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**[THE OBSOLESCENCE OF THE WESTPHALIAN MODEL
&
THE RETURN TO A MAXIMUM STATE OF EXCEPTION.]**

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The myth of Westphalia has carried extraordinary power within the shared consciousness of society, and continues to impact discourses on contemporary issues on the international plane. - Stephan Beaulac

The contemporary organization of global violence is neither timeless nor natural. It is distinctively modern. In the six centuries leading up to 1900, global violence was democratized, marketized and internationalized. Nonstate violence dominated the international system – Janice E. Thomson

All the theories in political science of the state of exception, are based explicitly on the state's monopoly on violence- Hardt & Negri

Abstract: The international system is based on the modern conception of the Westphalian model, which organizes and monopolizes violence under the exclusive authority of a sovereign state. This conception only began to characterize global politics in the 19th century and more so at the beginning of the 20th century, contrary to the political myth that perceives the year 1648 as the moment where world state leaders monopolized, organized and structured violence. I characterize the international system prior to the Westphalian model to be a period of maximum state of exception because states de-monopolized violence and authorized the use of nonstate actors to conduct violence which dominated the international system. The international system transitioned from a maximum state of exception to a minimum state of exception when the Westphalian model began characterizing the international system. In a minimum state of exception, the Weberian state entailed a state monopolization on the authority to deploy violence beyond its borders and the states acceptance of responsibility for violence emanating from its territory. Violence in a minimum state of exception shifted from nonstate actors to citizen-soldiers. It is the objective of this research paper to highlight three consecutive Revolutions in Military Affairs (RMA) that occurred in the international system which have modified the actors involved in war. The latest RMA that occurred at the highpoint of the coldwar, but more so after the declaration of the Global War on Terror (GWOT), has rendered the Westphalian model obsolescent. The modification of the primary actors in combat has consequently reverted the international system to a maximum state of exception where war is now global and an everlasting state in global affairs.

Key terms: Factuality versus Legality, War and Civil war , Maximum and Minimum State of Exception, Westphalian Model, Revolution in Military Affairs (RMA), Nonstate actors, Sovereignty ,Global War on Terror (GWOT), High-point, Plausible deniability, Global war, Republican Contract, Citizen-soldier.

Introduction

War, plays an intrinsic part in international relations insofar that it is one of the strategies adopted by great powers to maximize their power and ensure their survival¹. Clausewitz's famous 19th century definition of war being "merely the continuation of politics by other means"² continues to hold *veritas* in today's international system. The transition from the Medieval epoch to Modernity, or from Feudalism to Secularism, altered the way we discuss and categorize wars. Following the transition, a conflict was no longer exclusively titled War, such as the Hundred Years' War, or the Thirty Years' War, rather the category of War was beginning to witness an evolution, generating conflicts acknowledged as *Civil War* such as the French Civil War or the American Civil War. It is true; the treaty of Westphalia in 1648 is the founding moment where European powers expressed the will of no longer engaging in religious warfare and domestic interference in politics. Nevertheless, one would be naïve to believe that these different nomenclatures came to affect the *systema gentium* immediately.

The Westphalian treaty gradually gave birth to the Westphalian model, through the passing of centuries, and became the principal model characterizing state politics in the international system. The principle elucidates that each nation-state has sovereignty over its territory and domestic affairs, to the exclusion of all external powers, on the principle of non-interference in another state domestic affairs³. Because it took several centuries for the concept of nation-state to mature, loyalty to a Lord and not a nation remained the *ethos du jour*. There was no reason for any ambitious man to limit his employment to the ruler of the land of his birth

¹ John J. Mearsheimer, *The Tragedy of Great Power Politics* (New York: Norton, 2001),54

² "Clausewitz: War As Politics by Other Means," Online Library of Liberty, last modified April 10, 2014, <http://oll.libertyfund.org/pages/clausewitz-war-as-politics-by-other-means>.

³ Andreas Osiander, "Sovereignty, International Relations, and the Westphalian Myth," *International Organization* 55, no. 2 (2001):251

especially when provinces were being passed according to marriage and the whims of war⁴. State leaders had no problem de-monopolizing violence and endure the unintended consequences of losing control over large numbers of pirates, privateers and mercenaries that filled their army ranks and have them control and influence the decision-making process of authorizing violence. It was not until the American and French revolution in the 18th century that the category of civil war appeared because war was now conducted by citizen-soldiers which monopolized, organized and structured warfare⁵. Also, both revolutions instigated the institution of the republican contract which came to replace states opting to employ nonstate actors such as pirates, privateers or mercenaries to defend their territories⁶. This evolution in military affairs only permitted citizen-soldiers to take part in conflict and codified the legitimacy and monopoly of violence to be exclusively in the control of the sovereign state⁷ - which is how we traditionally perceive *Civil* war.

This research paper will be concerned in revealing the developments that occurred in the international national system which influenced the transition of conflicts being categorized as simply war to *civil* war and will reveal the blurred line between such distinctions of categories in 21st Century International Relations. The research will begin by revealing the myth of Westphalia which divulges that the international system could not have witnessed civil wars after the treaty of Westphalia in 1648, contrary to contemporary belief, for the reason that the Westphalian model only began to characterize the international system at the conclusion of the 18th century. Furthermore, the second section will discuss the concept of the state of exception which constitutes the basis of this research paper because it allows the reader to discover if the

⁴ Urban, 30

⁵ Barry Buzan, and Lene Hansen, *The Evolution of International Security Studies* (Cambridge:University Press, 2009),54

⁶ Ibid,29

⁷ Xavier Guillaume and Jef Huysmans, *Citizenship and Security: The Constitution of Political Being* (New York: Routledge, 2013),198-199

actors in conflict are citizen-soldiers or nonstate actors such as privateers, mercenaries, or pirates. This discovery will consequently allow the reader to establish whether the destabilization of the Westphalian model characterizes the period in question and whether the period in question is categorized as war or *civil war*.

The definition of state of exception I develop in this research paper goes beyond Carl Schmitt's⁸ traditional conception of the state of exception which he proposed after World War One. Firstly, the current state of exception characterizing the international system which I label as a maximum state of exception, blurs the line between legality and factuality because traditionally it was seen as a given that the sovereign state will always prioritize monopolizing violence and will only authorize citizen-soldiers to eliminate the state of exception. Furthermore, the state of exception adopted in this paper is perceived as an indefinite trait of the international system, contrary to Carl Schmitt's definition which perceives the state of exception as a temporary matter.

Consequently, because Schmitt's definition is no longer viable to explain the current state of exception the international system is witnessing, the state of exception I take up includes two extremes, maximum and minimum. Both extremes will be explained in three historical periods that witnessed a Revolution in Military Affairs (RMA) which then modified the state's military defense strategy by reconfiguring the main actors involved in the field of battle – whether to primarily use nonstate actors such as privateers, mercenaries, pirates, terrorist networks (maximum state of exception) or citizen-soldiers (minimum state of exception).

⁸ Carl Schmitt, *Political theology: four chapters on the concept of sovereignty* (Cambridge, Mass: MIT Press, 1985),5

The first period of maximum state of exception I discuss lasted until the end of the 19th century, and the second period of maximum state of exception I discuss reconstituted itself in the international system at the high-point of the cold war in 1989 Afghanistan, and currently persists because of the initiation of the Global War On Terror in 2001. The research will highlight the similarity between both periods by alluding to large numbers of nonstate actors being authorized by the state to conduct violence. Also, both periods lack the state having control and monopoly on the decision making process of authorizing violence but rather allows the privatization of war by endowing mercantile companies, charity organisations, or financial aid organization with power that was traditionally reserved to the state. This privatization allows the governing power to sanction plausible deniability or the ability to deny knowledge of or responsibility for any damnable actions committed by nonstate actors.

I accentuate that the transition from a maximum to a minimum state of exception occurs because of unintended consequences that arise in the international system because the state loses control and becomes under attack by nonstate actors it had initially legitimated and authorized to conduct violence. I underline that the period of minimum state of exception commenced in the 19th century when leaders stopped authorizing nonstate actors to conduct violence but utilized primarily and exclusively citizen-soldiers. Furthermore, I identify a period of minimum state of exception to be similar to Carl Schmitt's traditional conception of a state of exception in that it is temporary and conforms to the Westphalian model since the sovereign state prioritizes having monopoly on the authority to initiate violence using exclusively citizen-soldiers. The sovereign state during a period of minimum state of exception in contrast to a period of maximum state of exception is held accountable for resources being diverted to nonstate actors because they are seen as exacerbating unintended consequences which threaten the stability of the nation-state.

The research concludes by stating that the international system has always been in a state of exception, but its minimization or maximization depended on the actors authorized to partake in conflict and whether the state desired to embody a Westphalian model. It also concludes by stating that since the highpoint of the cold war and the initiation of the Global War On Terror, the international system has been re-manifesting itself into a maximum state of exception where conflicts that are perceived as *civil* war are no longer simply *civil* because a variety of nonstate actors other than citizen-armies have been authorized and legitimized by ostensible sovereign states to engage in violence resulting in a Global War.

The Myth of the Westphalian model

The sub-field of International Relations (IR), International Security Studies (ISS), arose from the threats of World War II. Its primary objective was determining how to protect the *state* against external threats in the future. The development of ISS recognized the primary referent object in IR to be the state⁹. Prominent political scientists such as R.B.J. Walker have argued that the concept of national security that flooded the field of IR after WWII drew upon several centuries of state conception which directly constructed the traditional idea of a modern sovereign state¹⁰. Walker claims that the state witnessed sweeping transformation in transition from the feudal system to the modern sovereign-territorial system¹¹.

The story of *state transformation* in IR has been routinely attributed to the Peace of Westphalia in 1648 and the system it produced- the Westphalian Model. The Westphalian Model

⁹ Buzan and Hansen , 23

¹⁰ Ibid,23

¹¹ Ibid,23

is defined as “a society of states based on the principle of territorial sovereignty”¹², that entails principles of equality, autonomy, and non-interference in the affairs of other states. Similarly, as Morgenthau notes, the Peace of Westphalia made the “territorial state the cornerstone of the modern state system”¹³. However, the Peace did not represent a “majestic portal that leads from the old world to the new world”, as stated by Gross¹⁴, but quite the opposite. Revisionist scholars such as Osiander claim that political scientists who attribute the ethos of sovereignty and equality to the Peace of Westphalia do so “against the backdrop of a past that is largely imaginary.”¹⁵ Firstly, the Peace did not include the term “sovereignty”, because the language utilized to inscribe the treaties, Latin, did not possess such a term¹⁶. However, the treaty did include the term *right to landeshoheit* or *right to territorial jurisdiction* of states, although it would be under the control of the Holy Roman empire- an external legal regime¹⁷. Osiander mentions that the Peace of Westphalia has witnessed endless misinterpretation of “technical details on constitutional matters”¹⁸ that has led notable IR scholars such as Gross¹⁹ to misinterpret *landeshoheit* as territorial sovereignty rather than territorial jurisdiction. Because political entities had their laws dictated by the Holy Roman Empire (an external actor), one could easily capture that *states* were not *sovereign* in the modern political sense and also lacked the autonomy that characterized Westphalian sovereignty.

¹² Graham Evans and Jeffrey Newnham, *The Dictionary of World Politics: A Reference Guide to Concepts, Ideas, and Institutions* (New York: Simon & Schuster, 1990),501

¹³ Hans J. Morgenthau and Kenneth W. Thompson, *Politics Among Nations: The Struggle for Power and Peace* (New York: Knopf, 1985),294

¹⁴ Leo Gross, "The Peace of Westphalia, 1648-1948," *The American Journal of International Law* 42, no. 1 (1948):28

¹⁵ Osiander,252

¹⁶ Derek Croxton, "The Peace of Westphalia of 1648 and the Origins of Sovereignty," *International History Review* 21, no. 3 (1999):577

¹⁷ Osiander,279

¹⁸ Osiander,265

¹⁹Gross, 28

States were not characterized by Westphalian sovereignty after the Peace of Westphalia, but rather by hierarchical subordination as mentioned by Walker²⁰. Walker cites that the feudal system that remained after the Peace had an understanding of the world “as a continuum from low to high, from the many to the few, from God’s creatures to God, from the temporal to the eternal”²¹. Consequently, estates of the Holy Roman Empire continued to recognize the emperor who is located at the highest point under God, as their overlord and continued to send representatives to the Imperial Diet to pay common taxes²². Thus, since Westphalian sovereignty is violated when external actors influence or determine domestic authority structures such restrictions are inconsistent with the traditional concept of Westphalian Sovereignty²³. This reality explicitly nullifies the belief that the Treaty of Westphalia proliferated any impression of equality and autonomy to the *subject*; in fact, the subordinate nature of the international system after the Peace persisted well until the end of the 19th century.

The Westphalian Model has hardly anything to do with the Peace of Westphalia and believing otherwise is nothing short of a myth²⁴. The myth that the model was implemented from one day to the next is used as a shorthand by academics to describe the system of states which the world is made up of today and has been perpetuated since it allowed for a convenient and simplistic account of how the European state system emerged. The treaty of Westphalia was the beginning of a long history in the making and its product, the Westphalian model, came into being through centuries of twists and turns²⁵. Therefore, Osiander mentions that “Westphalia, is

²⁰ Buzan & Hansen, 23

²¹ Ibid, 23

²² Croxton, 574

²³ Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, N.J.: Princeton University Press, 1999), 20

²⁴ Osiander, 251

²⁵ Buzan & Hansen, 24

really a product of the nineteenth and twentieth-century fixation on the concept of sovereignty”²⁶ because the international system did not fully mature and evolve into the modern conception of Westphalian sovereignty until the mid-twentieth century.

