

# “Sovereignty-in-Being”: A Dangerous New Model for Territorial Expansion in the 21st Century

*by Russell Handy, Michael J. Forsyth and Joseph Kunkel*

The basis by which nation-states “declare” sovereignty is being challenged in ways our current generation has not experienced. Non-state entities have historically ignored the concept of borders and move with near impunity in some cases, disrupting the stability of recognized states. We are accustomed to that. The evolving trend is of nation-states encroaching upon territories with a view toward establishing sovereignty by means of their mere presence: “sovereignty-in-being.” This evolution is a dangerous and growing threat to stability, requiring serious thought and collaboration among like-minded leaders of free nations.

## **Historical Context: The Westphalian System, 1648 -1991**

The international system framing national sovereignty has existed as we know it for over 350 years. The 1648 Treaty of Westphalia that ended the Thirty Years’ War established the system and the concept of modern sovereignty – at least how we have come to define it in the “Western World.” Prior to the agreement there was a distinct lack of respect for the rights of some states and powerful landowners, warlords, religious and political leaders ran roughshod over smaller states. Disputes erupted over religion, borders, trade, and who was allowed to establish laws within a given territory. The result was an ugly war that killed millions across northern Europe in the first half

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of the 17<sup>th</sup> century. The devastation of the land and loss of life finally exhausted the antagonists who met in a diplomatic congress to establish peace. The assembled ambassadors went beyond a simple peace treaty and completely revamped the concept of national sovereignty.<sup>1</sup>

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The Thirty Years' War began partially as a result of encroachment upon the rights of governance between neighbors. Although leaders of several political entities attempted to overrun their neighbors over genuine disagreements about internal policy, in many cases the invasions were simply land grabs to enlarge territorial possessions. The treaty established the conditions to make such behavior among political leaders anathema. Specifically, the terms recognized the right of sovereignty of each state over its land, people, and foreign policy on an equal basis. Further, the treaty “formalized” the instrument of war as a policy tool in the hands of internationally recognized sovereign political leaders and held those leaders responsible for unacceptable warlike acts. Thus, sovereignty gave exclusive dominion over territory and the people within designated borders to the recognized political leaders, free of interference by neighboring rulers. All recognized states, no matter their size, ethnicity, or creed, and their leaders were considered equally sovereign within the international community. Sovereignty – defined as dominion or rule over an area – became the central tenet of the treaty and this modern concept has endured to today.<sup>2</sup>

This is not to say all powers have respected the sovereignty of their neighbors. Napoleon and Hitler are illustrative examples of leaders who trampled over the Westphalian standard.

Napoleon ignored sovereign borders in an attempt to expand the French Revolution across Europe, but was defeated when an alliance finally coalesced to turn him back. One might say Hitler used the sovereignty-in-being model expertly during the Sudeten Crisis with Czechoslovakia and subsequently had his usurpation underwritten by the western European Allies at the Munich Conference. Both of these leaders became pariahs in their time and the international community united to turn them back and return the world back to accepted norms.

Despite these few historical “bumps in the road,” the tenet of Westphalian sovereignty has generally held over the past three centuries – until recently. Events over the past two decades involving both non-state and state actors have undermined the system and begun to make us question if we are “all in” with Westphalian principles.

### **Westphalian “Outliers”?**

As implied earlier, although we in the western world respect and generally adhere to Westphalian principles and, quite frankly, assume all others *should* – we’ve witnessed conspicuous violations over the past 20 years. China offers an illustrative example of a nation adhering to an evolving interpretation of sovereignty, presenting a distinct challenge to the United States and her allies and partners in the region.<sup>3</sup> China ended a centuries-long decline in the early 20<sup>th</sup> century to emerge as a regional power in Asia, global economic powerhouse, and competitor for influence. Prior to 1945, China would likely contend they had suffered for several hundred years at the hands of colonizing nations in the West that encroached on her sovereignty. Since China emerged from its civil war in 1949, it has jealously guarded its territorial borders and prerogatives of internal domestic policy. As China’s rise gained steam with the economic reforms of the early 80s, it began to experience

corresponding growing pains associated with her newfound strength. As the economy grew so did China's need for resources to fuel her expansion. Since much of its required natural resources exist in its "backyard," a competition has ensued in which China seeks to establish sovereignty over areas purported to have the desired resources, such as the isolated rocks of the Spratly Islands.<sup>4</sup>

