

## States without Borders: Westphalia Territoriality under Threat

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**ABSTRACT** The treaty of Westphalia signed in 1648 formally recognized state system in international politics. By Westphalia treaty of 1648, a system of rules establishing the rights and duties of states was signed. It established the 'territorial state' as the basis of the modern state system and emphasized international boundaries as legal territorial boundaries between one country and the other and asserting their sovereignty as well. This paper focuses on recent developments, especially globalization and contemporary historical, economic and socio-political struggles and rivalries that have seriously challenged this concept, thereby making the original meanings of borders to become more and more ambiguous and contradictory if not problematic. Today, for example, the emergence of supra-state regions as exemplified by the European Union, African Union and others have led to a lack of congruence with the Westphalia principle and have thus created a challenge for the modern nation state. As a result, the protection and order that Westphalia established is giving way to unstable economic fortunes with a consequent question on the contemporary relevance of the Westphalia treaty.

### WHAT ARE BORDERS?

Borders refer to external boundary of states which have legal significance and require knowledge of history and appreciation of context to understand (Bartlett and Mackay 1989; Anderson and O'Dowd 1999:594). This particularly refers to international boundaries and not to domestic borders that demarcate administrative competencies within a state without emphasis on sovereignty.

### THE NATURE OF BORDERS

The treaty established the 'territorial state' in terms of the frontiers of their territories, on land and sea. It also defined the conditions under which a state could acquire valid title to territory (ies) either by discovery, cessation, and annexation (Morgenthau 1993:254). Territoriality also implies the definition of the right of a state over its citizens whether they live within and outside its defined territory. It equally defines their rights over the territorial sea, the rights of diplomatic representation, and the sanctity of national governments. The laws of war and treaty obligations have their origins in the treaty of 1648 (Morgenthau 1993: 254). In a very important sense, the treaty brought religious wars to an end, and established the territorial state as the basic unit of the international system. The importance of 1648 is in terms of the compre-

hensive codification of these rules. Earlier, Hugo Grotius (1953) had written on the law of war and peace.

That Westphalia established the territorial state also meant the end of absolutism (Ray 1998:161-4). By implication, nation states, despite the confusions surrounding the term (Olson 1991:120), became sovereign. However, given the fluidity of international law, and the undefined nature of state power, sovereignty has sometimes been described as unnecessary or unclear (Ray 1998:63) about the status of states in the international system particularly, within the framework of the United Nations. Relevant or not, sovereignty gives emphasis to international boundary(ies).

The 1648 creation of international borders could imply certain stagnancy in meaning and relevance. However, against the backdrop of the triad forces (Ray 1998:163) that gave birth to it, we can reasonably expect certain dynamic of boundaries along these lines or in terms of emerging social forces. Much of these changes are from adjoining states. Borders may be defined as external boundaries of states which have legal significance (Bartlett and Mackay 1989). Borders are significant in legal terms because they are the legal demarcations which define sovereign jurisdictions. It could also mean a zone of transition or a frontier area.

International borders impact on internal boundaries as in the case of federations or a

devolved unitary system. Legal boundaries interact and sometimes conflict with national, ethnic, religious or linguistic ties. Where they conflict, there are always a number of socio – political agitations deriving from these contradictions as in the case of Africa (Nzogola-Ntalaja 1987:42-66). Thus, to understand borders, we need the knowledge of history and appreciation of context (Anderson and O’Dowd 1999:594).

### Contemporary Relevance of Borders

Despite the controversies surrounding borders, they have served as territorial organizing principles. This lends credence to J.P. Nettle’s (1968) pioneering work on the centrality of the state in political thought and analysis (see also Evans 1997). The importance of boundaries cannot be undermined by variations in stateness. If anything it shows that without boundaries, the international system would have been comparable to, if not worse than, the Hobbesian State of nature (Hobbes 1971).

