be understood as the pivotal enactment of state ontology that underlies and ties together various practices of state making. Further inquiries into the conditions and implications of the

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predicament of state identification can fruitfully draw on, and contribute to, studies of performative state making, on the one hand, and historical reconstructions of the ontology of the statist international, on the other.

Finally, it might seem that the challenge of individual state identifications does not directly concern the constitution, contestation, and (re-)production of the state system as a whole. The argument presented in this paper suggests otherwise, however. It is precisely at the margins, in situations of state creation and contestation, that both the fragility and the power of the state system as a whole become visible. The state system is imagined as the consolidated normality against the background of which individual units can and must be identified. But if state identification cannot be grounded on any substance of statehood, neither can the state system. Rather than being a pre-given structure, the state system is itself performatively enacted through practices – including of state identification – that presuppose individual states. Thus, far from being an insignificant anomaly, the contestation and reconfiguration of statehood at the margins, where state projects clash and overlap, play an important role in (re-)producing the state system as the central imaginary of international theory and practice.

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