As the international system evolved by the turn of the 20th century ethos such as non-interference, nation-state, a monopoly on the use and authorization of violence and territorial jurisdiction, altogether became concepts that defined the traditional sovereign state since they were perceived as vital for crafting international stability and order²⁷. Even though Wars were still regarded as an intrinsic part of international politics and could not be prevented, global conflicts similar to both World Wars could be minimized because they now possessed a *civil* aspect²⁸. Religion was no longer imposed by an external actor or a motive to conquer because with the progress of politics, it began being perceived as challenging logical reasoning because conflict between opposing religious positions could not be solved. Furthermore, the international system began witnessing the characterization of the social contract between the citizen and the sovereign which began the transition of conflicts becoming categorized as *civil* war rather than simply war. *Civil* War became a war category when the Westphalian model began characterizing the international system since individuals were no longer perceived as subjects but citizens protected by a binding social contract with the sovereign state. Walker notes on Hobbes “whatever the sovereign does cannot be as bad as the condition of unrestrained competition”²⁹, thus the contract entailed individuals granting the state the right to protect and define individual security, in exchange for an acknowledgment of its sovereign authority and elimination of the

²⁶ Osiander, 251

²⁷ Buzan & Hansen, 24

²⁸ Ibid, 24

²⁹ R.B.J Walker, "The Subject Of Security," *Critical Security Studies*, (1997):67

perpetual state of war³⁰. Accordingly, state security implied a particular resolution to the problem of individual security that then resulted in the concept of collective security being established. Security being the watchword of ISS became a “condition both of individuals and of states and a condition that constituted a relationship between individuals and states”³¹.

Because this research is interested in security studies and its war component, I regard the most vital qualifier of sovereignty and the traditional conception of the state to be the notion of a sovereign state possessing a monopoly on the legitimate use of violence. The reason for such importance is because a state cannot fulfill the social contract, which promises the sovereign to protect its citizens, if coercion is de-monopolized and conducted by nonstate actors. Also, the traditional state is regarded as sovereign only if it is regarded as legitimate internally and externally. In the former, the citizen has to trust the sovereign in upholding the contract and in the latter, other sovereign states need to feel safe and identify that the sovereign will not engage in coercion beyond its demarcated border and territorial jurisdiction.

Throughout the 19th and 20 century, the state has always been defined in terms of its control over violence³². Max Weber (1864-1920) regards the main characteristic of a sovereign state to “successfully uphold a claim to the monopoly of the legitimate use of physical force in the enforcement of its order”. Charles Tilly in similar terms cites that “controlling the principle means of coercion within a given territory”³³ defines the state. More recently, Giddens explains the state as having “direct control of the means of internal and external violence within a territory demarcated by boundaries”³⁴. Giddens’ definition is interesting because it defines the state in

³⁰ Buzan & Hansen, 25

³¹ Emma Rothschild, "What Is Security?," *Daedalus* 124, no. 3 (1995):61

³² Janice E. Thomson, *Mercenaries, Pirates, & Sovereigns* (New Jersey: Princeton University Press, 1994), 8

³³ Thomson, 8

³⁴ *Ibid*, 8

terms of the nation-state, by emphasizing internal and external legitimacy and a state monopoly on violence³⁵. Therefore, the traditional definition of the state is defined by the commonality of all these definitions which is that sovereignty depends on the state having a monopoly on violence which in turn directly influences their legitimacy internally and externally.

A different perspective on the state of exception

A state of exception has been traditionally defined by Carl Schmitt as a moment where the executive branch of a sovereign state claims that the suspension of the rule of law is necessary to protect the *state* from an invasion, a coup d'état, or an ongoing war³⁶. A state of exception is enacted when a sovereign state in contract with its citizens, informs them of the circumstances in which the state of exception arose. For instance, the United States of America declared a state of exception in 1939 because of World War Two, and again during the Cold war in 1950 because of the communist threat

It is important to remember that a citizen will tacitly consent to a state of exception as long as they are constantly reminded the reason the exception arose and that it will not be a permanent state of affairs³⁷. This tacit consent is revealed by the U.S continuously reminding its citizens of the communist threat during the Cold war and is further revealed when the state revoked both states of exceptions when the wars ended. Throughout the time of civil war, if we hold to Giddens'³⁸ definition of a sovereign state, a state of exception is facilitated in implementation and termination because the sovereign only utilizes citizen-soldiers to conduct

³⁵ Ibid, 10

³⁶ Carl Schmitt, *Political theology: four chapters on the concept of sovereignty* (Cambridge, Mass: MIT Press, 1985),6

³⁷ Michael Hardt and Antonio Negri, *Multitude: War and Democracy in the Age of Empire* (New York: The Penguin Press, 2004),8

³⁸ Thomson,10

violence³⁹ and eliminate the state of exception. This directly upholds the traditional conception of a sovereign nation-state being exclusively defended by a citizen army⁴⁰.

Defining the state of exception can be complex precisely because it is situated between the limit of law and politics⁴¹. Even Carl Schmitt's definition of a sovereign being "he who decides on the exception"⁴², still lacks a genuine scheme because the dilemma with his definition of a state of exception is more of a factual question rather than a legal question⁴³. Schmitt's writings tackled the state of exception from a legal context by stating that even though the state of exception suspends civil law, it is not defined by anarchy and chaos because it is the sovereign, the legal actor in a society that decreed the exception⁴⁴. In other words, Schmitt believes that a state of exception still possesses order within it. However, that is the paradox and the incompleteness part of his definition since he fails to demonstrate that it is the legal system that initiates the state of exception and not anarchy. Thus, because the state of exception represents the control of a space that is neither external or internal, Agamben argues that since the suspension of law derives from the legal domain and not simple anarchy the "state of exception introduces a zone of anomy into the law"⁴⁵, where the sovereign "remains exterior to the normally valid legal order"⁴⁶. This results in Agamben defining the sovereign in relation to the state of exception as "ecstasy-belonging", which means that that the sovereign during a state of

³⁹ Schmitt, xxiv

⁴⁰ Guillaume & Huysmans, 197

⁴¹ Hardt & Negri, 8

⁴² Schmitt, 5

⁴³ Giorgio Agamben, "State of Emergency" Lecture at University de Paris VII , (2002).<http://www.generation-online.org/p/fpagambenschmitt.htm>

⁴⁴ Agamben.

⁴⁵ Agamben.

⁴⁶ Agamben.

exception acts outside legal norms, yet belongs and defines the structure of the state of exception⁴⁷.

The current *system gentium* urgently requires us to consider Agamben and Negri's elaboration and definition of the state of exception in terms of factuality rather than just legality. The framework of international law regarding war has been destabilized which modifies the modern conception of state sovereignty. The traditional conception of a state using Giddens' definition has altered to accommodate an emerging new form of sovereignty identified as Empire which results in Global War.

The global order in *Empire* is plagued by perpetual war which results in the state of war being inevitable and permanent⁴⁸. Because war functions as an instrument of rule in *Empire*, the Pentagon Doctrine of Full-spectrum Dominance has identified a conflict entitled "Long War"⁴⁹ that will shape and dominate international politics. It is by no means a coincidence that the conflict is not termed Long Civil-War since conflicts in this *Empire* are comprised of nonstate actors in the form of *networks* rather than a sovereign nation-state demarcated by borders⁵⁰. This Long War which characterizes the current maximum state of exception has no definite spatial or temporal boundaries in contrast to the traditional conception of war being between sovereign states. This renders a victory, surrender, or a truce between states and nonstate actors difficult to achieve⁵¹.

If followers of Schmitt's were to put a date on when the Global War *legally* commenced, it would be once President George Bush invoked proclamation 7463 and declared a state of

⁴⁷ Agamben.

⁴⁸ Hardt & Negri, xiii

⁴⁹ Hardt & Negri, 53

⁵⁰ Ibid, 54

⁵¹ Hardt & Negri, 14

exception on September 14, 2001, three days after the attacks⁵². It is crucial to understand that on that day we were *reminded* that we have been living a state of exception, contrary to the belief of most political thinkers who state that 9/11 commenced the legal and factual state of exception⁵³. Legally, the state of exception occurred after the U.S got attacked. However, factually the state of exception was inevitable because wars after the cold war and more so after the Global War On Terror (GWOT) disrupted the main qualifier of the Westphalian model which is that the sovereign state possesses exclusive monopoly on legitimizing and authorizing violence.

The Global War on Terror (GWOT) has redefined the traditional conception of war in international relations. Traditionally modern theories of sovereignty pursued the ending of the state of war by isolating war to the margins of society and ending civil wars⁵⁴. War is no longer limited to specific periods; it is perceived as being the norm and peace is perceived as the exception⁵⁵. Wars that occur in a state of maximum exception erode the distinction between war and peace such that we can no longer imagine or even hope for a real peace⁵⁶. War in the current global order of *Empire* is becoming the primary organizing principle of society, resulting in the reversal of Clausewitz statement of “war is a continuation of politics by other means” to “politics itself is increasingly becoming a war conducted by other means”⁵⁷.

The events of 9/11 and RMA maximized the state of exception because the state was dealing with a globally networked nonstate actor with no official structure analogous to a state⁵⁸. The adversary could not be dealt with using assumptions that underpinned traditionalist security

⁵² <http://georgewbush-whitehouse.archives.gov/news/releases/2007/09/20070912-2.html>

⁵³ Hardt & Negri, 6

⁵⁴ *Ibid*,6

⁵⁵ *Ibid*,6

⁵⁶ *Ibid*,5

⁵⁷ *Ibid*, 12

⁵⁸ *Ibid*,229

studies during the cold war such as state-centric and rationality approaches, thus the declaration of *war* on terrorism revived interest in strategic studies focussing *on force* to establish security.⁵⁹

Most political scientists were struggling to categorize terrorism as a *kind* of war precisely because it was a non-sovereign actor⁶⁰. A concern that kept lingering in the debates was how were defense planners supposed to devise alliances, tactics and strategies for fighting such strange type of war?⁶¹. The GWOT exacerbated the maximum state of exception by questioning how the war would look like in the future and its transformation of international politics⁶². War's becoming characterized as "new" or "old" were categories of war exchanged in international politics after the cold war⁶³. The former represents the traditional dominant form of interstate war, fought by formal citizen-soldiers with controlled violence, under a central political structure, and for political objectives⁶⁴. While the latter is an intrastate war with uncontrolled violence fought by nonstate actors such as private military contractors (privateers) and mercenaries for economic and criminal objectives rather than political⁶⁵. While some believed that war after the cold war became "new"⁶⁶, other political scientists and this research paper adopt the stance that the end of the cold war and the GWOT did not represent anything new or old in *war*. Non-state actors have been used as a method of engagement in different periods of time for different objectives⁶⁷. The difference between both types of war concerns which *extrema*

⁵⁹ Ibid,231

⁶⁰ Ibid,231

⁶¹ Ibid,231

⁶² Hardt & Negri, 43

⁶³ Stathis N. Kalyvas, "New" And "Old" Civil Wars: A Valid Distinction?," *World Politics* 54 (2001): 100

⁶⁴ Ibid,100

⁶⁵ Ibid,102

⁶⁶ Ibid,102

⁶⁷ Ibid,233

of exception is at play, maximum or minimum, which is influenced by the current changing conception of how violence is legitimated and monopolized⁶⁸.

As stated earlier, the most important validation of sovereignty in the modern nation-state system is the monopoly and legitimate use of violence both within a national space and against other nations⁶⁹. Within a sovereign nation-state, the citizen-army is the only legitimate social actor whose violence is perceived as legal and legitimate internationally and domestically grounded in legal structures. Any other actor who engages in violence is deemed illegal and illegitimate a priori⁷⁰. All theories of the state of exception are grounded, similar to sovereignty, on the state's monopoly on the legitimate use of violence⁷¹.

In the current global maximum state of exception, legitimacy is a diluted term because violence is not monopolized but de-monopolized and proliferated to several nonstate actors. We have a maximized state of exception because the enemy is not localizable and ungraspable and most importantly because the enemy becomes the constitutive function of legitimacy⁷². The enemy is unknown yet ever present and the population is constantly reminded that the state no longer has a full monopoly on violence which results the state of exception shifting extremes between minimum and maximum.

Since the RMA and commencement of the GwoT, we are reliving the birth of what analysts called a “new” war⁷³. It is definitely not new and absolutely not a civil war because the conductors of violence are nonstate actors, thus in the modern Westphalian conception of international politics, these wars pose a challenge to state legitimacy. The current wars resemble

⁶⁸ Hardt & Negri ,25

⁶⁹ Ibid,25

⁷⁰ Ibid,25

⁷¹ Ibid,25

⁷² Ibid,30

⁷³ Ibid,37

pre-Westphalian conflicts that were neither spatially bounded, nor organized or controlled by nation-state armies⁷⁴. It seems that the international system is reverting to pre-modern times where we were plunged into an indistinct state of war because of de-monopolized violence.

Since the ending of the cold war, and the beginning of the GWOT with the invasion of Afghanistan in 2001, we witness the RMA and its maximized state of exception component explicitly. Defense strategists in the United States began employing an increased number of nonstate actors to fight their wars⁷⁵. These programs included training, recruiting and numerous support and operational functions during the conflict⁷⁶. These hired privateers or mercenaries are not like citizen-soldiers or republican armies whom traditionally legitimated violence and monopolized it, for the reason that nonstate actors are not subject to public accountability of military service⁷⁷. It seems that wars that occurred after the end of the cold war and more so after 9/11 are increasingly similar to wars fought before and after the treaty of Westphalia in 1648. These are wars that employ nonstate actors and include a maximum state of exception which is a serious corruption of the art of war because the actors involved destroy public ethics⁷⁸. We are witnessing a form of enemy that is not a unitary sovereign state. In fact, it has become a general condition in this era of asymmetrical conflict that the main actors are *distributed networks or nonstate actors*⁷⁹. This outcome characterizes the current maximum state of exception which involves an enemy that is elusive, ephemeral and most importantly might at any moment appear to be universal and at another vanish into thin air⁸⁰.

⁷⁴ Ibid,37

⁷⁵ Ibid,47

⁷⁶ Ibid,47

⁷⁷ Ibid,47

⁷⁸ Ibid,48

⁷⁹ Ibid,55

⁸⁰ Ibid,55

I have elaborated extensively on the notion of state of exception with its fundamental link to state monopoly on the legitimate use of violence. The extremum that I have described as maximum is a period where the state's legitimacy on the use of violence has been compromised and its monopoly destabilized. In contrast, a minimum state of exception is then a period that prioritizes the state having a monopoly on the use of violence, even though nonstate actors are employed on a smaller scale. But most importantly, a minimized state of exception has an expiry date; peace is not seen as the exception but a norm that the international system is thriving to attain. Finally, in a minimum state of exception the state continues to prioritize emulating the Westphalian model by possessing exclusive monopoly on authorizing violence using citizen-soldiers rather than endowing nonstate actors or networks with such authority.

