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The EU as an innovative force for global governance

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Abstract

The EU has outgrown the Westphalian system of international relations. In its present form, the EU is neither a state nor an association of states. It can be described instead in new terms as a democratic union of democratic states, which operates on the global stage as a democratic international organisation. Although it is far from perfect, the EU demonstrates that perpetual peace and effective global governance are not only thinkable but also practicable. While the modern state system of centuries past elevated the principle of absolute state sovereignty as the exclusive dogma of international relations, the world needs a new paradigm to address the global challenges of the twenty-first century. Academics from relevant disciplines, notably lawyers, political theorists, historians and philosophers, are called upon to undertake an interdisciplinary endeavour to devise a new template for the multilateral era.
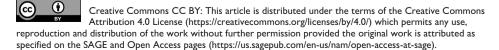
In memory of Wilfried Martens, who encouraged me to look 'beyond Westphalia'.

Introduction

The EU embodies the most consequential innovation of the modern state system since the introduction of the latter in the wake of the Middle Ages. The hallmark of the EU is that it applies the constitutional values of democracy and the rule of law to an international organisation. As a result, the EU can no longer be comprehended in the traditional

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terms of the Westphalian system of international relations as either a state or an association of states. Instead, the EU has established itself as a new kind of international organisation, which can be identified in academic terms from the UN perspective of global governance as a democratic regional polity, and from the internal viewpoint of its citizens as a democratic union of democratic states. In short, the EU is a union of states and citizens which works as a European democracy (Hoeksma 2023, 79–80).

This article aims to investigate the relevance of the Westphalian system for today's political theory and to analyse how the evolution of the EU from an internal market to a democratic transnational polity has propelled the Union beyond the traditional template into a conceptual *terra incognita*.

Eternal foundation

The historical reason as to why this legal–political innovation took place in Europe is that the old continent formed the theatre for two devastating world wars in the first half of the twentieth century. Since the start of the early modern era the states of Europe had been conducting their mutual affairs on the basis of the Westphalian system of international relations. The core of this system consists of absolute state sovereignty. In reaction to the feudal mindset of the Middle Ages, philosophers such as Bodin emphasised that sovereignty had to be one and indivisible. The very idea that states had to respect a higher authority was perceived as unbearable. Internally, the sovereign was free to treat his subjects as he pleased and, in the field of foreign affairs, the ruler was guided merely by the *raison d'état*. In consequence, war was regarded as the continuation of diplomacy by other means. Less than two centuries after its introduction, the Westphalian model was praised by Jean-Jacques Rousseau as the eternal foundation of our international system (Bick 2020, 4).

After its restoration in the wake of the Napoleonic adventures at the turn of the seventeenth and eighteenth centuries, the Westphalian system was regarded by statesmen and theorists alike as the guarantor of the balance of power. The large European states, notably Great Britain, France and Russia, had to control each other's ambitions through fluctuating partnerships with the Austro-Hungarian Dual Monarchy, the Ottoman Empire, and the 'latecomers' Germany and Italy. They granted each other their own spheres of influence to the detriment of smaller states such as Poland, Denmark, Ireland and Luxembourg.

The position of the smaller peoples in international law was strengthened by the emerging principle of self-determination (Kooijmans 2008, 2). Whereas the Westphalian model makes a sharp distinction between the internal and the external dimension of absolute sovereignty, the right of peoples to govern themselves increasingly gained recognition in the course of the late nineteenth and the early twentieth centuries. Seen from this perspective, the outcome of the Great War (1914–18) is particularly striking. The first of the two world wars of the twentieth century resulted in the demise of four empires and the rise of numerous smaller sovereign states on the old continent and in the Middle East. However,

both the Treaty of Versailles and the League of Nations failed to address the root causes of the war by leaving the principle of absolute sovereignty untouched. Two decades later, Germany disrupted the balance of power once more and violated the principle of self-determination for the sake of the creation of '*Lebensraum*' and the Third Reich.

The legacy of Westphalia

The Organisation of the United Nations, which was founded in 1945 with a view to 'sav[ing] succeeding generations from the scourge of war, which twice in our lifetime had brought untold sorrow to mankind' (UN Charter 1945), reaffirmed the right of self-determination and subsequently applied it in the context of decolonisation, which was to liberate countries in the Global South from Western domination. At the same time, the UN reaffirmed the universal faith in human rights and encouraged regional international organisations to promote its values. On the old continent, 10 countries established the Council of Europe in 1949 and adopted the European Convention on Human Rights and Fundamental Freedoms in 1950. Promising as these developments appeared to be, they did not meet the demand for 'no more war' which had been expressed by the peoples of many European countries. The difference between the existing organisations and the European Coal and Steel Community was that the founding states of the latter breached the principle of absolute sovereignty by attributing the exercise of sovereignty over the raw materials required for war to a higher authority. Thus, the process of European integration started as a deliberate attempt to overcome the constraints of the Westphalian system (Kapteyn and VerLoren van Themaat 2008, 7).

Although the stakeholders in the emerging polity deliberately departed from the traditional paradigm, their way of thinking was set to be dominated by the Westphalian approach for decades to come. In line with the artificial distinction between states and international organisations, scholars continued to propagate the view that the values of democracy and the rule of law can only thrive within the borders of a sovereign state. In addition, they argued that relations between states had to be regarded as a zero-sum game and that the gains of one party implied a loss to the other. In the bellicose Westphalian concept, war would, by definition, bring about both a victorious and a defeated party.

The legacy of the Westphalian paradigm caused a paralysing debate and intellectual stagnation in the emerging polity (Hoeksma 2016, 11). While all participants in the discussion about 'the nature of the beast' wanted post-war Europe to be democratic, one school of thought located the seat of democracy in the polity per se, while the other school held with equal vigour that the member states were to be regarded as the natural keepers of democracy (Magnette 2006, 190). So, the federalists championed the creation of an overarching European state with a bicameral parliament and an independent judiciary, while the intergovernmentalists insisted on the establishment of a Europe of democratic nation-states or—in the words of its most influential propagator, Charles de Gaulle—a *Europe des Patries*. Over the decades, the two opposing schools came to mistrust each other to such an extent that progress could only be made if and as long as the end goal of the common effort was not mentioned (Hoeksma 2016). In hindsight, the

emergence of this 'paradox of the *finalité politique'* is all the more perplexing, since the drafters of the 1957 Treaty of Rome had consciously chosen to formulate the objective of their endeavour in post-Westphalian terms so as 'to lay the foundations of an ever closer union among the peoples of Europe'.

The democratisation of the EU

This state of mind is the main, if not only, reason why post-war scholars and politicians were unable to observe that the ever-growing European polity was evolving in a direction different from the one they had predicted on the basis of their academic or ideological presumptions. While customs unions are not uncommon in international law, the finding of the European Court of Justice in 1963 that the member states had given their Community an 'autonomous legal order', could have been perceived as a clear sign that the emerging polity had started to move away from the Westphalian system. The ensuing identification of the Communities as a Union of democratic states (*EC Bulletin* 1973) served as an encouragement for the member states to ensure that their polity would also acquire a democratic legitimacy of its own. They transformed the existing Parliamentary Assembly into a directly elected Parliament. The first direct elections for the new parliament were held in the spring of 1979, albeit with its members chosen by the electorates as citizens of the member states brought together in the Communities. The architecture of European democracy was changed through the foundation of the European Union and the introduction of EU citizenship in 1992. Contrary to the demands of the Westphalian system, the new status established a direct link between the Union and its citizens and subsequently enabled the citizens to participate in the political life of the Union. The constitutional character of the emerging polity was accentuated through the introduction of the values of the Union by virtue of the 1997 Treaty of Amsterdam. The Charter of Fundamental Rights of the Union, which was proclaimed in 2000 at the summit of Nice, was integrated into the 2007 Lisbon Treaty, which came to replace the ill-fated Constitution for Europe after its rejection in 2005. The Treaty of Lisbon defies the Westphalian dogmas by construing the EU as a democracy without turning it into a state.

The entry into force of the Lisbon Treaty on 1 December 2009 was followed by an unprecedented series of crises. For almost a decade, the EU was shaking on its foundations and a number of member states raised the question of whether they should return to the Westphalian concept of national sovereignty. One country decided to withdraw from the EU altogether, while a number of other member states envisaged reform of the Union from within. Poland and Hungary notably rejected the introduction of the rule-of-law mechanism in 2020 and argued in a dispute before the European Court of Justice that the new mechanism amounted to unwarranted interference by the EU in the internal affairs of sovereign states. The Court rejected this utterly Westphalian complaint by establishing that the member states (1) had voluntarily created their Union, (2) had first agreed among themselves on their common values, and (3) had subsequently applied these values to their Union (European Court of Justice 2022a; 2022b). By concluding that the Union must also be able to defend these values within the limits of its competences, the Court demonstrated beyond doubt that the EU has abandoned the Westphalian system.

Conclusion

In line with academic norms, this article observes the EU as it can be perceived beyond the premises of the traditional paradigm. Removing the Westphalian veil allows for a better diagnosis of the achievements and shortcomings of the EU since the introduction of the rule-of-law mechanism. The following points may serve to give a first impression of the far-reaching consequences of the abandonment of the Westphalian system.

1. Thanks to its construction as a union of states and citizens, the EU has been able to overcome its notorious democratic deficit. By creating a dual system of democracy *in* Europe and democracy *of* Europe, the EU ensures that decisions on both the national and the transnational level are democratically controlled.

2. Contrary to initial expectations, the EU does not undermine the rule of law but rather reinforces the constitutional character of its member states.

3. In consequence, the EU embodies a new model of democracy. Transnational democracy is a system of governance for a union of democratic states, which also constitutes a democracy of its own. In short, the EU has evolved from a confederal union of democratic states to a European democracy of states and citizens.

4. As the EU is neither a state nor an association of states, the two opposing schools in the debate about the nature of the EU should bury the hatchet. In consequence, the EU should conduct its communication on a contemporary footing by presenting itself as a union of states and citizens which works as a European democracy.

5. The EU should position itself on the global stage as a democratic regional polity.

6. As a democracy, the EU is still young and fragile. It needs to strengthen its democratic institutions, involve its citizens in the political life of the Union and initiate European citizenship education. It should draw on the conceptual consequences of its transition from a confederal association of states to a transnational democracy of states and citizens at the next Convention.

7. The challenge for the academic community is to devise a political philosophy that is capable of informing and explaining the functioning of the EU as a transnational democracy.

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Jaap Hoeksma *(b. 1948) studied philosophy of public law at the Free University of Amsterdam. He worked with the UN High Commissioner for Refugees (1976–90) and founded his company Euroknow in 1991. He is creator of the board game* Eurocracy *and author of* European Democracy *(2019) and* The Democratisation of the European Union *(2023).*