Entrepreneurial Leadership for Peace

The Case of Nonstate Sovereign Entrepreneurs and the Nonterritorial Sovereign Organisations They Form*

Jurgen Brauer
Georgia Regents University, USA

- Entrepreneurship
- Nonstate sovereign entrepreneur
- Nonterritorial sovereign organisation
- Conflict
- War
- Civil war
- Violence
- Peace
- Political philosophy
- International public law

In 2011, Brauer and Haywood proposed the discovery of a previously unrecognised form of entrepreneurship, dealing with the rise of certain nonstate actors as they impinge on the powers of sovereign states. The present paper synthesises the new concepts of nonstate sovereign entrepreneurs (NSEs) and of the nonterritorial sovereign organisations (NSOs) they form. It shows that nonstate sovereign entrepreneurs and their organisations already exist, and it distinguishes them both from their state counterparts as well as from nongovernmental organisations (NGOs). Some attention is paid to nonterritorial sovereign organisations that contribute to conflict prevention and transformation.

Jurgen Brauer is Professor of Economics, Hull College of Business, Georgia Regents University, USA, and Visiting Professor of Economics, Department of Economics, Chulalongkorn University, Bangkok, Thailand.

Hull College of Business, Georgia Regents University, Augusta, GA, USA

jbrauer@gru.edu

* This paper has benefited from the few but important comments of an anonymous reviewer. I thank Stephen Conroy for shepherding the paper through to publication. An earlier version of the paper was read at the 2013 *Leadership for Peace and Prosperity Conference,* University of San Diego, 3–5 October 2013. The main idea was conceived while the author was Research Director, One Earth Future Foundation, in the fall of 2008. The views expressed here should not necessarily be attributed to the Foundation. For research assistance I thank Robert Haywood, Jeffrey French, and Matthew Bunch all of whom worked at the Foundation at the time. By invitation, an even earlier version of the paper was read as a keynote address at the United Nations University's World Institute for Development Economics Research Project Workshop on Entrepreneurship and Conflict held at the International Conflict Research Institute, University of Ulster, Londonderry, Northern Ireland, 20–21 March 2009. I thank my hosts and the workshop participants there for their interest and comments. An edited version of that paper was published as Brauer and Haywood (2011).

In 2011, Brauer and Haywood proposed the discovery of a previously unrecognised form of entrepreneurship, dealing with the rise of certain nonstate actors as they impinge on the powers of sovereign states. In the next section, the paper synthesises the new concepts of **nonstate sovereign entrepreneurs** (NSEs) and of the **nonterritorial sovereign organisations** (NSOs) they form. A later section (and the Appendix) shows that numerous nonstate sovereign entrepreneurs and their organisations already exist, and it distinguishes them both from their state counterparts as well as from nongovernmental organisations (NGOs). Some attention is paid to nonterritorial sovereign organisations that contribute to conflict prevention and transformation. These organisations can pose competitive challenges, even threats, to sovereign states and in the conclusion I observe how states may have begun to deal with NSOs. Notes, references, and an Appendix follow.

I believe that the paper is a conceptually difficult read, involving as it does issues in political philosophy and international public law that go beyond the author's direct training and professional experience. But there are perhaps 'two plus one' keys to reading the next section, 'Territorial and nonterritorial sovereign organisations', which outlines the main idea. One key revolves around the concepts of sovereignty and territory; the second around the concept of the monopoly on the legitimate use of physical force (violence). The first is that the very idea of sovereignty is usually equated with the notion of holding physical territory. In short: No land, no state. The paper claims that this is incorrect. It claims that there are entities that are sovereign and yet they do not hold physical territory. These are the paper's **nonstate sovereign organisations**, or NSOs. The second key concerns the notion of the monopoly on the legitimate use of physical force (violence), also usually equated with the idea of sovereignty: Only the sovereign may legitimately use (or grant the use) of physical force. Therefore, this monopoly power to legitimately use (or grant) physical force defines sovereigns. The paper claims that this, too, is incorrect. It shows that there are organisations that do not and indeed cannot use physical force—for they have none—and yet they are sovereign.

In short, I claim that neither physical domain nor physical power is necessary for sovereignty. And I claim that such sovereigns exist, that they profoundly sway world affairs, and that they do so in a nonviolent way.

The third key to reading this paper is that these nonstate sovereign organisations decidedly are *not* nongovernmental organisations (NGOs); unlike NGOs, NSOs are *sovereigns* and they very much govern!

Territorial and nonterritorial sovereign organisations, TSOs and NSOs

A defining characteristic of states is their assumption of certain rights and responsibilities vis-à-vis the persons who are their citizens and, today, so is the idea that the citizens, in turn, possess rights and responsibilities vis-à-vis the

state. Loosely speaking, the idea is that of the existence of a *contract* between citizen and state (or among citizens, to form a state), a contract that asks that, in exchange for protection and safety (and other goods and services), citizens surrender the exercise of certain forms of power to the state, in particular the power to commit acts of physical force and of violent force, especially. The state is an aggregation of its citizens, and in their behalf the state is the entity that then asserts the 'monopoly of the legitimate use of physical force', as the abbreviated form of Max Weber's famous phrase has it.

It is important to consider the full quote, found in the fourth paragraph of Weber's 'vocation' lecture on politics, given in January 1919 to students at the University of Munich.

> ...we have to say that a state is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory. Note that 'territory' is one of the characteristics of the state. Specifically, at the present time [i.e. 1919], the right to use physical force is ascribed to other institutions or to individuals only to the extent to which the state permits it. The state is considered the sole source of the 'right' to use violence. Hence, 'politics' for us means striving to share power or striving to influence the distribution of power, either among states or among groups within a state (Weber 1919).

Weber identifies *territory* as a characteristic of statehood. It is not a sufficient condition, but it is a necessary condition: Not all territories are states, but all states have territory. Further on in the lecture, Weber says:

> ...the modern state is a *compulsory association* which organizes domination. It has been successful in seeking to monopolize the legitimate use of physical force as a means of domination within a territory. To this end the state has combined the material means of organization in the hands of its leaders, and it has expropriated all autonomous functionaries of estates who formerly controlled these means in their own right. *The state* has taken their positions and *now stands in the top place* [my emphases].