The reader should be reminded that this research paper adheres to the belief that we have always lived a state of exception, but each century had its maximized and minimized periods of exception. The period to be discussed below reveals that the current maximum state of exception is not new at all. The relationship between political leaders and nonstate actors in the current global war is reminiscent of the relationship between Empires and nonstate actors (privateers, mercenaries, pirates) before and after the treaty of Westphalia in 1648.⁸¹

Nonstate actors, Maximum state of exception and Unintended consequences

We will quickly recognize that prior to the sovereign Westphalian system; empires authorized and desired a proliferation of violence by nonstate actors, creating a globally maximized state of exception for over three centuries. Our contemporary control of violence is

⁸¹ Hardt & Negri, 48

neither timeless nor natural; it is a feature of the modern state system⁸². Non-state actors such as mercenaries, privateers, and pirates utilized their own means of violence in pursuit of their particular objective whether it was glory, riches, or political power⁸³. Charles Tilly, a Weberian state theorist, mentions how state builders were involved in a bloody struggle to extract coercive capabilities from individuals who claimed the right to exercise violence to attain their global political objectives⁸⁴.

Unorganized violence conducted by nonstate actors was a feature of the pre-modern political order (heteronomous system). In the heteronomous period of the international system, violence was democratized, marketized, and internationalized by state leaders resulting in the demopolization of violence⁸⁵. Critical theorists such as Ruggie⁸⁶ and Cox⁸⁷ attacked the Waltzian realist theory which assumes that sovereignty is a natural characteristic of the international system by stating that realist theory has a major flaw in which it provides “no means by which to account for, or even describe, the most important contextual change in international politics in this millennium, the shift from medieval to the modern international system”⁸⁸. A critical theorist, unlike realist problem-solving theory, does not take the institution of sovereignty for granted but calls it into question by analyzing its origins and how and whether it was modified⁸⁹. Walker confirms this by stating that sovereignty is a socially constituted regime that is not a

⁸² Thomson,3

⁸³ Ibid,3

⁸⁴ Ibid,3

⁸⁵ Ibid,5

⁸⁶Robert W. Cox, “Social Forces, States and World Orders: Beyond International Relations Theory,” in Robert Keohane, ed., *Neorealism and its Critics* (New York: Columbia University Press, 1986), 208.

⁸⁷Gerard Ruggie, “International Structure and International Transformation: Space, Time, and Method,” in James N. Rosenau, eds., *Global Changes and Theoretical Challenges: Approaches to World Politics for the 1990s* (Lexington: Lexington books, 1989),34

⁸⁸ Thomson,11

⁸⁹ Ibid,12

permanent principle of international order rather it has been constituted and reconstituted historically⁹⁰.

Critical theorists further rectify the mythological assumption that the Westphalia model was a creature of the international system after the Peace treaty by suggesting that sovereignty is socially constituted and reproduced through sovereign state rulers practices. Furthermore, they state that Sovereignty is new and unique to the modern state system especially when boundaries before the 19th century remained unclear. As long as nonstate violence persisted, boundaries between states and nonstate realms of authority were blurred or did not exist. Likewise, because states authorized nonstate actors to engage in violence after the treaty, it was difficult to determine which acts of nonstate violence were state sanctioned and which were privately conducted. This reality directly undermines the belief that the current state system based on a Westphalian model was implemented following the Westphalian Treaty in the 17th century.⁹¹

Non-state actors were authorized by state rulers to engage in violence since the 13th century when privateering was invented⁹². Privateering is but one category of nonstate actors who engaged in authorized violence. From the 13th century to the 19th century, privateering, piracy and mercenaries were the norm in filling the ranks of European armies and were practices that were internationalized and marketized by private mercantile companies until the 19th century. Large-scale private armies dominated Europe from the 14th to the 15th century⁹³. Conversely, mercenary armies were the norm for 18th-century European states⁹⁴.

⁹⁰ Ibid,12

⁹¹ Ibid,19

⁹² Ibid,22

⁹³ Ibid,21

⁹⁴ Ibid,21

Privateers, unlike Pirates, were required to post a bond known as a *letter de marque* to ensure their compliance in fulfilling the government's demands and their commissions were subject to inspection by public warships⁹⁵. Whereas, piracy acts of violence are committed independently of any political organization which renders it impossible to hold any state responsible for their commission⁹⁶. Thus, the distinction between a privateer and a pirate is that the former acts under the authority of a state that advocates or is charged with responsibility for his/her actions, while the latter acts in his/her own interest and on his/her own authority⁹⁷.

The fundamental problem lays in determining who was a pirate and who was a privateer and then who was responsible for acts of violence in the high seas where no state was sovereign⁹⁸. For instance, prominent scholars such as Janice E. Thompson⁹⁹ and William Urban¹⁰⁰ have equated pirates to privateers and mercenaries considering that no matter what category they belong too, they are conducting violence that is not compatible with the Westphalian model because they are actors who destabilize state monopoly on violence and over-run the social contract.

However, as we shall discover, piracy could not become defined much less suppressed until privateering becomes illegal in the 19th century through the Treaty of Paris¹⁰¹. Mercenarism, similar to piracy is also hard to define because it is highly similar in the sense that a mercenary is widely defined and characterized as a nonstate actor who fights for an employer other than his home state and whose motivation is primarily economic¹⁰². Conglomerates of mercenaries in the

⁹⁵ Ibid,21

⁹⁶ Ibid,22

⁹⁷ Ibid,22

⁹⁸ Ibid,23

⁹⁹ Ibid,145

¹⁰⁰ Urban,279

¹⁰¹ Ibid,144

¹⁰² Ibid,144

form of Free Companies flourished in Europe from the 14th century until the 19th century, and some mercenaries became condottiere's and Dukes of Renaissance Italy. However, the common perception was, as evidenced by Ambassador Machiavelli of Florence that they are not to be trusted because they always turn to the highest bidder¹⁰³.

It seems that the most prevalent argument concerning state rulers choosing to utilize nonstate actors is because of the lack of revenue, “The founding of colonies was a conspicuous example of well-to-do men performing a function that seemed desirable to, but beyond the resources of, early modern states”¹⁰⁴. On the other hand, a more alarming reason is the concept of *plausible deniability* that state rulers invented at the turn of the seventeenth century. It involved states not being held accountable for endeavors that were not met with success, but only admitting accountability when the ventures were successful¹⁰⁵. In other words, if the enterprise caused conflict with other states, the ruler could claim it was a “private” operation that was not authorized by the state resulting in no political organization being held accountable or responsible for atrocious acts.

Therefore, these practices blurred practical and theoretical distinctions between state and nonstate authority and difference between a privateer, a pirate, and a mercenary. This method of building power was successful, and it is the objective of the following sections to discuss historical periods where such actors were used and reveal what they achieved in their heyday. The junctures will show that violence conducted by nonstate actors was authorized and welcomed by states¹⁰⁶ and was not taboo until the end of the 19th century¹⁰⁷. This consequently

¹⁰³ *ibid*,27

¹⁰⁴ *ibid*,21

¹⁰⁵ *ibid*,22

¹⁰⁶ *ibid*,22

¹⁰⁷ *ibid*,22

created a long six century period of maximized state of exception that has been *re-authorized* after the cold war and constitutes the current international system.

It was the year 1523 when the first acts of piracy occurred in the Spanish Main under the direction of Privateer Jean Fleury under the Command of Admiral-Privateer Jean Anjo of the French naval force¹⁰⁸. Both privateers attacked Spanish ships that were under the command of *Conquistador* Hernan Cortes and Francisco Pizarro, who plundered and destroyed the Aztec Empire of Mexico and Inca Empire respectively.¹⁰⁹The French were shocked at the discovery of gold under the command of Cortes and Pizarro and from then on, the acts of both French privateers encouraged the British and the Dutch to start engaging in acts of violence towards Spanish vessels.¹¹⁰ The line between Privateer and Piracy is explicitly blurred because in the eyes of the French monarchy these were privateering acts authorized by the state while in the eyes of the Spanish monarch these were acts of Piracy conducted by nonstate actors. In 1544 Henry VIII of England, in his war with France, gave blanket authorization for privateering and allowed privateers to keep all the plunder they seized¹¹¹.

This began the gradual ascendance of British naval superiority in the new world¹¹². It was the Elizabethan Sea Dogs who conquered the new world, similar to the Spanish Conquistadors. These private adventurers authorized by the English crown engaged in all kinds of violent activities against the Spanish Monarchy in the new world¹¹³. Privateers such as Sir Francis Drake, Sir Richard Grenville, Sir George Clifford (3rd Earl of Cumberland), and Sir Walter

¹⁰⁸ Angus Konstam, "Privateers, Pirates and Aztec Gold," Mexicolore, last modified 2013, <http://www.mexicolore.co.uk/aztecs/spanish-conquest/pirates-and-aztec-gold>.

¹⁰⁹ Angus Konstam, "Privateers, Pirates and Aztec Gold," Mexicolore, last modified 2013, <http://www.mexicolore.co.uk/aztecs/spanish-conquest/pirates-and-aztec-gold>.

¹¹⁰ Andrew Pettegree, *Europe in the Sixteenth Century* (Oxford: Blackwell, 2002),243

¹¹¹ Thomson,23

¹¹² Ibid,23

¹¹³ Ibid,23

Raleigh (Grenville's cousin), John Hawkins, and Henry Morgan not only plundered Spanish ships but engaged in what we would today term *state-sponsored terrorism* during the 16th and 17th century¹¹⁴. For instance, Drake sacked and destroyed Peru while Clifford in the Battle of San Juan in 1598, captured Puerto Rico on a private expedition and destroyed the city and all its crops¹¹⁵. These privateers extorted their way to fame and fortune in England by sharing their treasure with the English Crown which resulted in the English Crown knighting these privateers for their achievements¹¹⁶.

The execution of Raleigh in 1618 marked the beginning of the decline of privateering, but only for a short period because of the Twelve Year Truce enacted on April 9th, 1609 between the French, the British, the Spanish, and the Dutch monarchies. Raleigh's case is alarming in revealing the distorted line between Piracy and Privateering because Raleigh continued his depredations in Spanish America while the British Monarchy and the Spanish monarchy had enacted a truce. Forcing the Stuarts of Britain to treat his acts as piracy and not privateering, thus executing him.¹¹⁷

Privateering re-emerged when the King of England passed the prize act of 1708; this produced the highest level of privateering to date¹¹⁸. The privateers were now capable of retaining all prizes attained from a marine or land attack and were paid a commission for prisoners they took that became a market for slavery¹¹⁹. In 1744, the British monarch pardoned all previous privateers who were involved in "piracy" acts which consequently created a frenzy of privateers in England. Even political organizations were involved in creating lobbies to

¹¹⁴ Ibid,23

¹¹⁵ Ibid,23

¹¹⁶ Ibid,23

¹¹⁷ Ibid,23

¹¹⁸ Ibid,23

¹¹⁹ Ibid,23

promote the interests of privateering¹²⁰, which is clear indication of state complicity in internationalizing and de-monopolizing nonstate violence that prolonged the maximum a state of exception. The state was running the risk of pardoning and trusting previous criminals to engage in Crown affairs. This proved to be a disadvantage because the French and the British monarchs by the turn of 19th century were “unable, even if willing, to control the hordes of desperate privateers who were nominally subject to them”¹²¹. This deliberated political and diplomatic disruption between Empires, especially in times of peace.

Privateering up until the 19th century was a military category used by states to engage in interstate conflict and war. It was utilized and encouraged by Great powers in Europe to attain the riches of the world but also to expand their spheres of influence. In some instances, privateering turned against the state that authorized its violence. This reality will be an important consequence that will reshape, influence, and force state leaders in the international system to control and monopolize the decision-making process of violence.

Before we discuss the *unintended consequences* created by state leaders internationalizing and de-monopolizing violence, we will elaborate on the use of nonstate actors known as mercenaries in state armies. The reality that state armies were constituted of hired mercenaries before and after the treaty of Westphalia in 1648 proves again that the Westphalian model only emerged as a possible reality by the end of the 19th century.

Osiander¹²² and Croxton¹²³ dispute the standard assertion that the peace of Westphalia first granted European Empires the right to engage in alliances and employ foreign actors in their

¹²⁰ Ibid,24

¹²¹ Ibid, 24

¹²² Osiander,252

¹²³ Croxton,577

armies¹²⁴. Article 8.2 of the treaty states “the individual state shall have the eternal and free right to make alliances among themselves or with foreigner, yet only , where they preserve in all ways the oath by which all are bound to the emperor and empire”. This article only re-affirmed what already constituted a foundational practice of conducting violence. The international system prior to the treaty and more so after, continued to allow states to build their armies using an external actor (nonstate actors) which by definition voids the modern conception of state sovereignty.

Unlike privateering there is no consensus on how to define a mercenary even though the lines tend to be blurred. The soldier of fortune is the ideal type of a mercenary who fights for an employer primarily for economic means but also a subject who is devoted to war for its own sake.¹²⁵ In the 12th century, the English king introduced the concept of scutage that allowed subjects to buy their way out of military duties¹²⁶. Thus, it seems that the profit created a European market for mercenaries where war-markers increasingly relied on private or royal subcontractors to raise and supply armies for profit¹²⁷. In the 18th century, all empire armies constituted a foreign component. In the 18th century, Britain’s army mostly included individuals from the Netherlands and from Germany¹²⁸, while also supplying troops to the French, Prussians, and the German armies¹²⁹. The French army included Scottish and Flemish soldiers in the 18th century while in the 16th and 17th century it was mostly composed of Swiss soldiers¹³⁰. The Dutch army in the 18th century was mostly comprised of French, German, Scottish and Irish mercenaries¹³¹. Even privateers were employed as foreign mercenaries, further blurring the line

¹²⁴ "How 'Westphalian' is the Westphalian Model?," E-International Relations, accessed October 11, 2015, <http://www.e-ir.info/2014/02/03/how-westphalian-is-the-westphalian-model/>.

¹²⁵ Thomson , 26

¹²⁶ Ibid,26

¹²⁷ Ibid,27

¹²⁸ Ibid,27

¹²⁹ Ibid,27

¹³⁰ Ibid,28

¹³¹ Ibid,29

between Privateers and Mercenaries. During the war between Spain and the United provinces (Dutch republic), the Dutch employed privateers from Zeeland while Spain used the services of Dunkirk privateers (French Privateers)¹³².

