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Towards Global Justice: Sovereignty in an Interdependent World

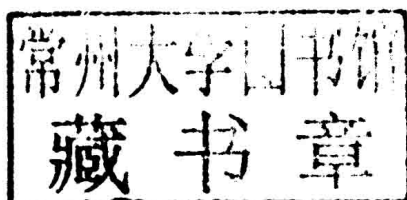
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The time of absolute sovereignty ... has passed; its theory was never matched by reality.

Boutros Boutros-Ghali
An Agenda for Peace

(New York: United Nations, 1992), para 17

The diplomacy generated by the Arab Spring replaces Westphalian principles of equilibrium with a generalized doctrine of humanitarian intervention.

Henry Kissinger

Syrian intervention risks upsetting global order

Washington Post, 2 June 2012

Foreword

This is an important book, which comes at a crucial time in the realignment of international relations, as states of the world begin to make common cause against external threats like terrorism and climate change, while accepting their own vulnerability to international monitoring and even armed intervention to ensure that they treat their own peoples with a modicum of dignity. Students brought up to believe in the traditional principles of Westphalian sovereignty seemingly embodied in Article 2(4) of the UN Charter, now find it difficult to account for a world in which Milošević and Mladić can be put on trial, where Charles Taylor goes to jail for many years, and where the UN and regional bodies encourage—by sanctions, indictments, and even armed intervention—a popular revolt against a long-lasting Libyan regime. This is not the world of independent nation-states, with political and military leaders bedecked with legal privileges and immunities. It is a world where “sovereignty”—classically the power of national entities to treat their own people as rulers wish and freely to follow their own national interests—is no longer an accurate account of how the world works, let alone of how it will work in the very near future. This book offers a credible theory of post-Westphalian sovereignty, based on interdependence rather than independence.

The author does not abandon the classical theory, but rather shows how it can and must be revised and reconfigured in a model that will explain, for example, the ground-breaking Security Council Resolutions 1970 (to refer the situation in Libya to the ICC prosecutor) and 1973 (that NATO should take “all necessary measures” to protect the civilian population from a regime that ruled the country for forty years). Academics—because they do not much live in the real world—have been slow to appreciate what was in truth a millennial shift from expediency to justice in international affairs. The belief in human rights is not “*The Last Utopia*” as Samuel Moyn would have it, but rather a system for reordering relationships between states and actively enforcing minimum standards of fair treatment. Conflict resolution, too, is no longer a matter merely of allowing expendable dictators to leave the bloody stage with amnesties in their back pocket and Swiss bank accounts intact—as the Mladić arrest has shown, they can run, but they cannot hide forever. Throughout the Arab world young people are organizing on

Facebook and posting photos and films on You Tube when tyrants counterattack them—they understand that this will constitute evidence which may one day bring those responsible for atrocities to international justice. John Locke's argument for the right to revolt when rulers break their compact by oppressing the people is on its way to becoming a part of international law through the "responsibility to protect" principle that this book so astutely analyses. Its particular strength comes from the author's experience of how regional security arrangements work, and her ability to show how the imperatives of NATO, EU, and UN membership variously impose duties on nation-state members that prevent them pursuing their own national interest at the expense of the global or regional interests of state communities.

This is a ground-breaking work which expounds a theory of interdependent sovereignties which is coherent and capable of accurately describing the limits on the nation-state in the twenty-first century. The author is a theoretician who has left her armchair to participate as an army officer in regional security arrangements and in observing the workings of justice in the Hague and has returned to academe to make sense of them—producing this bold template for understanding the limits of political power in a globalized world. International relations is not a subject that can be divided into historical or legal or philosophical or political perspectives—it can only be understood scientifically by examining how all these subjects cohere. The strength of this book is its multidisciplinary approach which leads to a new theory of how human rights will be better protected in a better world.

