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**Neo liberalism, Securitisation
and the New Transnational Regulatory Governance**

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BEYOND NEW IMPERIALISM: A NEW TRANSNATIONAL REGULATORY GOVERNANCE

This paper argues that events in the aftermath of September 11 have intensified a move towards a more authoritarian and regulatory global order. The paper presents two central arguments. First, that the events of September 11 should not be seen in simple terms as a reassertion of US hegemony. On the contrary, the emerging regulatory order is to be found within the internal transformation of the state—a transformation characterised here as the ‘new transnational regulatory governance’. Secondly, we argue that the post cold war global order signals a decisive break with the Westphalian notion of statehood. Notions of hegemony and new imperialism are trapped within the Westphalian framework. In contrast, we argue that the intensification of global capitalism creates the conditions for the emergence of new webs of regulatory governance that link capitalist states together in a way similar to Kautsky’s (1978) notion of ultra imperialism. It is within this version of ultra imperialism that we seek to locate Southeast Asia’s role in the global order.

Neo liberalism then, the essay suggests, is a constantly evolving and dynamic project. Initially neo liberalism was identified with the retreat of the state from economic governance—if you like, the Thatcherite incarnation of neo liberalism. However, as economic reform has consolidated, Thatcherite neo liberalism and its predatory understanding of the state was replaced by a greater emphasis on the regulatory dimension of economic management. Regulatory neo liberalism replaced the predatory understanding of state intervention with a more enabling view of state that seeks the effective reproduction of economic order. Notwithstanding the effect of September 11 the basic parameters of this regulatory neo liberalism remain much the same, although it has been recast within a framework of securitisation. More to the point, changes in the global order in the aftermath of 9/11 are located within a broader process of the intensification and consolidation of a system of transnational regulatory governance. It is in this context that transnational regulatory governance provides a useful heuristic framework to understand the transformed global geo political economy.

Hence the argument in this paper stands in sharp contrast to explanations which view the role of the US in the post September 11 period as reflecting an intensification of US hegemony or a more coercive US military posture in the global political economy. Such explanations tend to obscure the fact that this intensification of US hegemony takes place in a context where there has been a far reaching transformation of the global order since the end

of the cold war. Transnational regulatory governance ushers in a post Westphalian global order that needs to be clearly distinguished from those suggesting that recent US foreign policy marks a shift from a so called 'benevolent' hegemony, typified by its posture in the post war period, to a more militaristic and coercive stance. For Perry Anderson (2002) the end of the cold war together with the advance of economic globalisation changed the equilibrium between force and consent that drove US policy in the post Second World War period . Instead, in the aftermath of the cold war the balance tilted towards a more coercive hegemony as:

with the erasure of the USSR, there was no longer any countervailing force capable of withstanding US military might. The days when it could be checkmated in Vietnam, or suffer proxy defeat in Southern Africa were over. These interrelated changes were eventually bound to alter the role of the United States in the World. The chemical formula of power was in solution (Anderson 2002: 7).

There is much to be said for this argument, and to be sure, the recent pattern of US foreign unilateralist policy in Iraq, the war on terror, as well its unwillingness to ratify international agreements or be bound by collective security institutions seem to tilt the odds sharply in favour of the view that there is a rebalancing of forces and consent in the operation of US hegemony. Yet, I think this remains very much a picture that in one sense assumes that international politics continues along the muddy streams of 'realist' international politics except that now it passes through a distinctly unipolar landscape. But herein lies the problem: this line of reasoning tends to elide the significant transformation in the nature of the state as well as the broader global environment in which it operates. Most accounts of hegemony, or indeed the recent popularity of the term 'Empire', seem to miss the decisive way in which recent changes in the global order reflect a far deeper mutation in the modes and mechanisms of political rule that are embodied in arrangement of transnational regulatory governance. It is these new forms of political rule which rupture Westphalian notions of statehood that have been so central to global politics. In essence it is transformation of the regulatory state rather than the enhanced role of the US that is the stimulus for change within the global political and economic system.