The employment of foreigners in military forces suggests that the market for military manpower was international. Nationality or countries of origin were not the primary bases for determining service obligations. Contrary to the modern conception of the Westphalian model which only allows the citizen-soldier to constitute the military force. Parker's *Thirty years war* was not eager to criticize the armies of European empires because we know little about them, we did not even know how they dressed¹³³. But what we do know is that several of them were criminals, but all of them were volunteers¹³⁴. The European world of mercenaries witnessed several changes from the 16th century to the 18th century with the French Revolution and the American Revolution producing the concept of a citizen-soldier or the Republican contract, which legally put an end to the hiring.¹³⁵

How did the internationalization and democratization of violence and the maximized state of exception last for such a long period? How did it become such a foundational part of the international system? Who were the "sovereigns" during the heteronomous period of the state system? If land and sea were a space where nonstate actors can engage in authorized and legitimized violence in the benefit of the Crown, where was the line between politics and economics? Between legality and factuality? Was there a line at all? What organization sanctioned such acts before it realized that *unintended consequences* were arising? The answer to all of these questions is mercantilism.

¹³² Thomson, 31

¹³³ Urban, 125

¹³⁴ *ibid*, 126

¹³⁵ *ibid*, 281

A fascinating case of nonstate violence is that of the mercantile companies¹³⁶. All analytical distinctions between the economic and political, nonstate and state, legitimate and illegitimate use of violence become irrelevant¹³⁷. The 16th century saw an expansion of companies chartered by states to engage in long-distance trade and establish colonies. Companies like the East Indian, Royal Africa, Dutch West Indian Company and Hudson Bay were all granted royal charters to engage in ventures¹³⁸. Royal charters were a prerequisite to engage in commercial trade and were only granted by the King. However, these companies were nonetheless private companies¹³⁹. As a rule, they were granted full sovereign powers¹⁴⁰ because they engaged in economic ventures, raised armies, navies, built forts, made treaties and most importantly made war¹⁴¹.

The company's executive board was composed of governors and military officers¹⁴². In 1621, the Dutch West India Company was authorized to make war and peace with any indigenous powers and to maintain a naval and military force in a specified region¹⁴³. In 1670, the Hudson Bay Company in North America was granted the absolute right to administer law and to judge all cases criminal or civil¹⁴⁴. The East Indian Company in the 17th century was granted a charter that allowed it to not only conduct civil jurisdiction on all persons, but it also allowed the company to make war and peace with kingdoms and allowed it to erect forts and engage in war¹⁴⁵.

¹³⁶ Thomson,32

¹³⁷ Ibid,32

¹³⁸ Thomson,35

¹³⁹ Ibid,35

¹⁴⁰ Ibid,35

¹⁴¹ Ibid,36

¹⁴² Ibid,36

¹⁴³ Ibid,37

¹⁴⁴ Ibid,38

¹⁴⁵ Ibid,39

The delegation of military power, meaning violence, and making war-type decisions, is not to be discounted. The *raison d'être* of these companies was not only commercial trade, but to engage in violence and cause as much damage as possible to other colonies and empires¹⁴⁶. In the 18th century the Captain-generals of the Dutch and English companies recruited mercenaries in the East, and established the first regular military force made up of artillery and cavalierly¹⁴⁷. Furthermore, the Dutch company in 1782 had hired over 100,000 Swiss and German mercenaries and in 1719 had employed 5,000 and 20,000 Indian mercenaries to retake a fort in Calcutta¹⁴⁸. These nonstate actors did not just act like mercenaries but also engage in piracy acts. The British company in 1610 under the command of Henry Middleton seized Indian ships forced them to trade their goods, and then ransomed the ships back to their owners¹⁴⁹. In 1621, the Dutch colonized the Banda Islands, enslaved the inhabitants and executed their leader¹⁵⁰.

These global monarchical empires authorized and endowed mercantile companies, which can be seen as forerunners to the modern conception of corporations, or financial aid institutions¹⁵¹, to bring profit to the coffers of the empire by engaging in violence utilizing any category of nonstate actors. These mercantile companies were the producers of a maximized state of exception chartered by the state that de-monopolized violence and perpetuated it globally. These private companies exploited nonstate coercive capabilities in conquering and colonizing large areas around the globe¹⁵² resulting in a global war.

¹⁴⁶ *Ibid*, 40

¹⁴⁷ *Ibid*, 40

¹⁴⁸ *Ibid*, 40

¹⁴⁹ *Ibid*, 40

¹⁵⁰ *Ibid*, 40

¹⁵¹ *Ibid*, 41

¹⁵² *Ibid*, 41

The situation began to change in the 17th and 18th century. It seemed that the state was no longer capable of controlling nonstate actors because they were creating unmanageable problems for the state¹⁵³ which began the long process of state rulers transitioning from a maximum to a minimum state of exception and gradually realizing the modern conception of the Westphalian model. Each category of nonstate actors concerned with legitimizing and internationalizing violence produced problems for the home state that authorized the violence. Privateers dishonored their letter of marques and became organized pirates, mercenaries posed a threat to the new republican contract of citizen soldiers, and most importantly, mercantile companies, which made all of these practices possible, turned their guns at each other and their home states¹⁵⁴.

Nevertheless, before elaborating on how the transition occurred, it is vital to understand why the transition occurred and this is because each of these practices produced problems or unintended consequences.

In 17th century, the state that authorized nonstate violence began losing effective control over nonstate actors it authorized for over three centuries. As Janice Thompson mentions, the state faced a paradox because for centuries, states minimized constraints on nonstate actors to increase their effectiveness¹⁵⁵, however with the progress of time, states now needed to maximize constraints on nonstate actors because they began questioning if nonstate actors are

¹⁵³ Ibid,42

¹⁵⁴ Ibid,43

¹⁵⁵ Ibid,43

effective in the long run¹⁵⁶. The state began to realize that the authorization and legalization of nonstate actors produced undesirable and even complex threatening consequences to the state¹⁵⁷.

The practice of privateering produced organized piracy. In the 17th century, the golden age of piracy occurred because privateers had violated their letters de marque and began challenging their authorizer – the state. In some instances, Dutch pirates later known as Barbary Corsairs had formed a quasi-state known as the Sale republic in the 17th century¹⁵⁸. The quasi-state was located in what is known today as Morocco. Jan Janszoon van Haarlem who became Murat Reis and Ivan Dirkie De Veenboer who became Sulayman Reis were Dutch privateers who became known as Barbary pirates or Barbary corsairs and established the republic on the coast of Morocco¹⁵⁹. Many corsairs were footloose Europeans who were “often little more than pirates who sought their fortunes under the star spangled banner of Algiers rather than the Jolly Ranger”¹⁶⁰. This shows that when Dutch mercantile companies authorized and funded demopolized privateer violence, privateers caused problems to their initial funders by conducting treaties and commerce with the enemy of the state. For instance, the Corsair quasi-republics challenged the designated enemy list of empires. The Ottoman Empire might be at war with the Europeans, but victims of the corsairs could be saved from attacks if they signed treaties with the Barbary States in which the victim would engage in commerce in exchange for protection¹⁶¹.

The case of Henry Every’s crew is another unintended consequence of privateer disloyalty in the 17th century. Every’s crew would initiate a strong hold of the coast of

¹⁵⁶ Ibid,43

¹⁵⁷ Ibid,44

¹⁵⁸ Ibid,44

¹⁵⁹ Ibid,45

¹⁶⁰ Ibid,45

¹⁶¹ Ibid,46

Madagascar known as Nosy Boraha or the Island of Sainte-Merie¹⁶². The island became known in Europe as The Commonwealth of Madagascar and became a huge threat to Europe. It was a quasi-state with a sense of nationalism between its pirates. In fact “pirates were more loyal to each other than they were to their country of origin, or to their religion. English, American, French, sailed and fought together under Henry Every’s crew despite France being at war with England and her Colonies”¹⁶³. Fear grew further in Europe because most of the pirates in Ile-Sainte Marie were English and the petition to the East India Company noted that ‘if the present generation of pirates in Madagascar should become extinct, their children will have the same inclination to Madagascar , as these have to England , and will not have any such affection for England’¹⁶⁴. One captain in the Madagascar quasi-state noted that he is a free prince, and has much authority to make war on the whole world as he who has a hundred sail of ships and an army of a hundred thousand men.¹⁶⁵ The case of Madagascar is of prime importance because it is the first major military effort by an Empire, the British in this case, against piracy. The ironic part of the military effort is that Captain William Kidd, a British Privateer failed in his mission to crush the Commonwealth because he as well was accused of Piracy. This betrayal helped “convince many of those in power that only a determined effort by the royal navy and honest colonial officials would eradicate piracy”¹⁶⁶. By the year 1701 the Commonwealth was dismantled because of the treaty of Ryswick in 1698¹⁶⁷. The treaty combined efforts by France

¹⁶² Ibid,47

¹⁶³ Ibid,48

¹⁶⁴ Ibid,48

¹⁶⁵ Ibid,48

¹⁶⁶ Ibid,44

¹⁶⁷ Ibid,44

and Britain to neutralize piracy in the Atlantic and the golden age of piracy was suppressed by the year 1730¹⁶⁸.

The case of controlling mercenaries was eliminated when a nation-state army or a Republican contract was initiated by states. One could say that the French Revolution in 1789 initiated the notion of a nation-state army because Napoleon's army relied on a citizen-army rather than mercenaries. The process of the nation-state came into being with armies now relying on the national sentiment of their national state to conduct war. Soldiers were now fighting *pour la république*, not for treasure. By the 19th century the Westphalian model was beginning to characterize the international system, states preferred national armies leading conflict rather than nonstate actors such as mercenary armies because they were not loyal to any state. Being a mercenary was less attractive by the 19th century as a global method of violence because wages had dropped, conscripted soldiers were cheaper, and looting was discouraged¹⁶⁹. By that time Lockean laws of private property, rent laws and insurance companies were modifying European thought. It took less skill and training for a citizen-soldier to become a fighter¹⁷⁰.

With the initiation of the French Revolution, foreign armies were restricted largely to exiled nobles¹⁷¹. Moreover, the peripheries of Europe such as Ireland, Scotland, Russia, Hungary, and Sweden were now more joined to the center. For instance, since the time of Peter the Great, the whole Russian imperial house married Germans¹⁷². Restriction grew even more by the year 1819 when the British crown passed an act that forbade any natural-born subject to

¹⁶⁸ Ibid,54

¹⁶⁹ Urban, 282

¹⁷⁰ Ibid,282

¹⁷¹ Ibid,282

¹⁷² Ibid,282

enlist in the army of any foreign entity¹⁷³, because all states became closer to each other's *territorial boundary*. The reason subjects were not permitted to enlist in foreign armies by the 19th century was because of neutrality acts. International law provided that a state could no longer claim *neutrality* in a conflict if it were caught allowing its subjects to be traded in the market of violence¹⁷⁴.

We notice the evolution of conscription in military service in the 18th and 19th because the international system began holding states accountable for violence conducted by individuals under their sovereign jurisdiction¹⁷⁵. In other words, plausible deniability was no longer permissible or even desirable because the consequences were simply: War. A state could no longer disclaim responsibility on the basis that individuals were pursuing their private interests¹⁷⁶.

Mercantile companies were the reason the internationalization, marketization, and legalization of nonstate violence took place. With mercantile companies armed with sovereign powers¹⁷⁷, they began exercising violence against their home states¹⁷⁸. A clash between two institutions of decision making authority, the state (ongoing building process) and mercantile companies was beginning to create consequences that the state could no longer control or even contain.

For instance, in the year 1608 the East Indian Company captured and looted a Portuguese ship while the English and Portuguese empires were at peace¹⁷⁹. In 1682, the conflict between

¹⁷³ Thomson, 58

¹⁷⁴ *Ibid*, 58

¹⁷⁵ *Ibid*, 59

¹⁷⁶ *Ibid*, 59

¹⁷⁷ *Ibid*, 59

¹⁷⁸ *Ibid*, 61

¹⁷⁹ *Ibid*, 61

the Montreal French and the Hudson Bay Company which began the famous nine year war had been a product of an unprovoked attack on the Hudson Bay company post by the French which forced the French king to compensate the British Empire¹⁸⁰. Interestingly enough, all wars the English East India Company engaged in from 1748 to 1756 with France was during a time when England and France were at peace in continental Europe¹⁸¹.

This reveals the dilemma European states were now facing because they had delegated sovereign power to companies that were now engaging in violence against them. Mercantile companies' unintended consequences were halting the establishment of the nation-state process. Mercantile companies possessed sovereign powers which allowed them to influence the decision-making process of authorizing war. By the 18th and 19th century, the state was beginning to be regarded as the sole institution which could possess authority over economic and military affairs in correspondence with its citizens, because they were no longer perceived as subjects¹⁸². By that time, the French and American revolutions began recognizing their subjects as citizens who possess natural rights and the actions of mercantile companies engaging in violence by disregarding the allegiance of its targets made the home state accountable for its atrocities. By the end of the 19th century, balance of power calculations made European states abandon the fiction that saw nonstate actors as trusted actors to govern continents.

The answers above alluded to *why* states transitioned from a maximum state of exception to a minimum state of exception. The consequences of Empires authorizing and internationalizing nonstate violence resulted in chaotic consequences where the state could no longer control the globalized violence it was complicit in authorizing. By the 19th century, the

¹⁸⁰ Ibid,61

¹⁸¹ Ibid,61

¹⁸² Ibid,67

state was suffering the consequences of being in a maximum state of exception with no monopoly on violence. The state realized that authorizing nonstate violence empowered individuals to act independently of their home state and challenged the sovereignty of the nascent national state itself¹⁸³. It was only a stronger relationship between the state and the nation or the sovereign and the citizen that could minimize such state of exception.

The next section will allude to *how* states transitioned from one extreme to the other, or more directly, how were states capable of becoming sovereign by monopolizing and territorialising violence that was authorized, internationalized and legalized for centuries?

How state initiative and desire delegitimized nonstate violence and transitioned the international system from a maximum to a minimum state of exception

We already discussed that the international system was in maximum state of exception for several centuries and unintended consequences occurred because state level authorities authorized nonstate actors to engage in violence. By the 19th century, the international system began incorporating the Westphalian model in the international; however it faced the difficulty of eliminating practices which have been legitimate for centuries¹⁸⁴. So how did states by the end of the 18th century begin to work towards un-authorizing, monopolizing, and territorializing violence and begin transitioning into a minimum state of exception? The answer to this complex question is simply when states stopped authorizing it¹⁸⁵. But, one needs to remember that

¹⁸³ Thomson, 68

¹⁸⁴ Ibid, 69

¹⁸⁵ Ibid,69

eliminating nonstate violence was not the goal of states, hence the practice being authorized for centuries, however it was precisely a result of unintended consequences of interstate politics¹⁸⁶.