London, June 2012

Geoffrey Robertson QC
Doughty Street Chambers

Foreword

A review of the crucial questions of our times—which is the new world order? what kind of power distribution is expected in the near future? what about China's position and role in the changing global power equation? and so on—reveals a fundamental need for assessment to be thoroughly undertaken. Namely, whether we still find ourselves in the Westphalian systemic paradigm, or whether we have already entered a new paradigm, be it post-Westphalian, post-modern, or otherwise named.

Practically, an ongoing debate within the academic community that has as its subject the configuration of the new global security architecture, or the future structure and functionality of the world system in the twenty-first century is unfolding into this direction of analysis. Does the Westphalian paradigm remain valid when we face the prevalence of the “zero-sum game”—to quote Gideon Rachman's *Zero-Sum Future*—or will it become obsolete in a kind of progressive “win-win world”, free of hegemonic wars that were previously unavoidable?

The extraordinary significance of a correct answer concerning the direction of the systemic evolution is reflected in Simona Tuțuianu's book, in an area of research that has been (and still is) explored by numerous and well-known international relations analysts. On Google, one can find at least five million entries which refer to various (and not only academic) papers connected to the present challenges to the Westphalian system. The most recent controversy which highlighted the undermining of the Westphalian paradigm concerns the doctrine of preemption about which Henry Kissinger stated after the events of 9/11: “At bottom, it is a debate between the traditional notion of sovereignty of the nation-state as set forth in the Treaty of Westphalia in 1648 and the adaptation required by both modern technology and the nature of the terrorist threat” (see H. Kissinger in *Preemption and The End of Westphalia*). This debate stresses major challenges to the structural transformation of national and international security threatened by stealth attacks.

More important than anything, is the fact that this bold demarche comes from a unique scientific space—that of Eastern Europe—projecting in the international scientific world a point of view focused on the vast theme of interdependent old

and new sovereignties, everything based on a rich and diverse bibliography. The author comes from this complex region in terms of security developments that conditions different perceptions on national sovereignties (there are a lot of new nation-states here) being well familiarized with the scientific standards in the field and having the wisdom to use the necessary and appropriate leverage to identify a coherent answer to the aforementioned question. At least two aspects are very important.

First, the Westphalian system—that of uncontained supremacy of the national sovereignty—has faced major defiance in the post-Cold War era which radically transformed it. Whether we speak about the international courts in the Hague and a new codification of international law by “overcoming” the principle of national sovereignty, or about the “Responsibility to Protect” doctrine (the case of Libya and maybe that of Syria, in the future), these developments clearly show that we are entering a new systemic paradigm different to the traditional Westphalian one.

Secondly, if this hypothesis is to be verified, an interpretative grid based on the *win-win game* scenario is activating, suggesting the preeminence of the logic of international cooperation at the expense of traditional rivalries, which ensures the optimization of global systemic management. In my capacity as Co-chairman of the Regional Stability within the Greater Black Sea Area Working Group of the Partnership for Peace Consortium of Defense Academies and Security Studies Institutes (RSGBSA WG), I have explored the virtues of this interpretative grid’s applicability during the implementation process of relevant regional scientific projects aimed to develop ideas for practical cooperative activities among the littoral states and interested international actors. Achievements are notable, thanks to a strong network of experts to which the author currently belongs and, whether it is supporting development of democratic defense institutions, promoting defense education enhancement to prepare future leaders, or conducting research in support of regional stability, the current work of the RSGBSA WG has a direct line back to the above-mentioned scenario.

These are two starting points for reflection which are very thoroughly presented by the author, assisting us to move forward in finding workable answers to the delicate question: *What next after Westphalia?*

Bucharest, June 2012

Prof. Mihail E. Ionescu

Preface: A Personal Note

Is the Westphalian logic of national sovereignty old-fashioned? In this book, I aim to examine its demise by way of explaining the limits of political power in a globalized world, without the utopian idealism found in many academic treatments of international law. I believe that obituaries of the classical theory of nation-state have been written too soon: the demise of the Westphalian concept has been premature and a “responsible sovereignty”—incorporating the developing international law of crimes against humanity—is a better way to account for the extent to which nations today accept (or at least pay lip service to accepting) the imperative of complying with human rights norms. It is also a better way to hold them to their humanitarian promises.