Beyond the national state, borders can have significance in a regional sense. In terms of a region, a border could refer to areas beyond a territorial state or an administrative area that is distant from that border. Because of the development of Supra national organizations and the border implications of most modern regional groupings, the ‘Westphalia’ meaning of borders have been ambiguous and contradictory (Anderson and O’Dowd 1999: 594). The European version of regional grouping deserves particular mention because of the activities of the Council of Europe and the promotion of the European Common Market (Anderson and Goodman 1995: 600–31; O’Dowd 1998b). Regional boundaries have implications for governance which sometimes imply a reduction in or the abolition of border controls (Church and Reid 1999:643–55; Kratke 1999: 631-41; Perkmann 1999:657–67). Regional conglomerates may arise as a result of ideological unity or division (Heyman 1999: 619–30; Paasi 1999: 669–80). Trans-border transactions in terms of funding opportunities or differential in wages, prices and institutional norms may give rise to regional unity. Indeed, beyond Nettle’s (1968) conception of the centrality of the state to political thought and analysis, economic consideration put border studies at the center stage of a contemporary analysis of interstate relations.

### Factors of Border Changes

These changes essentially deriving from regional groupings and alignments have resulted in ‘border change’ (Anderson and O’Dowd 1999: 595) that not only transform existing borders but also change the symbolic meanings and material functions of borders. This is because cross-border regions can derive from irredentist and revanchist tendencies (Nzogola-Ntalaja 1987: 52-53).

If the definition of borders were problematic, border changes would be more so because of its dynamic nature. It may refer to new, revival or geographically relocated state borders. In significant terms, it infers a change in the symbolic meaning and material functions of borders (O’Dowd 1998a). In a sense, this de-emphasizes legality and in a way clarifies the utility of borders more in terms of functionality than in terms of materiality and maybe in some way, a certain indication of symbolism. Border changes have occurred in the former Soviet Union (Forsberg 1996:355–86) the reunification of Germany, and national conflicts in Quebec, Yugoslavia, Kashmir, and to some extent Ethiopia.

The most significant dimensions of border change are those, which result from economic, political and cultural forms of globalization. Such cases of border change are evidenced by the emergence of supra-state region as exemplified by the European Union (Anderson and Goodman 1995: 600–31), because the latter effectively alters the symbolic relevance of existing borders. Changes of the former type are a reinforcement or in conformity to the Treaty of Westphalia. To that extent, our concern is with those border changes that have the capacity to devalue state borders in terms of emphasizing supranational or sub national entities. This is the challenge to the 1648 Treaty of Westphalia. Because a continuous development in this direction would mean that increasingly, states would have no borders in symbolic terms.

### Challenges of Symbolic Borders

But, as we know it today, borders have both material and symbolic uses (Paasi 1999; Anderson and O’Dowd 1999). In symbolic terms, they can be a material embodiment of history (Rupnik 1994: 91–114). The misleading aspects of symbolic borders are that there is most – times a wrong

assumption that state and society or state and nation are synonymous or coterminous. A proof of this wrong notion is the contemporary dynamism of borders and its attendant changes. Borders are designed on the basis of arbitration and simplification of complex geo-political, political and social struggles (Anderson and O'Dowd 1999). Unfortunately, boundaries do not always coincide with economy, polity, and culture. It represents a particular relationship between them that is sometimes, durable and sometimes transitory. But a lack of congruence between these border changes and the Westphalia principle creates a challenge for the modern nation state.

### **The Future of Westphalia 'Borders'**

The transitory nature of modern borders opens the floodgate of problems with the durability of the treaty of Westphalia. Globalization has encouraged increasing degree of human and material mobility and interaction (Amin 1997:129). Such interaction increasingly encourage cross border exchanges; whereas, Westphalia territoriality is over protective, imprisoning, aggressive in assertion, and condones off areas of opportunity and zones of contact and cooperation. The contradictions offered by rigidity raise a challenge for the spontaneity of borders. When viewed from the perspective that society in some cases transcends borders, there is an endless tendency towards fluidity since society would always want to interact, if there is a commonality across the regions. In this respect, the role of elites in terms of the nature and extent of cross -border interactions is important (Baud and Van Schendel 1997: 211-42).