For privateering, Raleigh's or Kidd's case alluded too previously describe the enduring consequences that states had to suffer when privateers defied the *lettre de marque*. However, the immediate source of protest concerning privateering became apparent in the 18th and 19th century when Europe adopted a liberal capitalist ideology with a quest of primitive accumulation of wealth because it had become the financial hub for insurance companies, credit companies, and banking institutions¹⁸⁷. In 1758, British privateers were rogue to the point where they were attacking neutral and home ships which directly challenged the new global economic system¹⁸⁸. This resulted in Francis Piggott, a British historian, mentioning that during the seven years' war some privateers went so far "as to capture vessels that had just been released by our own prize-courts"¹⁸⁹. This created mounting losses for insurance companies but more precisely to the coffers of Empires that were authorizing these privateers.

Furthermore, the second major blow for privateering occurred during the naval supremacy of Britain during the 18th and 19th century. In 1780, the British navy seized a Russian cargo ship and detained it for a year which persuaded Empress Catherine II to issue a declaration that stated that "All neutral vessels might, of right, navigate freely from port to port and along the coasts of nations at war"¹⁹⁰. This event initiated the Armed Neutrality Act of 1794 which

¹⁸⁶ Ibid,69

¹⁸⁷ Sanjay Seth, ed., *Postcolonial Theory and International Relations: A critical introduction* (New York: Routledge, 2013),49

¹⁸⁸ Ibid,49

¹⁸⁹ Thomson, 70

¹⁹⁰ Ibid, 70

allowed states such as Denmark, Sweden, Austria, Portugal, and Holland to claim neutrality in the face of conflict and adopted the Russian Declaration¹⁹¹.

Moreover, it was not until 1856 with the Treaty of Paris that the British Royal Navy explicitly codified privateering as an abolished form of violence and that neutral goods are permitted to navigate even if they hang the enemy flag¹⁹². France, Russia, Prussia, Austria and Turkey were signatories to the treaty. The reason the British were now willing or took initiative to de-authorize privateering was because of interstate politics, similar to interstate politics in the year 1730 between the British and the French, which terminated the golden age of piracy. By the 19th century, the British Empire had witnessed considerable damage to its navy by the French navy during the Napoleonic wars and was worried that the Russians were going to provide letter de marque to U.S citizens¹⁹³.

It is vital to remember that the decision to de-authorize privateers and prohibit their violence was a political deal¹⁹⁴. The signatories, who were of lesser power or neutrals, were more than happy to see the end of British supremacy in the seas because it interdicted neutral ships whenever it pleased. Also, the British also used the treaty to undermine the French empire that was second in naval superiority and isolated the U.S politically because it never acceded to the treaty¹⁹⁵. Britain's secretary of war in 1858 stated that "if the American stood out on a question of privateering against a resolution adopted by the congress, they will be isolated on a point in which the whole civilized world will be against them"¹⁹⁶. Another important aspect of the Treaty of Paris is that it it also illegalized piracy acts. It made it easier for sovereign states to

¹⁹¹ Ibid,70

¹⁹² Ibid,70

¹⁹³ Ibid ,72

¹⁹⁴ Ibid,74

¹⁹⁵ Ibid,75

¹⁹⁶ Ibid, 75

begin identifying acts of piracy if they occurred in the seas or in the lands because states always perceived piracy acts as unauthorized violence¹⁹⁷. By the 18th century, pirates were executed or imprisoned en masse¹⁹⁸.

Not only did the Neutrality Act and the Treaty of Paris push state leaders to organize violence under a sovereign state leader thus abolishing privateering and criminalizing piracy acts, but the act also delegitimized the practice of mercenarism or purchasing foreign subjects to engage in conflicts. The Neutrality Act of 1794 was a watershed moment in international affairs because it was the beginning of the implementation of the notion of sovereignty as we recognize it through the Westphalia model. It restricted citizens of a state to enlist in foreign armies¹⁹⁹. The act was the first domestic law in the world to deal specifically with the problem of the hostile expedition against foreign countries, and it served as a model for England and other nations²⁰⁰. International law experts state that for the first time in history, rights and duties of a neutral state were permanently codified in municipal law²⁰¹. In other words, the act universalized the concept of neutrality and forced states, if they claim neutrality, to be accountable to their citizens because the state could no longer claim to be neutral and allow their citizens to be sold on the market of violence.

If we are to use Charles Tilly's statement of "war makes state"²⁰², then the Napoleonic wars did in fact begin the building process of the European nation-state system. State accountability to its citizens was beginning to show in the 18th century when the French and the Americans introduced the Declaration of the Rights of Man and of the Citizen in 1789. Just like

¹⁹⁷ Ibid, 108

¹⁹⁸ Ibid,108

¹⁹⁹ Ibid,108

²⁰⁰ Ibid ,79

²⁰¹ Ibid,79

²⁰² Charles Tilly, "War Making and State Making as Organized Crime", Cambridge, UK: Cambridge University Press(1985):170

the Neutrality Act and the Treaty of Paris modified the process in which states defended their interests and acquired soldiers, the Declaration of Rights reinforced both of these watershed moments in history and solidified the social contract between the state and the citizen. Both Declarations of Rights facilitated the implementation of the Westphalian model by entrenching the notion of the citizen-soldier or the republican contract in international politics. The republican contract was a two party agreement between the state and the citizen²⁰³. The former agreed to protect the citizen and provide them with rights in return for the later protecting the state through soldiering which became a civic obligation²⁰⁴. The effects of both declarations are revealed when we discover that most nation-states from 1794 until the beginning of the 20th century began recruiting and enlisting their citizens into the military of the state instead of buying foreign soldiers and authorizing privateers²⁰⁵.

The transition from a maximum state of exception to a minimum state of exception occurred when state leaders enacted serious efforts in implementing the Westphalian model. The fundamental purpose of the Neutrality Act and the Paris Treaty endorsed by state leaders was to toughen the authority of the central government vis-a-vis its citizen²⁰⁶. The 18th century was marked by European states attempting to form a sovereign state by initiating a national state army, and ultimately by monopolizing the authority on organized violence within its borders.²⁰⁷ Sovereign state leaders were working on implementing the Westphalian model thus giving them exclusive right to initiate and terminate war for the reason that conflict can no longer be perceived as simply war but became a *civil* war.

²⁰³ Guillaume & Huysmans , 199

²⁰⁴ Ibid,199

²⁰⁵ Thomson, 81

²⁰⁶ Thomson, 87

²⁰⁷ Ibid, 86

Even though economic mercantile companies possessed sovereign powers as alluded to previously, their demise was also a result of intrastate politics and transformation of the international system. By the 18th century mercantilism was being denounced by French philosophers such as Victor De Mirabeau and Francois Quesnday who were advocates of *laissez faire economics* and wanted less government regulations²⁰⁸ or to be more precise less mercantile regulations. Similarly, Adam Smith's *Wealth of Nations* argued that free trade would liberate people by allowing them to produce more than before which would result in more production and greater wealth amongst the nation²⁰⁹.

All these new economic-political concepts delivered by philosophers in the 18th century affirmed that mercantile companies were autocratic and were holding back the international system from transitioning into a minimum state of exception. This led to ideas that introduced the notion that political and economic freedoms were better than autocracy and began the demise of mercantile companies in the 18th and 19th century²¹⁰. Their demise was a product of bankruptcy or mergers with other sovereign state enterprises²¹¹, which resulted in private mercantile companies no longer being capable in engaging in violence that went against their state policies and the nascent nation-state project.

The establishment of the nation-state project kept making successful accomplishments throughout the 19th century but especially in the 20th century after the first World Civil War and the second World Civil War²¹². The First Geneva conventions were declared in 1864 and the second Geneva Convention in 1949 which further provided rights to citizens and citizen-soldiers

²⁰⁸ Urban,286

²⁰⁹ Ibid,287

²¹⁰ Ibid,287

²¹¹ Thomson,97

²¹² I identify World War I and World War II as World Civil Wars because it was the first instance in armed conflict history that sovereign states authorized exclusively citizen soldiers rather than nonstate actors (mercenaries, privateers, pirates).

in conflict. Furthermore, after the second World Civil War (WCW) the United Nations adopted the Universal Declaration of Human Rights. All these accomplishments point to the disarmament of nonstate transnational activities in the international system and the honoring of the social contract. They mark the transition from heteronomy (maximum state of exception) to sovereignty (minimum state of exception) and the transformation of states into the *national* state system²¹³. A new way of organizing global coercive resources was agreed upon by sovereign state leaders and it no longer included the de-monopolization, and internationalization of nonstate violence²¹⁴. In this new international system which transitioned into a minimum state of exception governed by the Westphalian model, the state could not claim a monopoly on violence within its territory and disclaim responsibility for violence emanating from that space²¹⁵. The importance of the second WCW in international affairs and security studies is that for the first time in military conflict, all parties involved in the conflict are sovereign states who have monopolized violence and authorized exclusively using their citizen army to engage in *civil* war. This fact resulted in the development of the traditional conception of security studies that included the sovereign state becoming the main referent object in international politics to be secured²¹⁶. Countries at war were now defending their sovereign territorial state based on the Westphalian model using only their citizenry army.

Similarly, when analysing the cold war we notice that even though a nuclear arms race was ongoing and that the extinction of humanity was plausible, one cannot help but appreciate the conviction that it is because we were in a minimum state of exception that a nuclear war did not occur. It is precisely because violence was monopolized between two structured sovereign

²¹³ Thomson, 4

²¹⁴ Ibid, 4

²¹⁵ Ibid, 4

²¹⁶ Buzan & Hansen ,8,10

camps, with organized violence, that a nuclear war did not occur. From WWII until the Soviet-Afghani war and the collapse of the Berlin Wall, the international system was in a minimum state of exception. That is not to say that during the cold war sovereign states did not employ nonstate actors in specific conflicts in the Third World because they did. But it is to highlight that the scale in which the state desired or prioritized utilizing nonstate actors after the cold war is not comparable in scale to pre-Westphalian epochs.

Nonstate actors during the Cold war, the high-point of the cold war, and reverting to a maximum state of exception

During the Cold war Third World countries were having difficulty implementing the Westphalian model even though they were legally and formally, internally and externally, recognized as sovereign states by great powers and the United Nations. The difficulty in implementation was the result of Third world countries colonial past being conjoined with the absence of a strong state defended by citizen-soldiers. Even though Third world sovereignty was legally recognized, it was a world that seemed primed to act *outside* the realm of sovereignty because of its political affiliations that were perceived as non-liberal²¹⁷. Acting outside the realm of sovereignty made Third World countries susceptible to covert operations authorized by countries acting *inside* the realm of sovereignty such as the U.S and its NATO allies. Countries acting *inside* the realm of sovereignty violated international law by authorizing nonstate actors to conduct warfare in the Third World. The authorization of nonstate actors in the Third World during the Cold war violates previously mentioned treaties and conventions which have

²¹⁷ R.B.J Walker, "State Sovereignty and the Articulation of Political Space/ Time," European Journal of Political Research 20, no. 8 (February 1991):456

historically been enacted to diminish the maximum state of exception and solidify the Westphalian model.

For instance, the use of mercenaries during the Cold war took on the form which is reminiscent to mercenary practices being employed by states before the Westphalian model was established. Mercenaries during the cold war included individual foreigners hired directly by a state for use in a particular conflict²¹⁸. For example, the Central Intelligence Agency took the decision in labelling Congo's first democratically elected President Patrice Lumumba an "African Castro"²¹⁹ and was captured and killed by the orders of Congolese chief of staff Joseph Mobutu, an American asset in 1962 who later became the president of Congo²²⁰. Lumumba loyalist known as Simba rebels, were headed by Pierre Mulele in 1963 and were capable of taking control of Kisangani the 3rd largest city in Congo²²¹. This resulted in a cable on August 5th to be exchanged between the American and Congolese embassy which laid out two options for the GOC. One, either the Belgium government intervenes militarily, or option two would be the employment of mercenary brigade because the blame can be placed on the Congolese government and not the Belgians or the United States²²².

On August 7th, 1964, the Belgian foreign minister Paul Spaak informed Washington that it "unequivocally rejects Belgium or any other European nations sending troops". Thus, the mercenary option was the only option remaining, and it was summed up by Professor Piero Gleijeses at John Hopkins university as "Washington and Brussels would supply the money to pay for the mercenary and the weapons to arm them " but " Washington alone would provide the

²¹⁸ Thomson,89

²¹⁹ Mahmood Mamdani, *Good Muslim, Bad Muslim: America, the Cold War, and the Roots of Terror* (New York: Pantheon Books, 2004),71

²²⁰ Ibid,71

²²¹ Ibid,72

²²² Ibid,73

planes to fly them”²²³. By October 1964, the CIA estimated the number of mercenaries in Congo to be well over 1000 foreign individuals. Amongst them were Belgians, Spanish, and other European countries²²⁴. Even though the U.S was adamant in not including U.S mercenaries, it transported the mercenaries and their equipment across the west-east span of Congo²²⁵. In 1966, the New York Times reported after the operation was completely run by the CIA and American diplomats were “guiding the mercenaries into action, they were their sponsor, paymaster, and director”²²⁶. The British newspaper, the Observer, noted the terrorizing atrocities committed by these mercenaries. The newspaper notes that the pictures released “show how mercenaries not only shoot and hang their prisoners after torturing them but use them for target practices and gamble over the number of shots needed to kill them”²²⁷. These atrocious realities are reminiscent of the conduct of nonstate actors before the Westphalian model characterized the international system whereby they terrorized and pillaged cities.

