How 'Westphalian' is the Westphalian Model?
Written by Camille Mulcaire

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How 'Westphalian' is the Westphalian Model – and Does it Matter?

Consisting of two bilateral treaties signed in 1648, the Peace of Westphalia was agreed upon in order to bring an end to the carnage of the Thirty Years War. Significantly, the Peace has customarily been portrayed by international relations scholars, and has consequently been generally accepted by international relations students, as the origin of what has come to be known as the Westphalian model, "a society of states based on the principle of territorial sovereignty" (Evans and Newnham, 1990: 501), which entails the corollary principles of legal equality and autonomy, as well as non-intervention in the affairs of other states (enshrined in Article 2.7 of the UN Charter). Despite this, as the revisionist scholar Osiander (2001: 251) notes, "the accepted IR narrative about Westphalia" is in fact a "myth"; the Westphalian model has little, if anything, to do with the Peace of Westphalia from which the model derives its recognised name (Stirk, 2012: 641). This essay will analyse the basis of this myth by highlighting the numerous discrepancies between the terms agreed to at Westphalia and the core tenets that constitute the Westphalian model. This essay will then proceed to highlight why the Westphalian myth emerged and how it has been perpetuated so effectively. Finally, this essay will outline why it matters that the Westphalian model is not truly 'Westphalian,' the impact that the Westphalian myth has had on the contemporary study of international relations, and the importance of transcending the "Westphalian straitjacket."

The traditional portrayal of the Peace of Westphalia claims that it "made the territorial state the cornerstone of the modern state system" (Morgenthau, 1985: 294), formally acknowledging "a system of sovereign states" (Spruyt, 1994: 27), thus representing a "majestic portal which leads from the old world into the new world" (Gross, 1948: 28). Nevertheless, Osiander and other revisionist scholars have sought to emphasize that those who seek to ascribe the emergence of the concept of state sovereignty to the Peace of Westphalia do so "against the backdrop of a past that is largely imaginary" (Osiander, 2001: 252).

Firstly, it is essential to note that "nowhere do the treaties mention the word 'sovereignty' itself," particularly as there is no such word in Latin, the language in which the treaties were originally written (Croxton, 1999: 577). In fact, when the French delegation did suggest insertion into the treaties of a reference to sovereignty, the offer was immediately declined (Stirk, 2012: 645-646). Whilst the treaties do make reference to the right of '*landeshoheit*' or 'territorial jurisdiction' of states, it is crucial to bear in mind that this jurisdiction was under an external legal regime, namely the Holy Roman Empire (Osiander, 2001: 283). However, Osiander (2001: 265, 272) argues that misinterpretation of the "endless technical detail on constitutional matters" within the treaties had led international relations scholars, notably Gross (1948), to mistakenly interpret '*landeshoheit*' to describe 'territorial sovereignty,' crucially neglecting the fact that each state's autonomy was limited through the laws of the empire by the principle of *landeshoheit*. Hence, the political entities within the Holy Roman Empire were not sovereign states in the modern sense, lacking the autonomy that characterizes Westphalian sovereignty.

Hierarchy, not Westphalian sovereign equality, was the dominant motif in the international system during the seventeenth century (Stirk, 2012: 643). For example, Osiander (2001: 260) observes that the Thirty Years War was sustained by the "expansionist aggression" of the Danish, Swedish, and French crowns, who had entered into conflict in order to "aggrandize themselves," certainly not seeking a settlement at Westphalia based on absolute sovereign equality. In addition, "at least two Swiss Cantons retained reference to the Holy Roman Empire in their

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oath of citizenship" for several decades after the Peace of Westphalia (Osiander, 2001: 267), and even after 1648, the estates of the Holy Roman Empire continued to recognize the emperor as "their actual overlord," continuing to send representatives to the Imperial Diet and paying common taxes (Croxton, 1999: 574). Such examples clearly reflect the hierarchical nature of seventeenth century international society, with the hierarchy of empire persisting until 1806, importantly undermining any impression of emerging Westphalian state-sovereignty as a result of the Peace of Westphalia.

Osiander (2001), Croxton (1999), and Stirk (2012) also dispute the standard assertion that the Peace of Westphalia first granted state sovereignty through the right of states to form alliances with foreign actors. In fact, the estates of Europe had always had the right to conclude treaties and alliances with foreign actors (Osiander, 2001: 273); Palatinate and Brandenburg had "struck alliances with the United Provinces in 1604 and 1605 respectively" (Beaulac, 2000: 168). The treaties that constituted the Peace of Westphalia merely recognized a practice which had already been underway for almost half a century (Beaulac, 2000: 168). Consequently, "the peace itself was restorative not innovative in the eyes of its creators" (Stirk, 2012: 646) in reasserting the pre-existing rights of states, far from the "majestic portal" to which Gross (1948: 28) had erroneously likened the Peace of Westphalia.