Such interactions often produce 'new borders' on a daily basis that modify inter-state relations and geo-political regions or border regions (Wilson and Donnan (Eds.) 1998). In addition to elite tendencies, comparative relations with bordering institutions do affect cross-border relations. Whether this is symmetrical or asymmetrical, is a different matter.

Most often, military considerations take precedence over economic ones in border administration; in terms of the need to be protective of state security and therefore set up military barriers along lines. This tends to have economic costs (Hansen 1981). There is much to gain from regional economic co operations (Anderson and O'Dowd 1999:597), which are

different from illegal transactions (Baud and Van Schendel 1997:230-1). Asymmetries often give rise to circulatory cross-border activities (Heyman 1999). This tends to suggest a dynamic border arrangement but in the long run, they function to sustain the border of states.

### **Emergence of Transnational Governance and Impact**

The essence of border is to enable governments control resources and people in a way to determine its economic fortunes. However, globalization has changed this as it introduces wider webs of transnational governance, new supranational institutions and new technologies which increase the flows of capital, commodities and people across borders. This has already altered the conception of the Treaty of Westphalia in terms of state boundaries. Contemporary borders, therefore, pose a challenge to state centric tendencies and question the socialist idea not only in terms of its emphasis on a socialist globalization, but also in terms of its emphasis of the central role of the state in the development project. The simple truth is that today, we are in a 'borderless' global economy.

Globalization tends to undermine territoriality that observes restriction (Sack 1986:21-34). Territoriality focuses attention on borders. When it was instituted in 1648, it heralded a new era in inter- state relations. But, it has become problematic because it is divisive, disrupts social processes, reifies power, de-emphasizes social relations and distorts social reality (Anderson and O'Dowd 1999:598). It comes into conflict with any attempt to generate extra territorialities. To overcome this difficulty, borders need continuous maintenance and social definition (Anderson and O'Dowd 1999; Paasi 1999), only then would it not be zero-some (Anderson and Shuttleworth 1998: 187-208). Globalization thus becomes one of the ways in which we can overcome the problems of rigid borders because globalization is encroaching on the symbolic sanctity of borders.

In any case, that global view or conception of universal economics finds expression within the framework of the territorial state. Since, the capacity to coordinate cross- border relations is a key power indicator of the territorial state. Investment capital is a key to cross -border integration. In addition, nationality, religion, language, political ideology, race and maybe

gender; economic fortunes seem to be the singular factor, gravitating states towards cross – border transactions (Bunyan 1993; Miles and Thranhardt 1995).

Border studies become necessary to evaluate the limitations of state territoriality and power. State borders serve the dual purpose of control and exclusion as well as empowerment and inclusion. So that territorial boundaries can serve as a basis for democratic community. By extension, the freedom which democratic community makes possible allows the promotion of multicultural and multidimensional identities across open borders and robust cross- border relationships.

Among the factors which impact on new developments in border symbolism include, new economic relations between and among citizens of neighboring territories and their governments especially, in cases of regional groupings. In this connection, globalization becomes a problematic for traditional boundary conceptions, since it connotes a chain of activities (Amin 1997: 123–37) which tend to alter the original meaning of borders. The importance of this dimension of our discussion is in terms of whether the future of state borders is guaranteed and if they are losing their pride of place in inter-state relations (Anderson 1995: 65–112). Globalization studies tend to suggest a decline in the significance of borders and territoriality. Since globalization tends to encourage the development of a ‘borderless’ global economy (Ohmae 1990), new communication and information technology (Castells 1997), and a transnational governance network that undermine state boundaries (Robertson 1992; Giddens 1999).