At the core of this framework of transnational regulatory governance is not the relationship between the US and interstate system but the transformation that is occurring within the state itself. But, this is not to suggest that there is some kind of supra national state that is supplanting the role of the national state apparatus but that the national state itself becomes the site of transnational governance. From this perspective, as Panitch (2002)

building on the earlier work of Poulantzas (1978) has recognised, the crucial point is that the dynamics of imperialism need to be approached through the internal byways of the capitalist state rather than from superhighway of US hegemony.

Therefore, to analyse the post 9/11 era as the intensification of US hegemony or in fact in terms of a renewed importance of empire, is to be trapped within an essentially statist Westphalian framework of analysis that sees the international order in terms of a plurality of competing states. To be sure, this is a persuasive account of changes within the global order but I think it misses out on the fact the post cold war international order has been seen not so much as competition between states as the emergence of sets of closely connected regulatory structures of advanced capitalist states, but whose structures include key state structures and elements of pivotal newly industrial countries. Regulatory neo liberalism then results in the transnationalisation of various state structures and the social forces associated with these state practices. In essence, our argument is that for most of the 1990s this new transnational regulatory governance had been confined to predominantly economic issues, but since 9/11 this has been extended to encompass security issues so that a broad gamut of economic and social domains of governance have become securitised.

Instead, what is evident is the rise of a web of transnational connections and structures that link various capitalist states—a process that creates new forms of complex sovereignty in the global economy (Jayasuriya 1999). What is more, the emergence of this transnational regulatory governance signals a dramatic change from ‘Westphalian’ models of sovereignty. Instead, what we have is the embryonic form of a set of transnational state structures that cuts across traditionally defined national boundaries, thereby in effect creating a new post Westphalian state and international order. There is no single sovereign centre within the global order; neither can the global order be reducible to our usual ‘Westphalian’ order of multiple and pluralist sovereign units within the global order. It is sovereignty itself which is being rapidly reconfigured. Of course Hardt and Negri (2000) in their much discussed book on empire make this a central focus of their analysis, but the almost mystical nature of what they assume to be a new decentralised sovereignty obscures the transformation that is occurring not just in the regulation of the global economic order but also in hard edged security issues. More relevant for our purpose is a version of the globality¹ proposed by Shaw (2000). Shaw suggests that a globality may be found ‘in the dominance of a single set of new norms and institutions, which more or less governs the various state centres’. In turn, Shaw’s notion of globality has a resemblance to early work of Keohane and Nye’s (1977) on complex interdependence, as well as from a very different perspective to Kautsky’s (1970)

notion of ‘ultra imperialism’—a term used to describe what he thought to be the deepening engagement between core capitalist countries that is driven by the imperatives of global as against a national capitalism. Indeed ultra imperialism captures much better the reality and complexity of the new transnational regulatory governance than the notions of empire, hegemony, or indeed new imperialism, all of which remain stuck with an outmoded ‘Westphalian model of sovereignty and the state.

However, despite the evident value of ultra imperialism as an analytical framework it has limitations in comprehending the post Westphalian global order, and in particular we need to recognise that in this new global order what is really at issue is the way the domestic state apparatus becomes increasingly integrated within a broader arrangement of transnational regulatory governance. The point is that it is the internal transformation of the state, not the relationship between states and the US hegemony or empire, that lies at the core of the new transnational regulatory governance and the emerging global order. Undeniably the political frame of transnational regulatory governance must be broad and flexible enough to encompass different political projects within this transnational entity (to call this a ‘state’ I think would leave us mired in a Westphalian confusion). Nevertheless, it does enable us to explore how the emerging global capitalism can be framed in terms of these new transnational political structures that go beyond the boundaries of the national and the international.

But is the militarization of the global order since the event of 9/11 a continuation of regulatory governance that has advanced since the 1990s or something qualitatively different? Indeed some writers have suggested that the events of September 11 reflect a move away from the dominant themes of economic globalisation towards more security oriented issues. In an incisive argument Lipschutz (2002) has suggested that this re-orientation is from what he calls ‘disciplinary neo liberalism’ to one based much more on the military might of the US. There is no doubt that this is a powerful argument delineating the way in which the regulation of the global order has shifted from a predominately ‘soft’ decentralised and diffused system of regulation to more military dominated US based order. Indeed, Higgott has advanced a parallel argument that economic globalisation ‘is now seen not simply in neo liberal economic terms, but also through the lenses of the national security agenda of the United States’ (Higgott 2003: 5). Arguing along these lines, he suggests that US foreign economic policy is becoming increasingly securitised and this marks a significant change from the US foreign economic policy of the 1990s which sought to subordinate security to

economic concerns. In effect the greater militarisation of the global economy in the aftermath of the war on terror constrains the unbridled economic globalization of the 1990s. Hence,

policies geared towards controlling globalization. unlike in the more laissez faire period of the last decades of the 20th century when the market alone was meant to drive it – have a much stronger place in US policy under the Bush Administration (Higgott (2003: 20).