The South and East China Sea are flashpoints of intense rivalry where China and several countries are vying for control of tiny islands and their surrounding areas where rich resources are thought to exist. Additionally, nationalist aspirations are driving China to make claims on disputed islands. They are aggressively pressing claims in these regions and have progressed from presence operations to full-fledged land reclamation efforts in order to establish permanent installations on these barren rocks and reefs. In all cases, establishing their claims pushes international norms to the side and redefines sovereignty according to their template. This has many stark implications that could result in ugly consequences around the globe such as the danger of miscalculation, inability to deter aggression, and a new rise of militarism.

Former U.S. Secretary of Defense Ashton Carter noted that "turning an underwater rock into an airfield simply does not afford the rights of sovereignty," or allow a country to push air or maritime borders outward. Carter's statement was a rebuke to Chinese assertions that a rock is an island that they can claim as sovereign territory.<sup>5</sup> Despite U.S. objections, China is continuing its buildup in the disputed territories and is pushing a message through international media justifying the effort as simply normal development activities on their sovereign territory.

Russia's actions demonstrate that it, like China, is capable of developing its own unique interpretation of sovereignty. Since the inception of the Russian nation, it has continuously sought

and succeeded in expanding its territory to the east, west, north, and south. As Russia began to coalesce as a nation in the 15<sup>th</sup> century their leaders began to press south and east from Muscovy – an area surrounding modern Moscow – to extend political dominion and unite the various Rus tribes. This penchant to expand was passed on to the Romanov dynasty and the Tsars. One historian has noted that Russia expanded its territory about 55 square miles per day, which equates to 20,000 square miles per year, from 1500 to 1900. Among the reasons the Romanov kings pushed their territorial claims outward was a need to create external crises to keep the people unified, generate national pride, secure a stable tax base, and take control of natural resources. The borders of Russia expanded in all directions from the 17<sup>th</sup> century through the end of the Romanovs and Russian Empire in 1918. The Tsars pushed east to the Pacific, followed by eastern Europe in the 18<sup>th</sup> and early 19<sup>th</sup> century, and then finally, to the south into what is now the "stans" of central Asia. The competition with Britain for territory in Asia became so intense that historians have dubbed it the "Great Game." The political control the Romanovs achieved became a historical legacy later bequeathed to the Soviet Union and part of the Russian image of past greatness.<sup>6</sup>

### **Despite U.S. objections, China is continuing its buildup in the disputed territories...**

The collapse of the Soviet Union in 1991 created a sudden burst of new countries and national aspirations among former Soviet republics and satellites. Many of these countries, such as Ukraine and Belarus, are part of Russia's near abroad,<sup>7</sup> which Russia considers its traditional sphere of influence. The newfound sovereignty of these and other countries surrounding Russia became a source

of irritation and embarrassment. Oligarchic leaders like Vladimir Putin have invariably awaited the opportunity to reverse this trend by re-exerting influence over what was deemed as Russia's rightful area of interest. Russia's annexation of Crimea and the on-going dispute with Ukraine are cases-in-point.<sup>8</sup> Russia arguably manufactured a crisis and intervened, claiming to "protect ethnic Russian populations" in the region. In the process, they established claims to the territory based on the demographic make-up of the area, all at the expense of the territorial integrity of their "adversary," Ukraine, and ultimately challenging the principles of sovereignty in place since the 17<sup>th</sup> century.

### **Sovereignty-in-Being**

A case can be made that China and Russia are applying a deliberate and very similar "*possession is 9/10 of the law*"-style strategy in these very diverse parts of world we'll label sovereignty-in-being; defined as follows:<sup>9</sup>

A nation that has physical control of a given territory first – even if it is claimed by another country in word – gains sovereignty by their mere presence at the expense of the other(s).

**Nations continue to compete and the process by which they are doing so we have labeled as sovereignty-in-being.**

In other words, presence (for some period of time, not formally established by any recognized international norm) equals ownership.