As the autonomous power of estates cease, that of the state arises. Although Max Weber does not quite put this touch on it, one may summarise key elements of the quoted material as follows: 1) as an acknowledged power, the state is the sovereign [either granted by or taken from subjects]; 2) the state arrogates subjects unto itself [it is a 'compulsory association']; 3) sovereignty relates to certain monopoly powers exercised over a geographically demarcated territory—a physical domain—and only within that domain; 4) sovereign power extends to employing means of violence to coerce one's subjects within one's territorial domain; 5) all violence other than that exercised or granted by the sovereign state is illegitimate; 6) no power is higher than that of the sovereign state; 7) the prospect of winning the prize of sovereignty makes for internal contest to gain the powers of the state; and 8) sovereign states scuffle over the distribution of power, and their ranks in the order of power may change over time.

These also are key ideas of the Westphalian Peace of 1648—actually a series of peace treaties—and since then one thinks of the modern world as an assembly of competing territorial sovereign organisations, reflected today for instance in organisations such as the United Nations, which is an assembly of sovereign states and not a people's assembly. And Max Weber reminds us that even before

1648, leaders of estates—princes, margraves, barons, lords of the manor, and other nobles—likewise were inextricably linked to territory, for if they did not possess it, they could not have surrendered power over territory.

Modern sovereign states then take on (at least) four fundamental attributes:

1. Each sovereign has, or is deemed to have, **legitimate authority**. Authority is acknowledged power and it includes but is not limited to the potential use of coercive force. The sovereign derives authority from some legitimising source, which can be either internal (often ideological) and/or external (recognition by other sovereigns)
2. Each sovereign has **supremacy**. There is no authority above a sovereign, and all authority within the sovereign's realm is inferior to it
3. Each sovereign has **territory**. A state is defined as supreme within its territory
4. Sovereigns operate as *de jure* equals to each other. Interactions between territories remain the exclusive domain of sovereigns. They may encourage, discourage, or altogether prohibit such interactions. Unless separately agreed to, no institutions above them exercise legally binding authority

The fundamental, and contrasting, concept that Robert Haywood and I introduced in 2011 (Brauer and Haywood, 2011) distinguishes this set of Westphalian-Weberian **territorial sovereign organisations** (TSOs) as characterised from **nonterritorial sovereign organisations** (NSOs). As we will show, these organisations also are acknowledged powers; they, too, exercise legitimate(d) and compelling authority—although not in the form of physical force—and they exercise it in a way that appears to be on par with the powers of states yet without hold over any physical territory at all. Moreover, they owe their existence to activity by **nonstate sovereign entrepreneurs**, a number of whom appear overtly interested in the nonviolent resolution of conflict between and among, and perhaps even within, states.

Nonterritorial sovereign organisations transcend state boundaries and encompass the entirety of the globe, which is why they are not territorial. They are not just supraterritorial, nor transterritorial: Instead, they are not concerned with territory at all; they supersede it. For them, neither territory, nor (the ultimate threat of) physical force, is necessary for the exercise of sovereignty. As a matter of logic this implies that NSOs must address any issue in their domain in a manner that transcends the parochial interests of states. To be sure, NSOs may be subject to other interests but not to states' vested interest in the maintenance of their territory-based powers.

Robert Haywood and I claim: 1) that such nonparochial organisations—that is, the NSOs—already exist; 2) that they are related to a form of entrepreneurship (nonstate sovereign entrepreneurship); 3) that NSOs are not nongovernmental organisations (NGOs) as that term is commonly understood (NGOs do not exercise *sovereign* powers); 4) that NSOs exercise sovereignty for the common good, and often for peace and security within and between parochial states; and 5) that NSOs pose challenges, even threats, to sovereign, territory-bound states.

Examples of nonterritorial sovereign organisations

To flesh out these claims, consider a first example. The example should fulfil two criteria: First, it should be the outcome of a nonstate entrepreneurial activity. And, second, we are looking for an example of an organisation that is as sovereign as are states in the sense that it has: 1) legitimacy; 2) supremacy; 3) *de facto* (if not *de jure*) equality with other sovereigns; but 4) its exercise of compelling, monopoly power is not related to territory because it transcends territory.

Additionally, we are looking for an NSO that interacts and interlaces with states since states remain relevant players of course. After all, an NSO claims supremacy in an *issue* domain that extends over, but is neither based on nor limited to, the *physical* domain or territory.

However, we are not necessarily looking for a perfectly formed specimen of such an organisation, with broad-spectrum sovereign powers—when first formed, states were not perfect sovereigns either, and many are not today—but we are looking for sovereignty over at least one issue domain, so long as the compelling power is nonterritorial.

An example of such a nonterritorial sovereign organisation is the **Internet Corporation for Assigned Names and Numbers** (ICANN). Many peace and security issues today hang on the flawless workings of the internet—witness the role of internet-enabled social media in the Arab Spring in 2011 and of the controversies surrounding Chinese, US and other states' internet-based espionage and general snooping. It is the avowed objective of many a state today to ensure that the internet becomes *controllably flawed*, serving state interests. States seek to undermine the threat posed to their territorial sovereignty by the nonterritorial sovereignty that ICANN exercises over critical aspects of the running of the internet.