### **Territorial Ideological State in Trouble**

One version of the futuristic prediction of the value of borders goes to the extreme of positing that the current globalization trend will see the end of the state centric world of territorial borders (Ohmae 1990; Ohmae 1995). Implied in this perspective is the end of the ideological state (Fukayama 1991) and by implication, geographical territory (O’Brien 1992). It is easy to see the end of ideology in a globalizing or globalized world. And indeed, the world cannot truly globalize in an ideologically divided world (Ray 1998: Chap. 8). But the aforementioned centrality of the state and the experiences since supra state systems and organizations began emerging tends to

suggest that the state centric world of territorial borders is not about to come to an end at least in the sense that, state structures have continued to serve as the organizational basis of these supra state formations.

Moderate conceptions (Amin 1997; Giddens 1999) are skeptical of the view that the territorial state will end with increasing globalization, although, it does appreciate the extent to which globalization is overcoming territorial barriers and encroaching on state powers. In any case, it would appear that the protection and order that Westphalia established (Anderson and O’Dowd 1999:598), is giving way to unstable economic fortunes; with the attendant consequence of lessening state capacity for law enforcement, and irrelevant border- lines (Letarmendia et al. 1996: 91–116). As a result, Westphalia territoriality becomes more and more problematic, since territoriality focuses attention on ‘fixed’ borders (Anderson and O’Dowd 1999: 598).

The extreme views of the impact of globalization on the territorial state tends to emphasize economics and technology and to some extent culture. Its platform of analysis is virtual not actual economics, communities, culture and even systems of governance beyond territorial borders (see Hoogvelt 1997: 1 and 5-6). This manner of speaking can also be inferred from Alonzo Church (1971:276–82; see also Castells 1996:472).

As always, transnational cooperation is playing a key role in the transformation if not de-emphasis of the territorial state. This is symbolic in the cultural sense of globalization (Featherstone (Ed.) 1990). There is a sense in which Fukuyama’s (1991) expectations approximates the end of the territorial ideological state. It is also reasonable to believe that the victory of liberal economies would not be final (Sklair 1991; Holman and Van Der Pijl 1996). Nevertheless, the place of a transnational bourgeoisies if anything, lends credence to a globalization of values and by implication a de-emphasis of the territorial state. However, one is mindful of the fact that moderate views on the impact of globalization on the territorial state see new development in symbolic territories as new macro-regional borders (Hirst and Thompson 1995: 68).

### **CONCLUSION**

Whatever position is taken, political borders and by implication, the treaty of Westphalia is



undergoing a historic change (Anderson and O'Dowd 1999: 598) in such a way that we may indeed call to question and begin to rethink the future of political borders and territoriality. Indeed, we may well be heading for the pre Westphalia configuration in which Europe was a large collection of small local entities under one universal authority the difference being that instead of the Holy Roman Empire, commerce and economic consideration would now be the universal governing authority. In any case, this contemporary development does not in any way negate the traditional conception of sovereignty (Herz 1959: 50-1) since it did not imply that a state was under no superior obligation in its relationship with other states (Brierly 1963: 11). Sovereignty only came to express its popular autarkic meaning because of the desire to avoid catastrophes such as the thirty year war (Morse 1976: 33-4). Even Bodin's conception of sovereignty did not suggest a right to rule arbitrarily or above the law (Ray 1998: 163). However, we must face the future and whatever it is, that future certainly cannot be a world without the territorial state (Evans 1997: 602). The possibility is that international borders would become as symbolic, or less so than domestic boundary. The challenge before the state is the effective control of foreign capital (Mardon 1990: 111-38) in such a way that it does not lose its significance. How it effectively does this will determine the pendulum swing in favor of a globalised world or the territorial state but certainly, Westphalia territoriality can no longer hold in its strict sense. The modifications made would create 'states without borders'. That there are 'states' means there would at least be some sense of symbolic borders. But the borderlessness would consist in the incapacity of state borders to continue to serve as restrictions to transnational trade and to a large extent, military purposes. If international borders become comparable to domestic borders, we may well say 'welcome to the state of the world'.

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