Here is how a nation implements a sovereignty-in-being stratagem. The desired region may contain an ethnically related population fueling nationalist ambitions and/or a significant amount of coveted natural resources. The area in question could reside within the borders of a sovereign nation or as

part of the global commons. The interested nation then begins by conducting frequent presence operations in the area. Inevitably, diplomatic confrontations between the nation and regional competitors begin, leading to a rise in tension, but the tensions fall short of generating a military response. The aggressive nation then makes a unilateral announcement extending a land, air or maritime claim well beyond accepted international norms for their recognized territorial extent. The next phase involves establishing a permanent presence in the coveted area in an attempt to legitimize the claim, thus establishing sovereignty-in-being. Finally, the claimant challenges any competitor that seeks to prevent the nation from keeping its newly enlarged territory by asserting that any violation of the area is a violation of her national sovereignty. This sovereignty-in-being model completely undermines the Westphalian system and the recognition of national sovereignty by the international community.

The concept described above is not really new. Many nations of the past followed this pattern in attempts to expand from the time of Westphalia through the 20<sup>th</sup> century. It is nice to think that nations no longer seek to expand or aggressively compete with others in the 21<sup>st</sup> century, but it is naïve to think in this manner. Nations continue to compete and the process by which they are doing so we have labeled as sovereignty-in-being. In essence, what we see happening today is that some nations are using a new twist in reverting to the old paradigm of international competition for territory.

### **Enter the Arctic**

Has sovereignty-in-being extended into the Arctic? This broad expanse, rich in natural resources that have been extremely difficult to access to date, is ripe for territorial dispute, given the trend of receding multi-year ice and the resultant increase in access and potential for human activity. A concrete example of our

sovereignty-in-being model in the Arctic recently occurred on Svalbard, an island archipelago over which Norway exercises sovereignty by a treaty agreement.<sup>10</sup> Russian Deputy Prime Minister Dmitry Rogozin, whose portfolio includes development in the Arctic, made a trip by air to the Svalbard without informing the Norwegian government. While there he reportedly “ridiculed Norwegian authorities” and stated that Russia would in time “make the Arctic our own.” Before this journey Rogozin was on record as having said that “we [Russia] will lose the battle for resources, which means we’ll lose in a big battle for the right to have sovereignty and independence” if Russia fails to assert its claims.<sup>11</sup> This is a clear illustration of the method by which the sovereignty-in-being model identified here is implemented and represents a warning signal to all observers that “the Kremlin believes that credible displays of power will settle conflicting territorial claims.”<sup>12</sup> Russia clearly views the Arctic region as within its sphere due to its proximity. The presence of abundant natural resources provides further incentive to assert control.<sup>13</sup> Expansion of sovereignty claims by Russia in the Arctic is not only plausible, but a predictable continuance of a historical pattern exhibited over several centuries.

## Implications

In the worldview of most United States citizens, the thought is that peace is the prevailing norm with limited periods of conflict eventually leading back to periods of peace. An alternative viewpoint is that conflict and competition are constants, interrupted by brief periods of peace. Nations that believe the latter are more inclined to employ sovereignty-in-being and gamble that, although their actions could lead to conflict, aggressive steps will force potential adversaries to stand down thus achieving their ends.<sup>14</sup> Therefore, to ensure continuation of the Westphalian system and that it remains the

standard of the international community, United States’ national strategy and policy must seek to deter potential adversaries while simultaneously reassuring partners of our commitment to peace and stability.

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As already noted, there are several volatile areas of the world today with nations in those regions using sovereignty-in-being to expand. Russia is pressing claims in its European near abroad as demonstrated by its systematic way of gaining control of swaths of land in its former satellites where significant pockets of Russian nationals live. They are also advancing claims in the Arctic where many experts believe there is a treasure trove of resources. There is a grave danger of miscalculation as a result of overly aggressive bilateral efforts to solidify claims since nations could misinterpret each other’s actions. For example, a nation might establish so called redlines that constitute the point at which they will react to the actions of another country. If they then fail to act when that point is crossed it could embolden an aggressor to take even greater risks. Eventually, this could produce an unexpected counteraction when the honor and credibility of the aggrieved nation is questioned, resulting in conflict that could easily widen.