ICANN's vision is 'one world, one Internet', and its mission 'is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems'.[1] The scope of ICANN's governance is global, transcending territory. It is the ultimate rule-making body in designing and assigning internet domain name system codes (DNS codes), a task that is vital to the stability of the internet. Without consideration of their state sovereign status, ICANN assigns domain name suffixes for states and territories such as Palestine, Hong Kong, Taiwan, and Vatican City State (ps, hk, tw, and va, respectively). After the Assembly of Kosovo declared the Republic of Kosovo an independent sovereign state on 17 February 2008, Kosovo used the World Economic Forum in June that year to appeal to be granted its own domain name suffix. ICANN, however, deferred that decision to another nonterritorial sovereign organisation, the International Organization for Standardization (ISO), which is *not* an intergovernmental body (see the Appendix) and which, according to its ISO 3166-1 standard, makes the call as to what entities qualify for mail routing, currency, and other codes. At one point, Abkhazia, Transnistria, Somaliland, and South

1 See www.icann.org/en/about/governance/bylaws [accessed 3 September 2013].

Ossetia all were on the list of would-be recipients of their own DNS code. The DNS code has become a symbol of statehood, yet two nonterritorial actors grant it. Taiwan does have its own DNS, in spite of being shunned by states. Only 22 UN members now recognise it as an independent sovereign state. In contrast, Kosovo does not have its own DNS code, even as 103 UN members recognise it as an independent sovereign state.[2]

ICANN is a private, nonprofit, California-registered, public benefit corporation, operating under California law, not United States federal law. Governments have no direct decision-making power in the operation of ICANN. All powers are vested in ICANN's Board of Directors of 16 voting members, eight of whom are selected by a Nominating Committee which seeks 'to ensure that the ICANN Board is composed of members who in the aggregate display diversity in geography, culture, skills, experience, and perspective' (together with the President of ICANN, who is an ex-officio voting member of the Board, the eight constitute the Board's majority of votes). Although distributed representation across geography is mandated, nationality or statehood per se is deliberately excluded as a selection criterion. Moreover, '[n]otwithstanding anything herein to the contrary, no official of a national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director' (Bylaws, Article 6, Section 4).[3]

In the event of internet instability, ICANN's Security and Stability Advisory Committee advises the Board to determine what intervention, if any, should be taken to restore stability to the system. This is at least as critical as is the stability of the world's interconnected telephone systems, which is controlled by the International Telecommunications Union (ITU), an intergovernmental treaty organisation of the United Nations. While nonstate actors may become associates, only State Parties have voting rights in the controlling organs of the ITU. The ITU is a prototypical Westphalian-Weberian structure for interstate coordination and fulfils a function for the world telephone network that parallels ICANN's function for the internet.

Instead of civil and commercial society being accredited observers to an intergovernmental organisation such as the ITU, ICANN completely inverts this familiar governance structure. In ICANN, five advisory committees exist, one of which is the Governmental Advisory Committee. To quote from the ICANN Bylaws: 'Membership in the Governmental Advisory Committee shall be open to all national governments. Membership shall also be open to Distinct Economies

2 Kosovo: 'The Republic of Kosovo has been recognised by 103 UN member states and is a member of the International Monetary Fund (IMF), World Bank, International Road and Transport Union (IRU), Regional Cooperation Council and the European Bank for Reconstruction and Development'. The US FIPS system uses the code KV for Kosovo, the European Commission and others use XK as a temporary code for Kosovo. Taiwan: 'As of 2011, the ROC maintains official diplomatic relations with 22 UN member states and the Holy See, although informal relations are maintained with nearly all others'. See http://en.wikipedia.org/wiki/Republic_of_Kosovo and http://en.wikipedia.org/wiki/Political_status_of_Taiwan [accessed 9 September 2013].

3 See www.icann.org/en/about/governance/bylaws#VI [accessed 11 September 2013].

as recognised in international fora, and multinational governmental organisations and treaty organisations' [Art. XI 2(1)(b)] and '[e]ach member of the Governmental Advisory Committee shall appoint one accredited representative to the Committee' [Art. XI 2(1)(e)] and the Committee, in turn, 'shall annually appoint one non-voting liaison to the ICANN Board of Directors' [Art. XI 2(1)(f)].

To emphasise: All the world's sovereign states together have a single nonvoting liaison position, one of five such positions, in regard to ICANN's supreme rule-making organ, its board of directors. In ICANN, the private corporation takes on the voting role of the sovereigns in the ITU, and the state sovereigns take on the status of a nonvoting observer. Yet the rules of ICANN are just as binding and enforceable on states as are the rules of the ITU. ICANN's existence cannot be reconciled with the Westphalian-Weberian concept of the sovereign state. ICANN is sovereign in its issue domain and states have to live with the DNS code ICANN (and ISO) assign. Nor can it be said that ICANN is just another nongovernmental organisation (NGO). Unlike NGOs, ICANN makes and enforces rules.[4]

There is no inherent reason why the ITU should not have been able to exercise sovereign control over the internet. That it did not suggests that its governing structure was too slow to adapt to the quick surfacing of a new globe-spanning technology. That technology needed a way to organise itself, or be organised, and ICANN emerged to provide internet governance. It is legitimised by expertise, effectiveness, shared values, and certainly also by a political (i.e. power) process, just not by a state-based or even democratic one.[5]

Once the existence of a nonterritorial sovereign organisation such as ICANN is recognised, a new taxonomy of organisations can be written (see the Appendix for clarifications on some of the examples that at first may seem wrongly placed):

1. Sovereign organisations
   - 1.1 Territorial sovereign organisations (TSOs, or traditional sovereign *states*)
   - 1.2 Nonterritorial sovereign organisations (NSOs)
     - 1.2.1 *Civil* society NSOs (e.g. International Committee of the Red Cross, the International Olympic Committee, the Holy See)
     - 1.2.2 *Commercial* society NSOs (e.g. ICANN, ISO)
     - 1.2.3 *Political* society NSOs (possibly the Sovereign Military Order of Malta)
2. Nonsovereign organisations
   - 2.1 Nonsovereign, multi-territorial *state* organisations (e.g. EU, AU, the UN system)
   - 2.2 Nonsovereign-nonterritorial (NGOs, as commonly understood)
     - 2.1.1 *Civil* society organisations (e.g. Greenpeace)

4 The description here should not be taken to mean that all is well with ICANN. Critique can and has been offered. The point merely is that ICANN acts as a sovereign, but nonterritorially so.

5 On standard setting organisations, see, e.g. Cargill and Bolin (2007).

2.1.2 *Commercial* society organisations (e.g. IATA)

2.1.3 *Political* society organisations (e.g. the World Federalist Movement)

A number of these and additional examples are discussed in the Appendix. Some are drawn from Brauer and Haywood (2011); others have been added, or have been updated and added to in descriptive depth. They include the International Committees of the Red Cross and Red Crescent (ICRC), the Olympic Movement (IOC/OM), the Fédération Internationale de Football Association (FIFA), the International Chamber of Commerce's (ICC) International Court of Arbitration (but not the ICC itself), the International Organization for Standardization (ISO), the International Accounting Standards Board (IASB), the Kimberley Process Certification Scheme (KPCS), and the Holy See (which is the nonstate sovereign over its affiliated state sovereign organisation, Vatican City State, which, in turn, is sovereign over 800 or so citizens).

Apart from nonterritoriality, there seem to be three important characteristics each of these examples shares. One is that unlike states they focus on a single issue or domain of concern (such as internet governance). Second, an entrepreneur inspires them. In the case of ICANN, entrepreneur and philanthropist Esther Dyson was its founding chair. Henry Durant, a businessman, founded what now is the ICRC in 1863. Pierre de Coubertin established the Olympic Movement in 1894. Etienne Clémentel founded the International Chamber of Commerce in 1919, which in turn established an International Court of Arbitration in 1923 whose rulings are accepted by 145 sovereign states. (This is for company-to-company arbitration, not country-to-country trade disputes that may fall under WTO jurisdiction; see Appendix.) A third characteristic is that most of these NSOs address failings in the interactions of parochial states, either in commerce or in peace.

Although implicit or explicit state consent may be required in some cases of nonterritorial sovereignty, it is important to appreciate that states do not possess *de jure* or *de facto* veto over these examples of nonstate sovereign entrepreneurship, for otherwise NSOs would not be supreme over their issue domain. For example, if the Olympic Movement (OM) threatened to ignore a United Nations Security Council resolution regarding the banning of a state from participation in an international sporting event, the Olympic Movement may wholly ignore that resolution. Or if OM threatened to exclude Kuwaiti or Indian athletes from participating in the Olympic Games, all the affected states can to do is to comply with OM's wishes. If FIFA, the world football association, threatened to exclude Chad or Peru or Poland from World Cup qualifying rounds, the states either suffer exclusion or comply with FIFA's wishes. All these have happened, as the Appendix details.

Prior to the ascent of modern-day states, medieval guilds set standards and enforced them, quite in the absence of states acting as governance bodies. And, grounded in Islamic law, an informal money transfer network known as *hawala* (or *hundi*) is wholly based on trust and honour with presumably canonical but certainly not secular legal recourse in case of nonperformance. The Holy See is another example that, without territory, claims and exerts sovereign rights, in

its domain, over its subjects. It is at loggerheads with the People's Republic of China precisely over the extent to which China is seen to infringe these rights.[6]

How states deal with the threat of NSOs

In addition to commercial, political, and social entrepreneurship, another type then is nonstate sovereign entrepreneurship, which is different from state sovereign entrepreneurship (as, for example, in state competition over skilled labour, shipping flags of convenience, or offshore financial havens). Nonstate sovereign entrepreneurs who create (successful) nonterritorial sovereign organisations pose a potential threat to the parochial interests of states. If no threat is perceived, states may well tolerate NSOs. But when threats are perceived, states may try to co-opt NSOs or otherwise scheme their demise. They do this either by denying entry into the market for governance, crimp NSO performance in that market, or force exit from that market.[7] A couple of examples—one involving co-option and one involving market denial—may make the point.

Co-option

Global Witness, a London-based NGO, initiated the process that led to the eventual creation of the Kimberley Process Certification Scheme (KPCS) to regulate the production and trade in 'conflict diamonds'. The idea was to deny financing to *all* parties in war, but in time state members of KPCS gained control of its governing organs. They reduced the scope of the scheme to deny financing only to rebel movements, those that threaten 'legitimate' states. This left a number of extremely violent states as members of KPCS to help finance their own internal or external wars. Examples include India, Zimbabwe, Israel, Côte d'Ivoire, the Central African Republic, Russia, and the DR Congo. Out of 162 states listed on the 2013 Global Peace Index, these states rank, respectively, 141, 149, 150, 151, 153, 155, and 156. What had been an attempt at a tripartite civil, commercial, and political societies' partnership of voluntary self-regulation—a try at sovereign entrepreneurship spearheaded by civil society in the service of peace—has been captured, co-opted, and converted to serve the aims of states. Global Witness withdrew from KPSC on 5 December 2011.[8]

6 Interestingly, the Holy See is a Permanent Observer at the United Nations, with all but the right to vote, whereas Vatican City State—a true territorial sovereign—is not a member of the United Nations.

7 On competition in the market for governance, see Friedman and Taylor (2011).

8 On the co-option of KPCS, see Cooper (2010). On Global Witness's withdrawal from KPCS, see its press release: www.globalwitness.org/library/global-witness-leaves-kimberley-process-calls-diamond-trade-be-held-accountable and www.globalwitness.org/library/why-we-are-leaving-kimberley-process-message-global-witness-founding-director-charmian-gooch [accessed 11 September 2013].

Depending on how one reads the tea leaves, one might also see co-option at work in the cases of the ICRC—the ICRC refers to itself as the 'custodian' of the 1949 Conventions and this is different from the role it played in the 1860s—and of ICANN and ISO. The advantage in the battle over control over the internet has tilted toward states with state 'security' agencies intruding in ever more insidious ways into what may or may not be expressed and monitored on the internet. Vietnam, for example, in 2013 outlawed any form of blogging of a non-personal nature and requires social media providers to locate their relevant servers inside Vietnam, the better to capture and punish offenders.[9]

Denial

One might make a similar, and probably more controversial, argument with respect to the nature and role of private military and private security companies (PMCs and PSCs). For instance, it is well documented that a private South African-based firm, Executive Outcomes (EO), contracted with the legitimate government of Sierra Leone in 1995 to provide it with extra warfighting capability to help stop a civil war there. It is widely acknowledged that with perhaps just 200 men, EO achieved the full-stop cessation of the civil war, forcing rebel troops to negotiate. But under UN pressure, Sierra Leone then found itself compelled to renege on the contract (Abdullah 2004; Keen 2005). As a result, the civil war resumed and continued for many more years with tens of thousands of additional victims.[10] Inconsistently, prominent countries, especially the United States, themselves amply employed PMCs and PSCs in the Balkan, Afghan, and Iraqi wars of the 1990s, 2000s, 2010s, and the multiply renamed Blackwater USA (later, Blackwater Worldwide, Xe Services LLC and, now, Academi) is perhaps the most prominent private sector player involved. The dispute in the 'mercenary' debate was over who controls the means of violence: territorial sovereign organisations (states) or entities that might evolve into nonterritorial sovereign organisations in the domain of warfighting (or peacemaking) capabilities.

This is not the place to argue over the 'good' or 'bad' of PMCs or PSCs but just to point out the threat they are perceived to pose to state sovereigns, hence states' cartel-like need to deny them access to the nonterritorial security services market.

9 Decree 72 came into effect on 1 September 2013: 'blogs and social websites should not be used to share news articles, but only personal information. The law also requires foreign internet companies to keep their local servers inside Vietnam'. See www.bbc.co.uk/news/world-asia-23920541 [accessed 8 September 2013].

10 On the economics of PMCs and PSCs, see, e.g. Brauer (1999, 2008), and Brauer and van Tuyll (2008, chapter 8).

Conclusion

A large number of transboundary problems pose serious threats to human and nonhuman life. These range from transnational terrorism to global climate change, the ease of infectious disease transmission across state boundaries, and on to genocidal wars that generate large numbers of casualties and refugees. States cannot help but to approach these kinds of problems with a parochial mindset that reflects their territorially bounded interests.

Ultimately, humanity has to address only two problems, how to live with nature and how to live with itself, and the big questions of how to manage them revolve around governance. States as administrative units have their place, but the state-based system of global governance can create 'stickiness' in addressing urgent problems when insisting on the *de jure* equality of sovereigns (the principle of noninterference in each other's affairs) if this leads to a deadlock in global or regional affairs as, at the time of writing, in Syria.

In contrast, nonterritorial sovereign organisations (NSOs) are an alternative to help mitigate the misuse or abuse of state power. To be sure, their existence can threaten territorial sovereign organisations (TSOs) and there have been struggles between them and NSOs (co-option and denial). Another alternative is to create altogether new territorial sovereign organisations. Thus, Patri Friedman has proposed 'Seasteading', the creation of new sovereign states in international waters. This would permit a potentially large number of experiments in varieties of state-based governance with citizens free to lift anchor, as it were, and sail to a different jurisdiction, provided it admitted newcomers.[11] Similarly, Paul Romer conceived an idea to create Charter Cities that, like Charter Schools, or Special Economic Zones (SEZs) for that matter, would receive special dispensation from their present sovereign state masters to conduct experiments in governance: Set an amount of physical space aside and rewrite the constitutional (governance) rules for that specially designated territory.[12] Perhaps most advanced was a project to create such a city in Honduras, but Romer withdrew from the effort in September 2012 when he felt no longer assured of the necessary transparency in the decision-making underlying the process in the Honduran political system.[13] Either way, while the creation of Seasteads or Charter Cities may conceivably help to address *internal* obstacles to economic development, these ideas do not seem immediately relevant to address nonterritorial issues.

11 See www.seasteading.org/ [accessed 11 September 2013].

12 See http://urbanizationproject.org/blog/charter-cities [accessed 11 September 2013].

13 The *New York Times* commented: 'An internal contradiction in the theory is playing out: To set up a new city with clear new rules, you must first deal with governments that are trapped in the old ones'. See www.nytimes.com/2012/10/01/world/americas/charter-city-plan-to-fight-honduras-poverty-loses-initiator.html [original: 30 September 2012; accessed: 11 September 2013]. For a historical and far more general case of 'Why Nations Fail', see Acemoglu and Robinson (2012) who point to economically extractive versus economically inclusive political systems of governance.

Standards can be voluntarily adhered to or they can have regulatory standing; that is, with the force of law behind them. In daily practice states set standards in the form of laws, rules, and regulations and enforce them, ultimately, by (threat of) physical force. States can agree to mutually binding standards, as in treaties, but there is no supra-sovereign authority to enforce any such agreement, and state parties have the option to withdraw from any treaty they may have signed and ratified. (Syria's use of chemical weapons in its current civil war, for example, was addressed by threat of force in violation of the sanctity of state sovereignty—Syria had neither signed nor ratified the Chemical Weapons Convention.)[14]

And yet for particular issue domains, nonterritorial sovereigns have emerged that also set and enforce standards, and the argument in this paper is that in some arenas where territorial sovereigns fail, nonterritorial sovereigns may succeed, at least some of the time and for some part of the way. But it takes an entrepreneurial vision to conceive of a domain wherein a nonterritorial sovereign organisation can be established to provide a missing good or service that humanity desires, such as peace.

That state standards ultimately are enforceable by physical force reflects a kind of negative peace (Galtung 1969), the suppression of undesired behaviour by credible threat. Nonterritorial sovereigns generally do not possess means of physical force (perhaps PMCs and PSCs are an exception), and agreement on and fulfilment of standards must thus rely on enlightened self-interest and voluntary compliance. Instead of external policing, self-policing must be at work. This can become self-reinforcing so long as there are exclusion measures and the number of excluded parties remains small so as to limit opportunities to create competing standards which can lead to a standards competition, standards fatigue, and standards breakdown (see Cargill and Bolin 2007). But to exclude relies, first, on threat and, second, presumes the existence of a standards group. The keener problem then is how to get any such organisation off the ground to begin with. In this regard, a slew of recent economic thinking on the design of social institutions suggests that the **promise of inclusion** and **network economies** rather than the **threat of exclusion** and **market restrictions** can help to create such institutions.[15]

Over the years, economists have learned much about the topics of governance, standards, and institutional design and the time may be ripe to rearrange

14 Here one gets into complex issues in international law. Suffice it to say that it took an extraordinary UN Security Council resolution (S/RES/2118 (2013) of 27 September 2013) to compel Syria to 'voluntarily' join the Chemical Weapons Convention. Similarly, Eritrea, North Korea, and Timor-Leste are not members of the World Trade Organization (WTO) and are not subject to WTO rules. Likewise, Israel, Sudan, the United States, China, and others have either formally declared non-accession to the International Criminal Court after signing or have not signed in the first place. As UN members, they are legally bound only if the United Nations Security Council refers a matter involving them to the ICC (which China and the US of course can block by dint of their permanent UNSC seats).

15 For a prominent example of this line of thinking, see Thaler and Sunstein (2009) and also Acemoglu and Robinson (2012).

this knowledge away from being topic-oriented toward being problem-oriented. But economists are not entrepreneurs. In the end, the telling breakthroughs will have to come from nonstate sovereign entrepreneurs willing to try new ideas such as, at one time, the ideas for the ICRC and the Olympic Movement. Although peace is not a sufficient condition for prosperity, it is a necessary condition; peace reduces the cost of business and increases revenue through market expansion. Civil and commercial society must become constructive players in shaping an agenda for peace as part of a broader nonterritorial governance agenda. As demonstrated, many examples of territory-transcending global governance structures, institutions, and organisations already exist. They need to be widely recognised for the governance revolutions they are.

References

Abdullah, I. 2004. 'Between Democracy and Terror: The Sierra Leone Civil War'. Dakar: Council for the Development of Social Science Research in Africa.

Acemoglu, D. and J. Robinson. 2012. *Why Nations Fail: The Origins of Power, Prosperity and Poverty*. London: Profile Books.

Brauer, J. 1999. 'An Economic Perspective on Mercenaries, Military Companies, and the Privatisation of Force', *Cambridge Review of International Affairs*. Vol. 13, No. 1, pp. 130-146.

Brauer, J. 2008. 'Private Military Companies: Markets, Ethics, Economics', pp. 102-115 in A. Alexandra, M. Caparini, and D.P. Baker, eds. *Private Military Companies: Ethics, Theory, and Practice*. London: Routledge.

Brauer, J. and R. Haywood. 2011. 'Nonstate Sovereign Entrepreneurs and Nonterritorial Sovereign Organizations', pp. 294-316 (chapter 14) in Wim A. Naudé, ed. *Entrepreneurship and Economic Development*. Basingstoke, UK: Palgrave Macmillan.

Brauer, J. and H. van Tuyll. 2008. *Castles, Battles, and Bombs*. Chicago, IL: The University of Chicago Press.

Cargill, C. and S. Bolin. 2007. 'Standardization: A Failing Paradigm', pp. 296-328 in S. Greenstein and V. Stango, eds. *Standards and Public Policy*. New York: Cambridge University Press.

Cooper, N. 2010. 'On Forgetful Goldfish and Failed Mnemonics: Transforming Political Economies of Conflict Using Voluntarism, Regulation, and Supervision'. *The Economics of Peace and Security Journal*. Vol. 5, No. 1, pp. 43-51.

Friedman, P. and B. Taylor. 2011. 'Seasteading: Striking at the Root of Bad Government'. *The Freeman*, 24 February 2011. www.fee.org/the_freeman/detail/seasteading-striking-at-the-root-of-bad-government#axzz2dw8YClqn [accessed 11 September 2013].

Galtung, J. 1969. 'Violence, Peace, and Peace Research'. *Journal of Peace Research*. Vol. 6, No. 3, pp. 167-191.

Keen, D. 2005. *Conflict and Collusion in Sierra Leone*. Oxford: James Currey.

Thaler, R.H. and C.R. Sunstein.2009 [2008]. *Nudge: Improving Decisions About Health, Wealth, and Happiness*. New York: Penguin.

Weber, M. 1919. *Politics as a Vocation* [*Politik als Beruf*] http://anthropos-lab.net/wp/wp-content/uploads/2011/12/Weber-Politics-as-a-Vocation.pdf [accessed 27 August 2013].

Appendix

The nonterritorial sovereign governance example of ICANN is not unique. Undoubtedly, due to its role in the peace and security field, a nonstate actor of great interest is what is now the **International Committees of the Red Cross and Red Crescent**. Founded in 1863, this organisation today consists of several components, the most pertinent of which is the International Committee of the Red Cross (ICRC). The key entrepreneur behind the ICRC was Henry Durant, a businessman. The ICRC spawned the initial and subsequent formulation of international laws of war and international human rights. Originally concerned with the treatment of battlefield-wounded soldiers, the ICRC played a central and essential role in the formulation of the First Geneva Convention, the International Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. This treaty got state sovereigns to recognise the principle that helping the wounded, on or off the battlefield, was to be regarded as a neutral act. Since the initial Convention in 1864, the ICRC has effectively pressured sovereign states to extend ICRC protections under the rules of war to include naval warfare, prisoners of war, and civilians. ICRC formulated norms—standards—and delegated the codification and enforcement of the new norms to sovereign states. (The ICRC is the only humanitarian organisation explicitly mentioned by name in the 1949 Conventions.) ICRC is incorporated in Switzerland, just as ICANN is incorporated in California. Even a nonterritorial organisation has domicile. The claim just is that a nonterritorial sovereign nonetheless exercises sovereignty throughout its nonterritorial realm.

Another, and striking, example is that of the **Holy See** of the Catholic Church and its manifest, territorial organisation, **Vatican City State**, over which the Holy See is sovereign. From AD 756 onward, the Papal States were a territorial sovereign state, but in 1870 its lands were seized and incorporated into the then relatively new state of the Kingdom of Italy (established in 1860). Before the 1929 Lateran Treaty granted territory to what then became Vatican City State, the Holy See was completely nonterritorial. In some legal scholars' view, the Holy See today remains nonterritorial and merely 'operates from' Vatican City State, even as the Holy See is the nonterritorial sovereign over the territorial Vatican City State. The two entities are legally distinct, and they issue different passports.[16] Unusually, Vatican City State is not a member of the United Nations, but the Holy See is a permanent observer at the UN with all rights of full membership excepting the right to vote in the UN General Assembly.

> The Holy See has been recognized, both in state practice and in the writing of modern legal scholars, as a subject of public international law, with rights and duties analogous to those of States. Although the Holy See, as distinct from the Vatican City State, does

16 'Vatican City State is distinct from the Holy See... Ordinances of Vatican City are published in Italian; official documents of the Holy See are issued mainly in Latin. The two entities have distinct passports: the Holy See, not being a country, issues only diplomatic and service passports, whereas Vatican City State issues normal passports for its citizens'. See http://en.wikipedia.org/wiki/Vatican_City [accessed 4 September 2013]. In terms of governance, Vatican City State is a non-hereditary absolute elective monarchy.

> not fulfill the long-established criteria in international law of statehood—having a permanent population, a defined territory, a stable government and the capacity to enter into relations with other states—its possession of full legal personality in international law is shown by the fact that it maintains diplomatic relations with 180 states, that it is a member-state in various intergovernmental international organizations, and that it is: 'respected by the international community of sovereign States and treated as a subject of international law having the capacity to engage in diplomatic relations and to enter into binding agreements with one, several, or many states under international law that are largely geared to establish and preserving peace in the world'.[17]

There is of course no question that the Church's hold on its subjects is universal. It applies its law to its subjects, and can and does mete out punishment for infraction of its law, just like territorial state sovereigns. A related example is that of the **Sovereign Military Order of Malta** (SMOM), a largely nonterritorial sovereign recognised by over 100 states, many of whom have accredited ambassadors to SMOM, and holding permanent observer status at the UN.[18] Headquartered in Rome, SMOM has exactly three citizens who travel on an SMOM passport. Since losing the island of Malta in 1798, SMOM has no territories other than those granted extraterritorial status (i.e. embassies) in host states.

The **Olympic Movement** (OM), established in 1894, is a private body with global rule-making and enforcement powers. Because of governance failures of Westphalian-Weberian states, it was a deliberate attempt at nonstate peacemaking between and among sovereign, territorial states. The entrepreneur behind the Olympic Movement was Pierre de Coubertin, and its prominent symbol of five interlocking, multicoloured rings that represent the (then) five continents is important: They refer to people on land, not to subjects in states. It is a mockery of Olympic ideals when sovereign states glory in medal counts as if the Olympic Movement was about states. It isn't. It is about individuals transcending states and statehood through sports. Of the fundamental Principles of Olympism, the second principle for example says: 'The goal of Olympism is to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity'.[19]

The International Olympic Committee (IOC) is the 'supreme authority of the Olympic Movement'. Members of the IOC 'are volunteers who represent the IOC and Olympic Movement in their country (*they are not delegates of their country* within the IOC)' [my emphasis].[20] Although Chapter 15 of the IOC Charter states that:

> [t]he IOC is an international non-governmental not-for-profit organisation, of unlimited duration, in the form of an association with the status of a legal person, recognised by the Swiss Federal Council in accordance with an agreement entered into on 1 November 2000,

when one examines the actual powers of the IOC/OM, it is clear that the Movement is sovereign. For example, consider the following case: Athletes of Serbia

17 http://en.wikipedia.org/wiki/Holy_See [accessed 4 September 2013].

18 http://en.wikipedia.org/wiki/Microstate and http://en.wikipedia.org/wiki/Sovereign_Military_Order_of_Malta#The [accessed 4 September 2013].

19 See www.olympic.org/documents/olympic_charter_en.pdf [accessed 3 September 2013].

20 See www.olympic.org/about-ioc-institution?tab=members [accessed 4 September 2013].

participated in the 1912 Stockholm Olympics representing it as an independent state sovereign. From 1920 onward, Serbia participated as part of Yugoslavia. For the 1992 Barcelona Olympics, however, the Federal Republic of Yugoslavia (Serbia and Montenegro) had been placed under UN sanctions. Resolution 757 of 30 May 1992 was passed under Chapter VII of the UN Charter, which unlike Chapter VI resolutions was legally binding on all UN member states. The resolution stated that the UN Security Council '[d]ecides that all States shall...[t]ake the necessary steps to prevent the participation in sporting events on their territory of persons or groups representing the Federal Republic of Yugoslavia (Serbia and Montenegro)'.[21] As the host state sovereign, Spain had little choice in the matter but to comply with the resolution. But the IOC/OM permitted 58 Serbian athletes to participate anyway—as Independent Olympic Participants. One multi-medallist athlete, Jasna Šekarić, participated in the Olympic Games seven times, under four different designations: as an athlete of Yugoslavia (1988), an independent (1992), a member of Serbia and Montenegro (1996, 2000, and 2004), and finally as a Serbian (2008 and 2012).[22]

A number of such oddities—of permitting or not permitting athletes' participation—can be gleaned from the internet, the point being that the IOC/OM exercises considerable power over its nonterritorial domain.[23] Perhaps even more telling is the following case: Effective 1 January 2010, the IOC/OM suspended the National Olympic Committee (NOC) of Kuwait from OM membership, thereby barring athletes representing Kuwait from participation in the 2012 London Olympic Games. The reason for the suspension was that the IOC/OM had determined undue political interference in the affairs of Kuwait's NOC by the government of Kuwait. In the event, the Kuwaiti government warranted to the IOC/OM that the issues at hand would be dealt with, and the athletes then participated under the Kuwaiti flag after all. Yet a few months later, on 23 November 2012, the renewal of the suspension was threatened unless the sovereign state of Kuwait were to change certain sports legislation to the satisfaction of the IOC/OM.[24] Evidently

21 www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3b00f2122c [accessed 4 September 2013].

22 http://en.wikipedia.org/wiki/Serbia_at_the_Olympics and www.jasnasekaric.com/?lang=en [accessed 4 September 2013]. JasnaŠekarić's story reminds me of a tour guide in the city of Prague who, in December 2012, told me that his grandmother had lived under eight different state sovereigns without ever leaving the city.

23 http://en.wikipedia.org/wiki/Independent_Olympic_Participants [accessed 4 September 2013].