The crisis in Congo was the United States of America baptism in independent Africa²²⁸. It proved that the embrace of terror and nonstate actors for reasons of power were permitted but on a small scale. The Simba rebellion ended in November 24th 1965 with the mercenary option squashing the rebellion which then resulted in the mercenaries being phased out of Congo²²⁹. The New York Times stated that the mercenaries fought to save Congo however Gleijeses notes that the mercenaries could not be described as criminals because it could have led “to embarrassing revelations about their contacts with the CIA”. This resulted in the mercenaries employed in the Congo to be flown to Europe on two planes chartered by the

²²³ Ibid,73

²²⁴ Ibid,74

²²⁵ Ibid,74

²²⁶ Ibid,74

²²⁷ Ibid,74

²²⁸ Ibid,76

²²⁹ Ibid,76

International Red Cross²³⁰. This reality reveals that during a minimum state of exception the state could not be found hiring nonstate actors because it undermines state legitimacy and the Westphalian model. And most importantly, it reveals that the sovereign state fears being held accountable for the misappropriation of funds because it runs the risk of unintended consequences targeting the stability of the nation-state.

Another case of hired mercenaries during the cold war would be the Nigerian “civil” war of 1967 to 1970 and the Comoro islands. In the former conflict, on the federal side, there were British, Egyptians, Rhodesians and South African mercenaries serving as pilots. And on the Biafran side, mercenaries were composed of Americans, Germans, French and South Africans²³¹. In the latter conflict in the Comoro Islands, a French mercenary in 1975 known as Robert Denard was hired by the opposition to overthrow the president. A few years later Robert Denard was asked to overthrow the president he had helped to put in power²³². From 1975 to 1990, Denard was asked to get involved in more than four coup d’états in the Comoro’s. Furthermore, Denard was asked to conduct mercenary violence in several African countries such as Congo, Gabon, Zimbabwe and Angola which dubbed him ironically as the “pirate of the republic”²³³.

Surprisingly, during the Vietnam war, the U.S paid south Korea, the Philippines, and the Thai government for the use of their troops by paying a fixed amount for each soldier²³⁴. The U.S also paid for all expenses concerning the deployment of forces²³⁵. In the conflict of Angola in 1976, there were over a thousand mercenaries composed of American, British, French, Dutch,

²³⁰ Ibid,77

²³¹ Thomson,93

²³² Ibid, 93

²³³ "Obituary: Bob Denard," BBC News, last modified October 2007, <http://news.bbc.co.uk/2/hi/europe/7044019.stm>.

²³⁴ Ibid

²³⁵ Thomson, 94

German and Portuguese individuals²³⁶. The employment of mercenaries in Angola is important because it was a total fiasco. The American administration employed a few hundred mercenaries in Angola to fight off the MPLA who were receiving funding and training from Cuba²³⁷. However, the mercenaries from European countries were far less trained and some “were literally lured from London pubs with the offer of easy money and high living”²³⁸. The defeat resulted in the execution of 14 mercenaries, and the rest were on their way back to Europe²³⁹.

The reason Angola is an important chapter in the employment of nonstate actors during the cold war, is because plausible deniability was unequivocally banned. The Angolan fiasco resulted in the Hughes-Ryan Amendment requiring the CIA to report the description and scope of covert operations in a timely fashion to eight different congressional committees²⁴⁰. In 1975, the CIA had used up the Contingency Reserve fund which required President Ford to inquire for \$28 million for covert operations. Congress declined, and the senate refused with a vote of 54-22²⁴¹. In 1976, the U.S congress passed the Clark amendment, prohibiting any covert aid to any side in the Angolan civil war and any anti-communist force categorically²⁴². It was the first time since the cold war that congress had asserted its control over the intelligence community in such strong willed manner²⁴³.

The events in Africa and Vietnam employed characteristics of what I have termed *new* civil war because of their non-political objectives, however they remained *old* civil wars because nonstate actors were organized and structured which permitted their instant withdrawal from the

²³⁶ Ibid, 94

²³⁷ Ibid, 94

²³⁸ Mamdani, 78

²³⁹ Ibid, 78

²⁴⁰ Ibid, 77

²⁴¹ Ibid, 78

²⁴² Ibid, 78

²⁴³ Ibid, 82

theater of conflict and most importantly it resulted in their state of exception being temporary. Mercenaries during the cold war did not establish a maximum state of exception because they were employed in “small” wars²⁴⁴ and in small numbers. In comparison to 18th century Europe, mercenaries composed 30-40% of state armies where the purchase of mercenaries was a universal practice²⁴⁵. The Westphalian model by the 20th century and during the cold war characterized the international system, and no state attempted to reinstitute 18th-century practices by reversing or even challenging the norm. Even though foreign aid and mutual defense pacts replaced 18th-century mercantile companies²⁴⁶, government’s officials during the cold war were adamant in contesting the sovereign ruler and demanded accountability for public funds that were being misappropriated. They enacted amendments and acts that restrained the intelligence committee in conducting “mercantile” politics. In other words, the cold war was a period of minimum state of exception because even though the constitution was temporarily suspended because of the state of war, both camps in the cold war did not disorganize violence, rather they kept it controlled, organized, and monopolized using primarily citizen-soldiers.

The highpoint of the cold war is 1989 Afghanistan, and it became much more evident that it was during the wars in the Balkans and Central Asia in the 1990s²⁴⁷. The reason being is that the international system slowly began transitioning back to a maximum state of exception. IR began witnessing the formation of a “new” civil war that included networks or nonstate actors that began conducting unorganized violence on a scale that was witnessed in the international system before the Westphalian model characterized international politics. International Relations witnessed a revolution in military affairs (RMA) that destabilized the modern conception of the

²⁴⁴ Thomson, 95

²⁴⁵ Ibid, 95

²⁴⁶ Ibid, 97

²⁴⁷ I identify them as wars because the actors authorized to engage in violence are not citizen-soldiers

Westphalian Model. The highpoint of the cold war is a period where one realizes that the international system is reverting to the old ways of conducting politics and most importantly: war. The period is reminiscent of state leaders during the heteronomy period of the international system authorizing huge numbers of nonstate actors to conduct conflicts instead of citizen soldiers. The conflict in Afghanistan and subsequent conflicts possesses salient similarities to conflicts that occurred before the Westphalian model characterized the international system.

There is no way to compare the covert war conducted in Afghanistan to the counterrevolutionary operations conducted in Africa or the Americas by great powers during the Cold War. The extent of resources dedicated to the operation and in the gravity of its aftereffects²⁴⁸, the war of Afghanistan marked the international system transitioning from a minimum state of exception to a maximum state of exception. Reagan's strategic objective in the 1980s was to roll back the Soviets using any means necessary. Reagan was not interested in arriving at negotiated settlements. Rather than coexistence, his strategic policy was to turn the Afghan war into the Soviet's Vietnam²⁴⁹.

By the 20th century, foreign aid, mutual defense pacts have replaced 18th-century subsidies, leases and direct recruiting²⁵⁰. The transition to a maximum state of exception commenced when Reagan's administration provided Pakistan with a six year economic and military aid package that helped both parties fund and train nonstate actors²⁵¹. The CIA and the ISI were not interested in negotiated settlements; rather they agreed on providing maximum firepower to the mujahedeen and politically recruit the most radically anti-communist islamists

²⁴⁸ Mamdani, 12

²⁴⁹ Mamdani, 124

²⁵⁰ Thomson, 97

²⁵¹ Mamdani, 126

to attack Soviets in Afghanistan²⁵². The aid also allowed the flooding of weapons and radical recruits in Afghanistan and Asia who were behaving exactly like privateers, pirates, and mercenaries.

The nonstate actors came from all over the world, whether from Arab countries such as Algeria, Saudi Arabia, or western countries such as Britain or the United states²⁵³. This is similar to mercenaries from different parts of the world being sold and bought by different state leaders in the market of violence before the nation-state process. The blueprint of the Afghan jihad was worked out by the CIA in collaboration with the ISI of Pakistan²⁵⁴. In other words, the war occurred because the CIA provided weapons and training specialists to the ISI agency but ordered Pakistan to deliver the weapons and supervise the training of Afghan fighters inside Pakistan²⁵⁵.

Violence during the highpoint of the cold war was organized in a similar method to pre-sovereign Europe. It was organized in an international framework rather than a national framework that resulted in violence and the state of maximum exception being authorized internationally. A network of recruitment centers were set up linking points such as Egypt and Saudi Arabia to Pakistan, Indonesia to the east, with Chechnya to the north, Sudan to the south and Kosovo to the west²⁵⁶ and were authorized by state agencies to provide visas. For instance, the Pakistani embassy in Algeria provided over 3000 visas to Algerian volunteers to the war²⁵⁷, a substantial amount considering the war attracted over 100,000 volunteers²⁵⁸. Some rebels based

²⁵² Ibid, 126

²⁵³ Ibid, 126

²⁵⁴ Ibid, 127

²⁵⁵ Ibid, 130

²⁵⁶ Ibid, 131

²⁵⁷ Ibid, 132

²⁵⁸ Ibid, 132

in Peshawar who was affiliated with the International Muslim Brigade were paid monthly salaries of around 1500\$²⁵⁹ - further blurring the line between a recruit who is a mercenary and/or a privateer.

The lessons of covert operations in Africa taught the CIA to subcontract different tasks to different agencies that directly resulted in the privatization of the war²⁶⁰. Subcontracting was utilized to ensure the involvement of as few Americans as possible, remove American presence from the ground, and decrease the possibility of damaging American personal. However, the problem with subcontracting is that it allows plausible deniability to occur because subcontractors bypass the executive and deal directly with intelligence agencies²⁶¹. This reality privatized the institutions funding these networks and nonstate actors resulting in the lack of transparency and accountability because central agencies rather than the Sovereign were now being informed about illegal action.

The privatization of the war in Afghanistan war is strikingly similar to mercantile companies controlling and directing the market of nonstate actors during medieval Europe. The privatization of the war began when the Reagan administration repealed the Clark amendment in July of 1985 which allowed the government to channel more funds to the Central Intelligence agency. This resulted in the CIA having to worry less about funding, recruiting, and training foreign volunteers, but most importantly began the democratization and internationalization of nonstate actors.

Not only was the government now complicit in providing and authorizing a government body, the CIA, with more funds to recruits nonstate actors, but was engaging in a practice which

²⁵⁹ Ibid,132

²⁶⁰ Ibid, 133

²⁶¹ Ibid, 134

state leaders before the Westphalian model conducted. That period was when mercantile companies were endowed with Sovereign powers that allowed them to control, initiate and end wars, but most importantly it gave them control over the market of violence which produced nonstate actors. It was not just the intelligence agencies that were comparable to mercantile companies, but Islamic religious madrassahs and charitable bodies were now playing a vital part in the privatizing the war²⁶².

For instance the CIA, as revealed by John Cooley, used organizations such as Tablighi Jamaat to recruit thousands of foreign volunteers in their fight against Afghanistan²⁶³. Similarly, refugee centers such as the Al Kifah Afghan Refugee Center in Brooklyn New York was turned into a recruiting and fundraiser for the holy war occurring in Afghanistan²⁶⁴. The charities, recruiting centers, and training centers were situated around the world, similar to mercantile companies having privatized ventured across land and sea. Pakistan privatized most jihadist centers that were turned into politico-military training for nonstate actors, but also the U.S possessed training centers in Connecticut called High Rock Gun Club, Fort Bragg in North Carolina, and the CIA's Camp Perry in Virginia²⁶⁵.

Moreover, on February 1980, Brezinski secured financial support from Saudi Arabia, which matched the U.S government financial input dollar for dollar²⁶⁶. Also, President Carter had a close relationship with Pakistan's intelligence director, Zia Al Huq, providing him with millions of dollars to help the CIA with their operation in recruiting and training rebels in

²⁶² Ibid, 135

²⁶³ Ibid,135

²⁶⁴ Ibid,135

²⁶⁵ Ibid, 136

²⁶⁶ Ibid, 141

1979²⁶⁷. Thus, *facts* reveal that the state of exception was long in the making starting in the 1970's, but only became *legal* when President Regan repealed the Clark Amendment in July of 1985, and invoked the National Security Directive 166 in March of 1985. The directive began the covert and overt funding of the biggest clandestine operation in CIA history which cost over \$3billion in aid in just a few years²⁶⁸.

The state of exception created by the end of the cold war decade was not temporary, and it began factually before it was legally announced. Furthermore, even though it was the sovereign who initiated the *legal* state of exception, the United States of America was already in the practice of authorizing nonstate actors in substantial numbers, thus undermining the notion of sovereignty which is the foundation of Carl Schmitt's concept of the state of exception.

The consequences of the high point of the Cold war are important to mention considering their analogous to authorized consequences of nonstate violence visible during our previous maximum state of exception during the pre-Westphalian epoch. For instance, Ronald Regan stating that the mujahedeem²⁶⁹ are "the moral equivalent of our founding fathers"²⁷⁰ meant two things. One, it meant that American foreign policy is indicating that nonstate actors are defenders of American interest similar to nonstate actors who got knighted during the 15th and 16th century. Or, it seemed that President Regan forgot the damage induced by state leaders authorizing nonstate actors for centuries and was not competent enough to realize that voiding the Neutrality laws and treaties enacted to illegalize nonstate violence, is detrimental to the stability of the nation-state.

²⁶⁷ Ibid, 126

²⁶⁸ Ibid, 141

²⁶⁹ Mujaheeden are nonstate actors that are Muslim extremists located in Afghanistan who received funding and training from Western and Gulf countries during the highpoint of the cold war to battle the Soviets.

²⁷⁰ Mamdani,119

State leaders that authorized nonstate actors to conduct violence have shown in recent years the element of “losing control”²⁷¹ over actors they authorized. It is interesting to note that dozens of terrorist attacks conducted after the Afghan war can be seen in the light of a privateer turning on his authorizer. An investigation conducted after the war in Afghanistan, assessed terrorist attacks in four continents and concluded that they “inevitably turned out to have been related to veterans of the Afghan war”²⁷². The 1993 world trade center bombing was conducted by Brooklyn taxi driver Mahmud Abouhalima and Kuwaiti born Ramzi Yousef , both having fought in the Afghan war²⁷³. In 1995, France endured eight bomb attacks conducted by individuals which “all of the leaders arrested for terrorism have passed by Afghanistan or Pakistan”²⁷⁴.