In the early decades of the 21st century both Lipschutz and Higgott seem to suggest economic globalisation will be subordinated to an increasingly securitized global agenda.

While these arguments are persuasive in terms of the changed dynamics of economic globalisation in the post September 11 era, we need to be careful to make the distinction between the securitisation of globalisation or the state of exception as the political shell of the global order and the economics of this new global order which are still tethered to a form of economic globalisation. Securitisation of the global political order and a system of economic constitutionalism are not mutually exclusive. It is more useful to see the unfolding of the process of neo liberal globalisation as giving rise to a variegated series of governance projects throughout the last decade and a half, that have sought to recalibrate the engine of post war multilateralism—the ‘UN Republic’ to use Lipschutz’s terms. In the 1990s this system of economic constitutionalism, as Lipschutz and Higgott observe, was configured to a decentralised system of multilateralism which is now being replaced by a more coercive US based system of global governance. However, the events of September 11 gave way not only to a new governance project but also to one which sought to establish the foundations of a new global constitutional order; not just a recalibration but a reconstitution of the post war engine of international liberalism. Therefore, what is significant about the economic order post September 11 is the fact that economic constitutionalism is contained within a political core that operates outside the normal process of international legality. As Steinmetz (2003) aptly comments, global economic openness remains central to the US foreign policy objectives, but economic constitutionalism now functions within the more authoritarian frame of a global state of exception. None of this should be surprising as the experience of capitalist industrialisation in East Asia and elsewhere has shown us that markets are compatible with a diverse array of political forms. Likewise, global capitalism is compatible with a diverse array of political forms, and the events of September 11 signal a shift towards a more authoritarian political form, What is central to both the economic and more security oriented regulatory project is not the shift towards a more coercive policy by the US but the increasing transnationalisation of regulatory governance.

In a similar fashion, Robinson (2004) has used the notion of transnational state apparatus which is defined as ‘an emerging network that comprises transformed and externally integrated national states, *together with* the supranational economic and political forums, and has not yet acquired any centralised institutional form’ (Robinson 2004: 88). Central to Robinson’s claim is that economic globalisation has produced a new transnational capitalist class whose political counterpart is the emergence of a new transnational state apparatus. One of the strengths of this argument is that it forces us to explore how the national state has been transformed through the transnationalisation of state actors and institutions. It compels us to confront the way global capitalism has rendered conventional notions of statehood.

Breslin, in an analysis of China and the new global political economy, notes the emergence of a group of globalised bureaucrats pointing out that

This group, epitomised by the policies of Zhu Rongji, is engaged in a process of making the investment regime within China more and more liberalised and ‘attractive’ to international capital, and reforming the domestic economic structure to reduce domestic protectionism, and institute a more neo-liberal economic paradigm. (Breslin 2002: 25).

It is these ‘globalising bureaucrats’ that play a key role in the management of new systems of transnational regulatory governance. Hence it is the enrolment of these state actors in regulatory governance, the modes of governance within these new regulatory practices, and the unequal relationship between various sets of globalising bureaucrats that define the manner in which the new regulatory state is incorporated into the global order. One of the main changes after the events of September 11 is the emergence of new, more security oriented ‘globalising bureaucrats who exert much more influence at both the national and transnational levels of governance. For example, in the growing area of military and security cooperation, we see not merely close inter state collaboration but a more profound process of the incorporation of these state actors within new security oriented transnational regulatory governance.

As this indicates, what really marks out the notion of transnational regulatory governance is the fact that the compulsive pressure of economic globalisation or militarisation is located not outside the state but within its internal structures. