

# 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.

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Țuțuianu, S.

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