## Way Ahead – Time for a New Westphalia?

The United States must assume a leading role in ensuring this concept of sovereignty-in-being is not legitimized by successful implementation over time by nations such as China and Russia. The U.S. and like-minded nations that adhere to the international norm of the Westphalian model of sovereignty should formally reaffirm their

support of the concept. This reaffirmation of sovereignty requires strong language and unity of the signatories in a formal agreement, a new Treaty of Westphalia, which then becomes foundational to any counter-claim when nations attempt to exercise sovereignty-in-being. The signatories to this agreement should then develop and implement a strategy that encourages all actors to conform to this newly stated international norm of sovereignty. The strategy would require that all nations, regardless of size or military strength, respect their neighbors equally. The U.S. and like-minded partners must press international bodies such as the United Nations to ratify such agreement(s) – and be prepared to enforce them – emphasizing the inviolability of recognized borders, and the requirement to maintain the global commons for the benefit of all nations. All of these things are critical to present a common front to those who would usurp Westphalian sovereignty.

No strategy is viable unless those implementing it are resolved to see it through. Too many times over the course of history a well-intentioned nation or coalition was unable to deter an aggressor bent on territorial expansion. Obvious examples are found in the run up to World War II as Germany outclassed the allies during the Anschluss in Austria, the Munich Conference, and the extension of the protectorate over the remainder of Czechoslovakia. Other examples abound in the Napoleonic wars. The pattern is clear. Policy without resolve emboldens an aggressor. Thus, to maintain international norms, the global community must reaffirm its commitment to the Westphalian standard and underwrite the precept of sovereignty from a position of strength and resolution.

## Conclusion

The modern international system's bedrock concept revolves around respect for the sovereignty of recognized nations and the sanctity of the global commons. Nations like Russia and China are pushing the envelope by claiming ownership through mere presence, over time, in desired areas. They are taking great risks by pressing these illegitimate territorial claims. Through this methodical scheme we call sovereignty-in-being, possession is gained by establishing control of a region through a steady, deliberate process. In doing so, aggressors challenge close neighbors, daring them and the international community to reverse the situation. Unless the U.S. and like-minded allies and partners work together to formally condemn such actions, the entire international order is at risk and miscalculation could lead to violence that spills over, engulfing entire regions in destructive conflict. To avoid such a calamity the U.S. and partners who subscribe to the Westphalian concept of sovereignty must defend it using all tools of national power with unity and resolve. **IAJ**

## NOTES

1 Dr. David Hassan, "The Rise of the Territorial State and the Treaty of Westphalia," in Gay Morgan, ed., *Yearbook of New Zealand Jurisprudence*, (2006) v. 9, 66.

2 *Ibid.*, 63-65 and 69-70. For additional reading on the Peace of Westphalia we recommend the following references: Derek Cruyton, "The Peace of Westphalia of 1648 and the Origins of Sovereignty," *International History Review* 21.3 (1999): 569-591; Derek Cruyton, *Westphalia: The Last Christian Peace*, Basingstoke, UK: Palgrave-MacMillan, 2013; Peter Wilson, *The Thirty Years War: Europe's Tragedy*, Cambridge: Harvard University Press, 2009; and Klaus Bussmann and Heinz Schilling, eds., *1648: War and Peace in Europe*, Vol. 3, Munster, Germany: Westfalishes Landesmuseum, 1998. This text is a compilation of articles.