Political theory has not caught up with the developments that over the past decade have surprised and even astounded Westphalian traditionalists as they hear the daily news: General Pinochet arrested in London; Milošević on trial; Charles Taylor sentenced to lengthy imprisonment; indictments from an International Criminal Court (ICC) against Colonel Gaddafi and charges against the former Ivorian president Laurent Gbagbo; President Ben Ali of Tunisia convicted in absentia and President Mubarak of Egypt convicted in person. The question has now become: can heads of state keep their heads? The “Arab Spring” which not long ago would have been a few local insurgencies crushed by state violence, now garners international support, with the events in the region widely viewed as popular campaigns against tyranny. Domestic laws in many parts of the world are trumped by International Court rulings or over-ruled when they conflict with international treaties, while even national security policies must take into consideration regional security arrangements, international actions against terrorism, multilateral actions against piracy, international efforts to combat global warming, and multilateral efforts to stop human trafficking and other transnational crimes. No longer can a state act exclusively, on the advice of Machiavelli or Dr. Kissinger, in what its government conceives to be its national interests: there are global conventions and constraints to be considered.

Once upon a not-very-long time ago, students of political theory and international affairs were taught the three verities of the nation state: territorial

sovereignty, formal equality between states, and the principle of nonintervention in international affairs. Today, this teaching is obsolete: sovereignty, even for the most powerful of states, is not absolute. Leviathan has changed, and cannot rule without looking over its shoulder.

The book examines how independence has become interdependence across a range of state functions. Yet does this mean that traditional Westphalian concepts of sovereignty should be abandoned in constructing a new theory of world governance for the twenty-first century? Not at all—the emerging pattern invites reconfiguration in a new model, which can be called the pattern of interdependence-based sovereignty. This model serves to explain contemporary events that puzzle traditional theorists, such as the war over Kosovo and the indictment of Bashir. The revival of the Nuremberg principle and its validation in Security Council Resolution 1970 (referral of Libya to the International Criminal Court) and the precedent-making UNSC Resolution 1973 approving NATO intervention in Libya and use of “all necessary means” to protect civilians. We are witnessing the emergence of a new action philosophy which is restructuring the post-Cold War system of international relations, notwithstanding traditional opposition from China and opportunistic dissent from Russia. Security Council Resolution 1970 and 1973 were, after all, unanimous, and although there has, at time of writing, been no agreement over what to do about Syria, there is at least an agreement that something should be done, even if it is only sending UN peace observers to a place where there is no peace to observe.

The book explains why and how power is drained from the centre of nation-states: a multiplication of international treaties, conventions and regulatory networks, international and regional peace-keeping operations and, especially, regional cooperation arrangements; terrorism after 9/11 and a very important external factor—the hegemony of the US, especially in terms of military force. These factors have contributed to questioning the classical theory of the nation-state and have led to the emergence of an international community which promotes government by rules for the common good—albeit a system which at this early stage is far from perfect. We are witnessing, in a sense, the “twilight of Westphalia” in the emergence—in modern law, in revisionist history, and in international affairs—of a new global generalization based on human rights. Ironically, the 1948 Universal Declaration on the subject, regarded in its time as no more than a set of nonbinding promises by states to do their best, has now crystallized into a set of standards that may in certain circumstances actually be enforceable.

The theory of interdependent sovereignties is developed as a paradigm that appropriately describes governance by states in today’s world. The very fact that “sovereignty” remains a part of that description means that the Westphalian idea has not been abandoned: the state remains an essential construct, but one with its freedom progressively limited by interrelational constraints and by the overarching demand for universal human rights. There is neatness and even an idealism in the standard academic approaches in international law: their descriptions do not always conform to the way that law works (or does not work) in the real world. I attempt to illustrate it by examining the proceedings in the Milošević case.

I conduct a microanalysis of this new internationally-responsible sovereignty at work in the European Union, as well as in the context of regional mechanisms that encourage it, such as the Regional Stability within the Greater Black Sea Area Working Group of the PFP Consortium of Defense Academies and Security Studies Institutes.