Rather than establishing Westphalian sovereignty, the treaties actually included a number of provisions that violated the Westphalian model (Krasner, 1995: 141), through the restriction of each ruler's domestic authority by an external actor (the Emperor). Firstly, the treaties restricted the rights of princes to do as they like with their citizens: they "deprived the princes and free cities of the empire the power to determine the religious affiliation of their lands" (Osiander, 2001: 272). Article 5.28 of the Treaty of Osnabrück states that anyone who "shall profess and embrace a Religion different from that of the Lord of the Territory, shall in consequence of the said Peace be patiently suffer'd and tolerated, without any Hindrance or Impediment," essentially making religious liberty a matter of international – not domestic – responsibility (Croxton, 1999: 575). Another key restriction on sovereignty imposed by the Peace of Westphalia concerns the continuing importance of the Emperor where the right of making alliances is concerned:

The individual states shall have the eternal and free right to make alliances among themselves or with foreigners…yet only…where they preserve in all ways the oath by which all are bound to the emperor and empire (Article 8.2, Treaty of Osnabrück, 1648).

Since Westphalian sovereignty is "violated when external actors influence or determine domestic authority structures," such restrictions are inconsistent with the traditional concept of Westphalian sovereignty (Krasner, 1999: 20).

As has been highlighted above, the Westphalian model can hardly be portrayed as 'Westphalian'; the Westphalian model has little, if anything, to do with the Peace of Westphalia from which the model derives its recognized name (Stirk, 2012: 641). In light of this, it is essential to understand why the Westphalian 'myth' emerged in the first place. Misinterpretation of the treaties certainly has a part to play, but according to Osiander (2001: 251), the Westphalian myth emerged and has been perpetuated principally because it allowed for a convenient and simplistic account of how the system of European states emerged. Significantly, this neglects the fact that the emergence of sovereign states within Europe was gradual and did not result spontaneously from any revolutionary breakthrough resulting from the Peace of Westphalia. Ultimately, "Westphalia…is really a product of the (narrow) nineteenth and twentieth century fixation on the concept of sovereignty" (Osiander, 2001:251), with scholars such as Leo Gross (1948) further perpetuating the Westphalian myth. By having their minds on contemporary order building developments and the post WW2 "quest to translate the United Nations Charter into a meaningful part of the international order" (Clark, 2005: 56), scholars of these types ascribe the emergence of the Westphalian model to the Peace of Westphalia.

Moving to the question of whether it matters that the Westphalian model is not 'Westphalian,' the short answer is a resounding yes. Beaulac (2004: 186) argues:

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.

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As a highly compelling social construct, the myth has "managed its way into the fabric of our international legal order," as the model for the idea of state sovereignty in contemporary international law (Beaulac, 2004: 212). Crucially, the linkage between the Peace of Westphalia and the Westphalian model is not only "bad history" (as this essay illustrates above) but is also a "hindrance to the contemporary study of international relations" (Stirk, 2012: 644). This is due to the fact that "the standard account of sovereign equality and Westphalia sets up a norm that fails to account for the actual behaviour of states" (Stirk, 2012: 660), as violations of the Westphalian model have been an enduring and recurrent characteristic of international relations (Krasner, 1995: 147). The Westphalian model seems unable to explain 'deviant' patterns such as the Holy Roman Empire itself (Osiander, 2001: 280), or even the sovereign inequality institutionalised through the permanent membership on the United Nations Security Council to this day. Controversially, this could suggest that Westphalian sovereignty has never actually been intact, instead being best understood as an example of "organised hypocrisy" (Krasner, 1999: 5), a long-standing norm which is frequently violated. Hence, 'compromising' (looking beyond) Westphalia, as Krasner (1995: 115) puts it, is essential in order to gain a valid and more imaginative insight into political structures that deviate from the Westphalian model. This is a necessity given the processes of globalization and growing interdependence which continue to challenge established concepts of Westphalian sovereignty.

In conclusion, the Westphalian model can scarcely be seen as 'Westphalian.' Seventeenth century Europe was hierarchic, with any notion of sovereign equality explicitly rejected at the Peace of Westphalia. If anything, the Peace of Westphalia included provisions that restricted the sovereignty of the states of Europe, particularly regarding freedom or religion and the right to form alliances with foreign actors. The Westphalian myth which links the emergence of the Westphalian model to the Peace of Westphalia is based largely on the nineteenth and twentieth century fixation on the concept of state sovereignty (Osiander, 2001: 251), as well as misinterpretation of the technical detail of the treaties of the Peace of Westphalia. It is also of vital importance to note that the mythical linkage between the Peace of Westphalia and the emergence of a system of sovereign states is not only historically incorrect, but also a hindrance to a more imaginative and accurate understanding of political structures within international relations, that often deviate from the Westphalian model, both in the seventeenth century and to this day.

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Date written: January 2013