- 3 The 2017 *National Security Strategy* states that China’s “efforts to build and militarize outposts in the South China Sea endanger the free flow of trade, threaten the sovereignty of other nations, and undermine regional stability. China’s effort to upset the recognized rules presents a challenge to the United States.
- 4 M. Taylor Fravel, “International Relations Theory and China’s Rise: Assessing China’s Potential for Territorial Expansion,” *International Studies Review* (2010) v. 12, 505-507 and Chee Mun Chew, “China’s Perspectives on the Major Island Disputes in the East and South China Seas: Implications for the Strategic Rebalance Toward Asia,” (Unpublished Academic Research Paper: Air War College, Maxwell Air Force Base, 2013) 2.
- 5 Paul McLeary with Ariel Robinson, “He’s Kind of a Big Deal” The Situation Report by *Foreign Policy* magazine, accessed on line 9 June 2015 at <http://link.foreignpolicy.com/view/53252efef6e3a597521addf22p33f.1no5/44a33d80>.
- 6 Peter Hopkirk, *The Great Game: The Struggle for Empire in Central Asia*, (Kodansha America: New York, 1990) xv and 5.
- 7 The term “near abroad” is one used by Russia and is defined as the fourteen recently independent republics on Russia’s immediate border that emerged after the dissolution of the Soviet Union. *Encyclopedia of Russian History*, Encyclopedia.com, s.v. “near abroad,” accessed 9 November 2017, <http://www.encyclopedia.com/history/encyclopedias-almanacs-transcripts-and-maps/near-abroad>.
- 8 William Milam, “The Shadow of Westphalia: Sovereignty and Suzerainty in Europe and Beyond,” *The Friday Times* March 22, 2015 accessed online 2 October 2015 at <http://www.thefridaytimes.com/tft/the-shadow-of-westphalia/>.
- 9 The term sovereignty-in-being is derived from the British naval theorist Julian Corbett’s idea of the fleet-in-being found in his book, *Some Principles of Maritime Strategy*. In Corbett’s treatise he offers that the mere existence of a flotilla challenges command of the sea, thus it was not necessary to maintain a large “blue water” fleet to compete in the maritime arena of warfare. One only needed to challenge command and achieve local, temporary control of strategic bodies of water to make the conventional opponents challenges multiply. An example of the fleet-in-being concept in operation is the privateer fleet commissioned by the United States during the American Revolution. Though never able to challenge the British fleet on the open ocean – or even in littoral areas – the small flotilla harassed British shipping forcing the naval contingent to deal with them, drawing off critical resources needed elsewhere.
- 10 *Treaty Concerning the Archipelago of Spitsbergen, and Protocol*. Accessed online 11 October 2015, text found at <http://www.austlii.edu.au/au/other/dfat/treaties/1925/10.html>. The original signatories to this treaty in 1920 were the United States, the United Kingdom, Denmark, France, Italy, Japan, Norway, Netherlands, and Sweden. It was done under the auspices of the League of Nations and additional signatories were added in subsequent years, one of which was the Soviet Union. The treaty agreement recognizes Norway’s sovereignty of the archipelago, but it does provide rights to other signatories to conduct activities such as fishing and mining in coordination with Norway. The treaty remains in effect under the League’s successor the United Nations and any successor nations, such as Russia, continue to enjoy rights bequeathed from the original signatory.
- 11 Nina Berglund, “Russia Defies Norway in Arctic,” *News in English* (April 2015) accessed online 20 April 2015 at <http://www.newsinenglish.no/2015/04/19/russia-defies-norway-in-arctic/> and Ishaan Thardoor, “The Arctic is Russia’s Mecca, Says Top Moscow Official,” in *Alaska Dispatch News* (21 April 2015), A-5.
- 12 Stephen Blank, “Russia in the Arctic,” *Strategic Studies Institute* (July 2013) 22.
- 13 Volodymyr Valkov, “Expansionism: The Core of Russia’s Foreign Policy,” *New Eastern Europe* August 2014. Accessed online 21 March 2015 at [www.neweasterneurope.eu/interviews/1292-](http://www.neweasterneurope.eu/interviews/1292-)

expansionism-the-core-or-russia-s-foreign-policy; “Putin Reiterates Expansion in the Arctic,” New Europe Online March 2011. Accessed online 21 March 2015 at [www.neurope.eu/article/putin-reiterates-russia-s-expansion-arctic](http://www.neurope.eu/article/putin-reiterates-russia-s-expansion-arctic); and Duncan Depledge, “Could the Arctic be the Next Crimea?” *Quartz*, March 2015. Accessed online 23 March 2015 at <http://qz.com/368022/could-the-arctic-be-the-next-crimea/>.

14 Official website of the Russian Federation president, “Russia: 2014 Military Doctrine of the Russian Federation” published 26 December 2014 and obtained on open source at <http://www.kremlin.ru>. This document makes definitive statements in Section III that Russia is willing to take certain actions to deter adversaries through aggressive action to achieve its ends.

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