However, it seemed that the state enjoyed the advantages of plausible deniability because since information was privatized, intelligence agencies did not have to report to the executive.²⁷⁵ This resulted in agencies authorizing and legitimizing violence conducted by nonstate actors that created a private military capable of creating terror in different theaters of conflict after the cold war²⁷⁶. For instance, by the end of the cold war the ISI and CIA continued their support for Islamic mercenaries with new initiatives set in motion in central Asia, Caucasus, and the Balkans²⁷⁷. Jane Defense Weekly confirms that after the conclusion of the Afghan war, most manpower and equipment that originated in Pakistan under the ISI would appear in the Balkans and Central Asia²⁷⁸ which facilitated nonstate actors utilizing terror, and in turn created an

²⁷¹ If the consequences were perceived as “unintended” then sovereign states did lose control , if not, then they were calculated consequences

²⁷² Mamdani, 139

²⁷³ Ibid,139

²⁷⁴ Ibid,140

²⁷⁵ Ibid,140

²⁷⁶ Ibid ,138

²⁷⁷ Michel Chossudovsky, *America's "War on Terrorism"* (Montreal: Global Research, 2005), 28

²⁷⁸ Ibid,28

atmosphere where soviet disintegration became necessary, resulting in the creation of six new fundamentalist Islamic republics in central Asia²⁷⁹.

Yossef Bodansky, director of the U.S Congress Task force on terrorism and unconventional warfare stated that in 1996 a meeting occurred in Mogadishu, Somalia, where the war in Chechnya was planned²⁸⁰. The summit was attended by Osama Bin Laden, Pakistani and Saudi Arabian intelligence personal that discussed the supply of weapons and specialist and most importantly radical Islamic nonstate actors to conduct war in the Caucasus²⁸¹. In 1995, rebel leaders Shamil Basayev and Emir Khattab were invited to set up a base in Chechnya with the help of Saudi Arabia's Islamic Relief Organization²⁸². They were capable of organizing over 35,000 nonstate actors to engage in the first assault against Russian Troops in the first Chechen war in 1995²⁸³.

In 1997, a Congressional report by the Republican Party Committee (RPC) accused Clinton's administration of having "helped turn Bosnia into a militant Islamic base by utilizing Militant Islamic Networks"²⁸⁴. The RPC report confirms that the pattern used to dismantle Yugoslavia was also replicated in Kosovo with the complicity of NATO and the US state department²⁸⁵. Mercenaries who fought in Central Asia were invited to the ranks of the KLA(Kosovo Liberation Army) in 1998 and 1999 which is confirmed by British military sources

²⁷⁹ Ibid,28

²⁸⁰ Ibid, 29

²⁸¹ Ibid, 29

²⁸² Ibid, 30

²⁸³ Ibid, 30

²⁸⁴ Ibid, 41

²⁸⁵ Ibid, 43

that were trained and armed by the 22 Special Air Service Regiments (SAS) and two British private security companies²⁸⁶.

The terrorist activities conducted by the KLA were extended in 1999 to southern Serbia and Macedonia. A really important evolution in the KLA is that it was renamed Kosovo Protection Corps (KPC) and was elevated to a United Nations status which again permitted legitimate sources of funding and training to be conducted without executive accountability²⁸⁷. In an ironic turn of events, the KPC was a legitimate quasi-state. By 1999, the KPC commanders had established an operation zone in Serbia and Macedonia where they launched their attacks using foreign mercenaries from the Afghan War, but also from Britain, Holland and Germany²⁸⁸. Senior US military advisers directed them from a private mercenary outfit on contract with the Pentagon²⁸⁹.

As mentioned earlier, terrorist networks or nonstate actors engaging in violence receive their funding through specific intelligence agencies and organizations that permit the occurrence of plausible deniability. Also, nonstate actors employed at the highpoint of the cold war and afterward did not rely on their authorizers to compensate them for their violence. This is reminiscent of how privateers and pirates did not to rely on the state to pay them for their violence. It is true that foreign aid by intelligence agencies helped fund violent ventures conducted by nonstate actors; however it is illicit narcotic money that was used to finance all terrorist networks that emerged during the highpoint of the cold war and after the Cold war²⁹⁰.

²⁸⁶ Ibid, 43

²⁸⁷ Ibid, 45

²⁸⁸ Ibid,45

²⁸⁹ Ibid, 46

²⁹⁰ Ibid, 30

Alfred McCoy's study confirms that Central Asia and the Balkan's drug trade is intrinsically related to funding nonstate actors terrorist activities²⁹¹. The Golden Crescent Drug Triangle emerged within two years of the onslaught of the CIA operation in Afghanistan resulting in the border between Pakistan and Afghanistan becoming the world top heroin producer supplying 60% of the demand in the United States of America²⁹². As mentioned by McCoy "As the mujahedeen mercenaries seized territory inside Afghanistan, they ordered peasants to plant opium as a revolutionary tax that created hundreds of heroin laboratories in Pakistan"²⁹³. The annual proceeds of the Golden crescent were over 200 billion dollars, which primed powerful business syndicates in the West and in the former Soviet Union allied with organized crime, to compete for the strategic control of the heroin routes²⁹⁴. The multi-billion dollar revenue of narcotics was placed in Western Banks and some offshore banks where they proceeded in laundering the narco-dollars²⁹⁵. The international trade in narcotics constituted a business that is similar in magnitude to the oil trade because it was essentially a geopolitical control over drug routes²⁹⁶.

The highpoint of the cold war and its aftermath is highly similar to the period of maximum state of exception before the Westphalia model characterized the international system. In both periods, state leaders authorized, internationalized and de-monopolized nonstate actor violence at an unprecedented scale. Furthermore, since the highpoint of the cold war, state leaders have been suffering from authorizing network fighters. The privatization of information and the method of compensating nonstate actors are highly reminiscent of mercantile politics and

²⁹¹ Ibid, 30

²⁹² Ibid, 26

²⁹³ Ibid, 26

²⁹⁴ Ibid,26

²⁹⁵ Ibid,28

²⁹⁶ Ibid,28

state leaders taking advantage of plausible deniability. Concerning compensation, we notice that the privatization of the drug route that nonstate actors secured for the interest of specific global state powers after the cold war is similar to nonstate actor's pre-sovereignty securing water routes for the interest of global empires and mercantile companies. In both cases, nonstate actors either got compensated by their authorizer or reverted to resources available in their theater of conflict. More importantly, the maximum state of exception initiated during the last decade of the Cold war did not cease, but continued throughout the decades. When Hardt and Negri stated that 9/11 reminded us that we have been living a state of exception²⁹⁷, they were alluding to all the consequences that arose after the Cold war since they are both periods that are characterized by the state internationalizing and de-monopolizing nonstate violence.

What happened since 9/11 and what now?

9/11 was a reminder that state leaders and individuals persist in suffering consequences of a maximum state of exception because they fund and authorize nonstate violence. The attacks reminded the international system that post-cold war conflicts are to be based on nonstate actors or network enemies and no longer an enemy that is sovereign based on territorial boundaries with an exclusive state monopoly on violence. The attacks on 9/11 globalized war with the presence of large numbers of nonstate actors engaging in violence in different parts of the world, resulting in the internationalization of the global state of exception. During the cold war, the network enemy was partially hidden to the extent that it was constantly over coded in terms of socialist states²⁹⁸. However, since the ending of the cold war, as discussed earlier, nation-states

²⁹⁷ I do not label them "unintended" consequences because I assume that state leaders already knew from historical junctures, the consequences of authorizing nonstate actors.

²⁹⁸ Hardt & Negri, 55

no longer cloud our view as the dominant paradigm of political conduct, resulting in all wars since the end of the cold war being *netwars*²⁹⁹.

When the US initiated its first operation on the War on Terror which took place in Afghanistan on October 2001, the world was led to believe that the war was going to bring the international system back to a minimum state of exception where violence is monopolized under a nation-state citizen army. The evacuation that occurred during Operation Enduring Freedom (OEF) in Kunduz Afghanistan alludes to state leaders persisting on the authorization and internationalization of nonstate actor violence, but most importantly it reveals that state authorities are willing to overlook the unintended consequences of such evacuation

On November 2001, during OEF in the city of Kunduz northern Afghanistan, eight thousand men from diverse nationalities such as Uzbeks, Chechenia's, and Afghans were trapped in the last day of the city siege³⁰⁰. Over five thousand rebel fighters including intelligence officers were airlifted to a safe zone and were never brought to justice or detained or interrogated³⁰¹. Seymour Hersh has stated that "the US administration ordered the US central command to set up a special air corridor to help insure the safety of the Pakistani flight from Kunduz to the northwest corner of Pakistan"³⁰². Officials from the US Department have stated that the rescue mission was a mistake because "a rescue mission that was supposed to be a limited evacuation, apparently slipped out of control and as an unintended consequence, an unknown number of Taliban and Al Qaeda Fighters managed to join in the exodus"³⁰³. The fighters that were evacuated were incorporated into the Kashmiri terrorist group known as

²⁹⁹ A Netwar is any war that includes nonstate actors in the conflict , whether denoted as mercenaries or privateers

³⁰⁰ Seymour Hersh, "The Getaway: Questions surround a secret Pakistani airlift," The New Yorker, last modified 2002, <http://www.newyorker.com/magazine/2002/01/28/the-getaway-2>

³⁰¹ Hersh.

³⁰² Hersh.

³⁰³ Hersh.

Lashkar -e-Taiba in Kashmir where over 70% of those involved in nonstate violence or terrorist activities are trained by the ISI³⁰⁴.

Another case of state leaders remaining complicit in authorizing nonstate violence and prolonging the maximum state of exception is during the Operation Iraqi Freedom in 2004. The Iraq war was a testament to the revolution that occurred in military affairs. The war on Iraq employed a large scale of modern nonstate actors known as Private Military and Security Companies (PMSC) who became active or were active across the Balkans, Africa, the Levant, and the Americas.³⁰⁵ PMSC blur the line between privateers and mercenaries because PMSC are privateers who are authorized by the state, however, receive bonuses for enlistment³⁰⁶ making them comparable to mercenaries. At the height of the war, there was over 180 PMSC in Iraq operating and authorizing over 50,000 foreign fighters who are neither nationals of one of the parties to the conflict nor residents of the country in conflict³⁰⁷. The PMSC are collected through international network zones that are established in developing countries³⁰⁸ similar to the network zones used to collect rebel fighters during the highpoint of the cold war.

The Iraq war exemplifies the continuation of this “new” type of war since the end of the cold war. It employs nonstate actors who undermine the traditional conception of a citizen soldier engaging in organized violence. PMSC blur line between functions that are private and domestic for the reason that they are entrusted with “security” – an ethos that is traditionally and inherently attributed to the sovereign state with the help of its citizen-soldiers³⁰⁹.

³⁰⁴ Chossudovsky, 200

³⁰⁵ Jose Gomez Del Prado, "Impact on Human Rights of Private Military and Security Companies' Activities," Global Research, last modified October 2008, <http://www.globalresearch.ca/impact-on-human-rights-of-private-military-and-security-companies-activities/10523>.

³⁰⁶ Jose Del Prado.

³⁰⁷ Jose Del Prado

³⁰⁸ Jose Del Prado

³⁰⁹ Jose Del Prado

Order 17 issued on June 2004 concludes that private contractors are immune from prosecution which further facilitates a state losing control over the nonstate actors it authorized³¹⁰. This results in PMSC operating outside government control and far from state institutions resulting in various violations of human rights³¹¹. The Private military personal has been involved in various crimes against human rights that can be comparable to tension and atrocities committed by privateers and mercenaries in pre-sovereign Europe³¹²; however their immunity allows them “plausible deniability” and not to face the court of justice. For instance, on September 16, 2007, Blackwater was involved in the killing of 17 civilians in the city of Baghdad in Al-Nisour square³¹³. In 2003, the infamous Abou Ghraib scandal was conducted in the presence of PMSC from TITAN and CACI, and it resulted in the torture and deaths of several innocent Iraqi civilians and violated the UN charter of human rights and the Geneva conventions.³¹⁴

Currently, nonstate actors affiliated with terrorist networks known as AlQaeda and its offshoot known as the Islamic State of Iraq and the Levant (ISIL) are engaging in human right crimes and violations in the Levant in staggering numbers³¹⁵. Interestingly, ISIL emerged in Iraq in 2006 and has ever since emerged as a network that includes fighters who have been involved in previous conflicts during and after the cold war³¹⁶. They are extremist nonstate actors that are funded and trained by foreign intelligence agencies to undermine Iranian influence in the Levant

³¹⁰ Jose Del Prado

³¹¹ Peter Singer, "Outsourcing War," *Foreign Affairs* 84, no. 2 (2005), <https://www.foreignaffairs.com/articles/2005-03-01/outsourcing-war>.

³¹² Peter Singer.

³¹³ Del Prado.

³¹⁴ Del Prado.

³¹⁵ Harmeet Sooden, "The US-led Coalition's Human Rights Record in Iraq," last modified August 2015, <http://www.scoop.co.nz/stories/HL1508/S00020/the-us-led-coalitions-human-rights-record-in-iraq.htm>

³¹⁶ Nafeez Ahmed, "Pentagon Report Predicted West's Support for Islamist Rebels Would Create ISIS," *Medium*, accessed June 11, 2015, <https://medium.com/insurge-intelligence/secret-pentagon-report-reveals-west-saw-isis-as-strategic-asset-b99ad7a29092>.

and “redirect” the region towards a different direction³¹⁷. There are thousands of nonstate actors fighting in the ranks of ISIL who had previously fought in conflicts that occurred in the 1990’s in Chechnya, the Balkans, and Afghanistan³¹⁸.

Documents received by Judicial Watch on August 2012 from the US Defense Intelligence Agency, reveal that rebel forces involved in the Levant comprised Islamist insurgents funded and trained and supported by Western militaries and their regional allies³¹⁹. The document further states that “Al-Qaeda in Iraq (AQI), the precursor to ISIL, supported the Syrian opposition from the beginning, both ideologically and through the media.”³²⁰.

The manner in which ISIL nonstate actors generate their revenues is similar to the mujahedeen authorized by Ronald Reagan. They traffic narcotics to generate revenue to buy further weapons and fund their violence³²¹, but also engage in the export of gas and oil on the black³²². Patrick Henningsen has compared fighters involved in the ISIL network to nonstate actors who resemble pirates and privateers during Europe’s pre-sovereign state system because they smuggle, traffic and plunder villages to generate capital.³²³

³¹⁷ Seymour Hersh, "The Redirection: Is the Administration's new policy benefitting our enemies in the war on terrorism?," *The New Yorker*, accessed May 11, 2015, <http://www.newyorker.com/magazine/2007/03/05/the-redirection>.

³¹⁸ Dr Gordon Bodos, "ISIS' Balkan Networks," ACD, accessed September 11, 2015, <http://acdemocracy.org/isis-balkan-networks/>.

³¹⁹ Nafeez Ahmed.

³²⁰ For more information on how “Divide and Rule” was the strategy employed using nonstate actors, revert to the study conducted by RAND Contract No. W74V8H-06-C-0001 which reveals the alliance the US department had established with nonstate actors, rebel extremists, to contain Iran in the region http://www.rand.org/content/dam/rand/pubs/monographs/2008/RAND_MG738.pdf

³²¹ Tom Porter, "Cocaine Funding Isis: Drug Smuggling Profits Islamic State-Linked Jihadists in North Africa," *International Business Times*, accessed August 11, 2015, <http://www.ibtimes.co.uk/cocaine-funding-isis-drug-smuggling-profits-islamic-state-linked-jihadists-north-africa-1475824>.

³²² Suleiman Al- Khalidi, "Here's How ISIS Keeps Selling So Much Oil Even While Being Bombed And Banned By The West," *Business Insider*, accessed August 11, 2015, <http://www.businessinsider.com/r-islamic-state-keeps-up-syrian-oil-flow-despite-us-led-strikes-2014-10>.

³²³ Patrick Henningsen, "'SAND PIRATES': Are ISIS America's 21st Century Terror Privateers?," *21st Century Wire*, accessed July 11, 2015, <http://21stcenturywire.com/2014/11/01/sand-pirates-isis-are-americas-21st-century-terror-privateers/>.

The authorization of nonstate actors since the end of the cold war but more so since the attacks on 9/11 reminds us that we are living a maximum state of exception where security and peace are the exceptions and insecurity and war the norm. The world is reminded that the notion of national sovereignty has been damaged because of the RMA which resulted in the state no longer prioritizing having the authority or a monopoly on the decision making of violence. In our current maximum state of exception, it is no longer the traditional conception of a sovereign state, based on a Westphalia model, including its citizen-soldier, which defends the borders of the nation-state. Rather, as 9/11 ensued, the world is reminded that national sovereignty has been destabilized, overlooked, and violated because the employment of PMSC and other forms of nonstate actors affiliated with terrorist networks has once again been authorized and internationalized and stands as the main source of violence utilized by state leaders to conduct war.

Conclusion

Knowing whether the actors involved in wars are citizen-soldiers or nonstate actors has been crucial in this research paper to detect which extreme of exceptionality the international system endured since the 17th century. It allowed us to identify if the actors engaged in violence are organized (citizen army) or unorganized (nonstate actors or networks) and if the conflict was categorized as war or *civil war* or was characterized by “old” or “new” war features. This research paper also demonstrated three revolutions in military affair (RMA) that occurred in the past few hundred years which highlighted a change in the scale and extent in which the state desired and took initiative in controlling, organizing and monopolizing violence.

The first period that preceded the nation-state system or the Westphalian model, was an epoch that lasted until the end of the 19th century and was identified as an epoch of maximum state of exception. As discussed, contrary to most belief, the Westphalian model did not dictate international politics in the 17th century but is a modern state project that only began to characterize states at the end of the 19th century and more so after both World Civil Wars. It is a period where the state was opposed to exert authority and control over the decision-making process of violence, but rather chose to internationalize, and de-monopolize violence by selecting nonstate actors to engage in violence.

The second RMA began at the end of the 18th century and lasted until the end of the cold war. In this period state leaders through interstate initiatives and discussions were forced to revolutionize military affairs and transition into a minimum state of exception. Such transition arose because states lost control over nonstate actors they had authorized and began suffering unintended consequences. A more important explanation for the transition is the French and American revolutions in the 18th century which gave rise to the republican contract and institutionalized the notions of individual rights. These revolutions produced the biggest military revolution in the 18th century which endures until this day because it conditioned that violence could only be conducted by a citizen that is conscripted in a nation-state army and most importantly that a citizen-soldier had the duty to protect the sovereign state in return for rights. With individual citizens becoming the ostensible source of sovereignty, the state could no longer disclaim responsibility for violent activities in the international system³²⁴.

The institution of sovereignty, which is the foundation of the Westphalian model, began delegitimizing violence emanating from a source other than a sovereign state's citizen army.

³²⁴ Thomson , 148

Furthermore, the adoption of the Westphalian model primed state leaders to take initiative and begin monopolizing violence by becoming through the passing of time, the only entity in control of the decision-making authority on violence. This authority and initiative was shown in the adoption of the Neutrality Act in 1794, the Treaty of Paris in 1856 and with sovereign states adopting Geneva and Hague conventions which codified the rights of citizens and citizen-soldiers.

The third period highlighted the findings that the international system has reverted slowly, since the end of the cold war, into a maximum state of exception resulting in a Global war. During the highpoint the cold war and after 9/11, the obsolescence of the Westphalian model becomes more explicit. Alleged sovereign state leaders began re-prioritizing the use of non-citizens soldiers to conduct conflict in a privatized manner where accountability is imprudent. The numbers of nonstate actors utilized in conflicts after the cold war are comparable to the quantity of nonstate actors used in conflicts before the Westphalian model was established. For example, currently over 100,000 jihadist fighters in Syria are conducting violence, and they are affiliated to various terrorist networks such as AlQaeda and Jabhat Al Nusra³²⁵.

Janice E. Thompson, in 1994, posed “how much can [violent] practices change and yet remain consistent with the institution of sovereignty”?³²⁶ The retort provided in this research would opine that the moment state leaders begin authorizing the deployment of nonstate actors to conduct a war, that is the moment state leaders adopt a fundamental new identity that is paradoxical to the Westphalian model. It is an identity that ends or erodes their monopoly on the

³²⁵ Ben Farmer, "Syria: Nearly Half Rebel Fighters Are Jihadists or Hardline Islamists, Says IHS Jane's Report," Telegraph, accessed October 11, 2015, <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/10311007/Syria-nearly-half-rebel-fighters-are-jihadists-or-hardline-Islamists-says-IHS-Janes-report.html>

³²⁶ Thomson,153

authority to deploy, authorize and legitimate violence – they essentially adopt an identity that is inconsistent with the institution of sovereignty³²⁷.

Questions that remain unresolved in this research paper, but are important to investigate in the future consist of determining why state leaders reverted to authorizing nonstate actors to conduct violence when history has demonstrated that they create unintended consequences which hinder nation-state stability? Is it because the *resilience model* rather than Westphalian model became the new 21st century IR paradigm? Secondly, what would be the consequences of a maximum state of exception on citizenship rights domestically and universal rights internationally? Are regimes of right obsolete because there is no longer a monopoly on violence? And thirdly, what is the relation between nonstate actors being utilized in conflict to establish *new* territorial borders?. Adopting the notion that the Westphalian model has become obsolescent and that the international system is currently enduring a maximum state of exception would be necessary to begin inspecting these queries.

³²⁷ *Ibid*,153

Bibliography

Agamben, Giorgio. "A Brief History of the State of Exception." University of Chicago Press. Accessed September 11, 2015. <http://www.press.uchicago.edu/Misc/Chicago/009254.html>.

Agamben, Giorgio. "The State of Emergency". University de Paris VII (2002). Accessed September 15, 2015. <http://www.generation-online.org/p/fpagambenschmitt.htm>

Ahmed, Nafeez. "Pentagon Report Predicted West's Support for Islamist Rebels Would Create ISIS." Medium. Accessed June 11, 2015. <https://medium.com/insurge-intelligence/secret-pentagon-report-reveals-west-saw-isis-as-strategic-asset-b99ad7a29092>.

Al- Khalidi, Suleiman. "Here's How ISIS Keeps Selling So Much Oil Even While Being Bombed And Banned By The West." Business Insider. Accessed August 11, 2015. <http://www.businessinsider.com/r-islamic-state-keeps-up-syrian-oil-flow-despite-us-led-strikes-2014-10>.

Buzan, Barry, and Lene Hansen. *The Evolution of International Security Studies*. Cambridge: Cambridge University Press, 2009.

Bordos, Gordon. "ISIS' Balkan Networks." ACD. Accessed September 11, 2015. <http://acdemocracy.org/isis-balkan-networks/>.

BBC News. "Obituary: Bob Denard." Last modified October 2007. <http://news.bbc.co.uk/2/hi/europe/7044019.stm>.

Croxton, Derek. "The Peace of Westphalia of 1648 and the Origins of Sovereignty." *International History Review* 21, no. 3 (1999): 569-591.

Chossudovsky, Michel. *America's "War on Terrorism"*. Montreal: Global Research, 2005.

Cox, Robert. *Social Forces, States and World Orders: Beyond International Relations Theory*. New York: Columbia University Press, 1986.

"Clausewitz: War As Politics by Other Means." Online Library of Liberty. Last modified April 10, 2014. <http://oll.libertyfund.org/pages/clausewitz-war-as-politics-by-other-means>

Del Prado, Jose. "The Privatization of War: Mercenaries, Private Military and Security Companies (PMSC)." Global Research. Accessed June 11, 2015. <http://www.globalresearch.ca/the-privatization-of-war-mercenaries-private-military-and-security-companies-pmsc/21826>.

Del Prado, Jose. "Impact on Human Rights of Private Military and Security Companies' Activities." Global Research. Last modified October 2008. <http://www.globalresearch.ca/impact-on-human-rights-of-private-military-and-security-companies-activities/10523>.

Evans, Graham, and Jeffrey Newnham. *The Dictionary of World Politics: A Reference Guide to Concepts, Ideas, and Institutions*. New York: Simon & Schuster, 1990.

E-International Relations. "How 'Westphalian' is the Westphalian Model?" Accessed October 11, 2015. <http://www.e-ir.info/2014/02/03/how-westphalian-is-the-westphalian-model/>.

Farmer, Ben. "Syria: Nearly Half Rebel Fighters Are Jihadists or Hardline Islamists, Says IHS Jane's Report." Telegraph. Accessed October 11, 2015. <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/10311007/Syria-nearly-half-rebel-fighters-are-jihadists-or-hardline-Islamists-says-IHS-Janes-report.html>.

Gross, Leo. "The Peace of Westphalia, 1648-1948." *The American Journal of International Law* 42, no. 1 (1948): 20-41.

Guillaume, Xavier, and Jef Huysmans. *Citizenship and Security: The Constitution of Political Being*. New York: Routledge, 2013.

Hardt, Michael, and Negri, Antonio. *Multitude: War and Democracy in the Age of Empire*. New York: The Penguin Press, 2004.

Hersh, Seymour. "The Getaway: Questions surround a secret Pakistani airlift." The New Yorker. Last modified 2002. <http://www.newyorker.com/magazine/2002/01/28/the-getaway-2>.

Hersh, Seymour. "The Redirection: Is the Administration's new policy benefitting our enemies in the war on terrorism?" The New Yorker. Accessed May 11, 2015. <http://www.newyorker.com/magazine/2007/03/05/the-redirection>.

Henningsen, Patrick. "'SAND PIRATES': Are ISIS America's 21st Century Terror Privateers?" 21st Century Wire. Accessed July 11, 2015. <http://21stcenturywire.com/2014/11/01/sand-pirates-isis-are-americas-21st-century-terror-privateers/>.

Krasner, Stephen D. *Sovereignty: Organized Hypocrisy*. Princeton, N.J.: Princeton University Press, 1999.

Kalyvas, Stathis N. "'New' And 'Old' Civil Wars: A Valid Distinction?" *World Politics* 54 (2001): 99-118.

Konstam, Angus. "Privateers, Pirates and Aztec Gold." Mexicolore. Last modified 2013. <http://www.mexicolore.co.uk/aztecs/spanish-conquest/pirates-and-aztec-gold>.

Mearsheimer, John J. *The Tragedy of Great Power Politics*. New York: Norton, 2001.

Morgenthau, Hans J., and Kenneth W. Thompson. *Politics Among Nations: The Struggle for Power and Peace*. New York: Knopf, 1985.

Mamdani, Mahmood. *Good Muslim, Bad Muslim: America, the Cold War, and the Roots of Terror*. New York: Pantheon Books, 2004.

Osiander, Andreas. "Sovereignty, International Relations, and the Westphalian Myth." *International Organization* 55, no. 2 (2001): 251-287.

Pettegree, Andrew. *Europe in the Sixteenth Century*. Oxford: Blackwell, 2002.

Porter, Tom. "Cocaine Funding Isis: Drug Smuggling Profits Islamic State-Linked Jihadists in North Africa." *International Business Times*. Accessed August 11, 2015. <http://www.ibtimes.co.uk/cocaine-funding-isis-drug-smuggling-profits-islamic-state-linked-jihadists-north-africa-1475824>.

Rothschild, Emma. "What Is Security?" *Daedalus* 124, no. 3 (1995): 53-98.

Ruggie, Gerard. *International Structure and International Transformation: Space, Time, and Method*. Lexington: Lexington books, 1989.

Schmitt, Carl. *Political theology: four chapters on the concept of sovereignty*. Cambridge, Mass: MIT Press, 1985

Seth, Sanjay, ed. *Postcolonial Theory and International Relations: A critical introduction*. New York: Routledge, 2013.

Singer, Peter. "Outsourcing War." *Foreign Affairs* 84, no. 2 (2005): 119-133. <https://www.foreignaffairs.com/articles/2005-03-01/outsourcing-war>.

Sooden, Harmeet. "The US-led Coalition's Human Rights Record in Iraq." Last modified August 2015. <http://www.scoop.co.nz/stories/HL1508/S00020/the-us-led-coalitions-human-rights-record-in-iraq.htm>.

Tilly, C. "War Making and State Making as Organized Crime", *Cambridge University Press*(1985):169-191

Thomson, Janice E. *Mercenaries, Pirates, & Sovereigns*. New Jersey: Princeton University Press, 1994.

Urban, William. *Bayonets for Hire Mercenaries at War, 1550-1789*. London: Greenhill Books, 2007.

"Unfolding the Future of the Long War Motivations, Prospects, and Implications for the U.S. Army." RAND Corporation. Accessed July 11, 2015. http://www.rand.org/content/dam/rand/pubs/monographs/2008/RAND_MG738.pdf.

Walker, R.B.J. "State Sovereignty and the Articulation of Political Space/ Time." *European Journal of Political Research* 20, no. 3 (February 1991): 445-461

Walker, R.B.J. "The Subject Of Security." *Critical Security Studies*, 1997, 61-81.