24 Here is the full IOC/OM press release on the matter: 'After the NOC had been suspended for more than two years, the suspension was lifted on 14 July 2012 based on guarantees from the highest authorities in the country to pass new sports legislation that would put an end to governmental interference in the Olympic Movement in Kuwait. The deadline to implement the promises was set for 22 November, but the IOC regrets to note that the commitments have not been fulfilled. The suspension of the National Olympic Committee would serve as a protective measure by the IOC to preserve the autonomy of the NOC and the Olympic Movement in Kuwait. The relevant authorities of the State of Kuwait bear all responsibility for this regrettable situation, which is dramatically affecting the country's sporting family'. See www.olympic.org/news/kuwait-olympic-committee-risks-new-suspension/183740 [accessed 4 September 2013].

Kuwait complied because on 4 December 2012, the Executive Board (EB) of the IOC/OM:

> confirmed the lifting of the suspension of the NOC of Kuwait following guarantees of its autonomy. The NOC and national federations are now able to operate in full compliance with the Olympic Charter and the rules of the International Federations.

At the very same meeting, however, the Indian Olympic Association (IOA) was suspended:

> due to its failure to comply with the Olympic Charter and its statutes, failure to inform the IOC in a timely matter, and as a *protective measure against government interference* in the IOA's election process. With this decision, the IOA is no longer entitled to exercise any activity or right, including financial support, conferred upon it by the Olympic Charter or the IOC until the IOC Executive Board lifts the suspension. In particular, the Executive Board confirms that the IOA is not entitled to hold any elections until all pending issues are resolved and the EB decides to lift the suspension [my emphasis].[25]

These are stout actions, but the IOC/OM has not always won these sorts of sovereign tussles. In the run-up to the 1940 Winter Olympics, Nazi Germany insisted that athletes from then-Czechoslovakia could participate only under the Olympic flag, not that of Czechoslovakia, and the IOC/OM agreed to comply. (In the event, the games were cancelled with the breakout of World War II.)

Also from the domain of sports is the **Fédération Internationale de Football Association** (FIFA), the world body that regulates the sport of football (soccer). Like IOC/OM, it has been able to assert itself in the political affairs of sovereign states. In one example, the State of Poland fired the entire board of Poland's national football association for what FIFA determined to be undue political interference in the affairs of the association. FIFA used the credible threat of barring the Polish national football team from the 2010 World Cup qualifying matches to compel the government of Poland to reinstate the board and its president. An examination of FIFA's website shows that this is no isolated instance (Chad and Peru are other examples) and shows that, within its domain, FIFA acts like a nonterritorial sovereign compelling a territorial state sovereign to change is laws and behaviour.

Within commercial society, the **International Organization for Standardization** (ISO) plays an important governing role. The ISO is a private, nonprofit organisation composed of standards institutes nominally arrayed by states. Importantly, none is recognised, nor may they act, as representatives of states in any formal, official, or sovereign way.[26] The ISO sets standards, and the world follows them, quite outside Westphalian-Weberian channels. The ISO is working on a 'societal security' series of standards (ISO 22300; Technical Committee 223)

25 www.olympic.org/news/final-executive-board-meeting-of-2012-gets-under-way-in-lausanne/184870 [accessed 4 September 2013].

26 However, in October 2012 the ISO statues appear to have been changed so that only states recognised by the United Nations Organization may be represented in ISO. This excludes, for example, Gaza and the West Bank and Kosovo and Taiwan. The 'State of Palestine' is a 'correspondent member', but not a 'full member' of the ISO. ISO members 'represent ISO to their countries', but countries per se do not have an official seat at ISO.

that includes consideration of 'intentional harm'.[27] And it has conducted work on 'social responsibility' standards (ISO 26000:2010) that indirectly addresses peace and security concerns at the level of business organisations and their interaction with society at large.[28] Unless one steeps oneself in the documents available on the ISO website, it is difficult to convey to an unsuspecting audience that the ISO is *not* a multistate organisation of sovereign states. True, some sovereign states participate in the work of the ISO through state-based national standards boards or institutes. But many states do not have such state-based boards. Instead, private–public or purely private standards boards represent territorial regions. (For example, although its members include government agencies, in the United States, the American National Standards Institute, ANSI, is a private sector, not-for-profit organisation.[29]) The standards or guidelines that ultimately emerge from ISO then may (or may not) be ratified through the law and regulation function of sovereign states. Either way, they effectively become standards that almost everyone in the (business) world follows.

It is not inconceivable that, in future, ISO might formulate and promulgate a state sovereignty standard and that states can elect to be 'ISO certified' through an 'accreditation' programme, just as companies do now.

The **International Accounting Standards Board** (IASB) is a nonstate academic and practitioner-driven body that sets global norms—International Financial Reporting Standards (IFRS)—which the European Union and the government of the United States (through the Securities and Exchange Commission) have accepted. In the EU, IFRS must go through a 'due process of endorsement' before becoming EU law; in the US, since 2007 the SEC has accepted accounts following IFRS and submitted by non-US public companies whose shares are traded in the US, and it is negotiating with IASB to achieve full integration of US rules with IASB's standards that would permit even US companies to use international rather than US rules in their financial reporting.[30]

An entrepreneurial Frenchman, Etienne Clémentel, founded the **International Chamber of Commerce** in 1919. In 1923, the ICC established its own International Court of Arbitration to arbitrate commercial disputes between companies that span national jurisdictions. Since then, the Court has administered over 19,000 disputes. The Court is popular because arbitration is far cheaper and faster than litigation in one of the parties' national jurisdictions. Some 145 states have signed the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which assists with the mutual recognition and enforcement of decisions and awards.[31]

---

27 Also ISO/PC 284, 'Management system for quality of private security company (PSC) operations: Requirements with guidance'.

28 A useful discussion of issues, participation, aspirations, and warnings as of November 2012 may be found at www.iso.org/iso/home/news_index/news_archive/news.htm?refid=Ref1691 [accessed 3 September 2013].

29 www.ansi.org/about_ansi/overview/overview.aspx?menuid=1 [accessed 8 September 2013].

30 See http://ec.europa.eu/internal_market/accounting/ias/index_en.htm and www.iasplus.com/en/resources/regional/sec [accessed 29 January 2014].

31 See www.iccwbo.org/products-and-services/arbitration-and-adr/arbitration/ [accessed 29 January 2014].

