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The Peace of Westphalia

In early June, I had the privilege of visiting the UN Library on International Law in Geneva. As I understand it, this is the largest collection on this subject anywhere. For many years

I had understood the “Treaty of Westphalia” in 1648 had established the notion of sovereignty of national states and that this concept still informs international relations 370 years later. The latter point is true—sovereignty is still a key element in international law. Sovereign states are not supposed to interfere in the domestic affairs of other states. However, as I opened the books from 1648 in the Library on the Treaty, I discovered how little I really knew about this remarkable event. First, the proper reference is the Peace of Westphalia,^a as there were three distinct agreements concluded between May and October of 1648 among several parties ending not only the “30 Years War” (1618–1648), but also the “80 Years War” (1568–1648) between Spain and the Dutch Republic.

The Peace of Münster ended the conflict between Spain and the Dutch Republic. The Treaty of Münster ended the conflict between the Holy Roman Empire and France and its allies. The Treaty of Osnabrück ended the conflict between the Holy Roman Empire and Sweden along with their respective allies. Some 109 delegations (!) were involved in the settlement talks that took place in either Münster or Osnabrück, which were both declared neutral zones for the duration of the negotiations.

Among the many elements of these treaties, official religions (Catholicism, Lutheranism and Calvinism) and, in some cases such as in the Dutch Republic, religious freedoms were determined. In all states, private practice of a non-of-

ficial state religion was to be permitted. Moreover, it was recognized that sovereign states had exclusive authority over their lands and people as well as ambassadors abroad. States took responsibility for any warlike acts of its citizens against other states and unlimited letters of Marque and Reprisal^b were forbidden.

Intervention in the domestic matters of sovereign states by other sovereign states was explicitly forbidden. A look at today’s headlines suggests the transnational Internet and World Wide Web have become avenues through which this agreement is regularly violated. This suggests that in the 21st century, it might be timely to revisit the principles of the Peace of Westphalia and to consider whether they are still a viable basis for international relations and, if so, how these principles might be reinforced in the presence of transnational elements that embrace not only the Internet and its applications including the Worldwide Web, but also the presence of transnational corporations whose annual revenues exceed that of many states in some cases.

Speaking generally, I believe the Rule of Law to be preferable to Rule by Fiat. In the context of transnational relations, state sovereignty still seems to be a strong principle (“good fences make good neighbors”), but transnational corporations are faced with operating under distinct and often different and even conflicting state regulations. A bold and perhaps completely unre-

alistic question is whether global negotiation of all 193 countries (at present) could lead to a framework for common and more compatible transnational practices. While this sounds infeasible on the face of it, I wonder what many might have thought during the negotiations leading to the Peace of Westphalia with over 100 delegations bringing their special interests to the table.

Considering the benefits the Internet has so far conferred and the harms we are starting to see in this medium (social media unrest, misinformation, identity theft, fraud, among others), one wonders how to preserve the benefits while also preserving the rights cited in the UN Declaration of Human Rights,^c of 1948—exactly 300 years after the Peace of Westphalia. In an earlier Cerf’s Up column,^d I alluded to a recent conference sponsored by the Ditchley Foundation on exactly this topic.^e One of the concepts explored at that conference was what I called differential traceability by which I mean the ability to discover, under appropriate conditions, individual identity despite surface anonymity (that is, Within the Rule of Law). Perhaps now it is timely to imagine a Digital Peace of Westphalia. **C**

^c <http://www.un.org/en/universal-declaration-human-rights/>

^d V. Cerf, Traceability. *Commun. ACM* 61, 8 (Aug. 2018), p. 7.

^e <https://www.ditchley.com/events/how-do-we-make-internet-safer-without-destroying-its-vitality>

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^a https://en.wikipedia.org/wiki/Peace_of_Westphalia

^b Such letters had authorized privateers to attack the ships of other states.