The conclusions of the book draw together the above developments in a new theory of “inter-dependent sovereignties”—by which nation-states are free to govern their people to the extent, but only to the extent that they accord rights to life and liberty which can be monitored and ultimately enforced by external actors and adjudicators. In their foreign relationships, this sovereignty endows states with the freedom to follow their national interests but again subject to international or regional arrangements for collective security, not only to make common cause against pariah states and terrorism but also against natural threats such as climate change and pestilence. In this way, a new theory of post-Westphalian sovereignty is postulated which accounts for the above-mentioned developments and will hopefully provide a road map to a better world.

I thank Geoffrey Robertson QC who guided me through the labyrinth of human rights issues, and to Mihail E. Ionescu, director of the Romanian Institute of Political Studies of Defense and Military History, for sharing his rich range of expertise and knowledge of international relations. The Institute and its researchers deserve recognition for lightening my load and providing valuable collegial support. I am much indebted to my publisher at T.M.C. Asser Press, Philip van Tongeren, and to my editor Marjolijn Bastiaans. My thanks also to Lionel Nichols who helped me with the English translation. Last but not least, with gratitude to my family whose love and support always sustains me.

Bucharest, July 2012

Abbreviations

BSDC	Black Sea Defence College
BSUF	Black Sea University Foundation
CIA	Central Intelligence Agency
CIS	Commonwealth of Independent States
CSCE	Commission on Security and Cooperation in Europe
DCAF	Geneva Centre for the Democratic Control of Armed Forces
DoD	United States Department of Defence
EU	European Union
EUCOM	U.S. European Command
GBSA	Greater Black Sea Area
GWOT	Global War on Terrorism
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IPAP	Individual Partnership Action Plan
IPSDMH	Institute for Political Studies of Defence and Military History
ISAF	International Security Assistance Force
KLA	Kosovo Liberation Army
MAD	Mutually assured destruction doctrine
MCT	Mobile Contact Teams
MENA	Middle East and North Africa
NATO	North Atlantic Treaty Organization
NIISP	National Institute for International Security Problems from Ukraine
NISA	NATO International School of Azerbaijan
NSC	The White House National Security Council
OECD	Organisation for Economic Co-operation and Development
OSCE	Organization for Security and Cooperation in Europe
PfPC	Partnership for Peace Consortium of Defence Academies and Security Studies Institutes
PMSC	Political-Military Steering Committee of Partnership for Peace

RSGBSA WG	Regional Stability within the Greater Black Sea Area Working Group of the PfP Consortium of Defence Academies and Security Studies Institutes
SAC	Senior Advisory Council of the PfP Consortium
SCMCH	Initiative of South Caucasus and Moldova Clearing House
UN	United Nations
UNSC	UN Security Council
US	United States
WEU	Western European Union

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Chapter 1

Sovereignty Over the Years

Abstract Theories of sovereignty, from Jean Bodin to John Rawls, are explained and the problem of positivism, namely principles that do not play out in real life, explored. A description of “functionalism” as an attempt to explain what works in international relations is given. Why does “sovereign equality” fail to explain a world in which some states have more sovereign prerogatives than others? The UN Charter enshrines Westphalian sovereignty but provides no room for moral judgements other than by Security Council’s use of Chapter VII powers. However, treaties and imperative norms of customary international law provide constraints on sovereign absolutism. Amoral realism theories, deriving from Realpolitik fail to account for new notions of state responsibility in an independent and globalized world. There is now a greater dependence on liberal institutions and regional arrangements for collective security, and a need to provide for a new theory of how sovereignty is limited in the world. Constructivism emerged in the 1990s as a moderate branch of a bigger family of critical currents, which shows that the social identities of individuals and states are more important than the material structure of the international system. A constructivist analysis assists the understanding of the evolution of sovereignty by applying the mechanism of socialization of norms in the field of human rights and humanitarian intervention. According to the constructivist logic, sovereignty is no longer an untouchable, sacred reality, but an imperfect social construction.

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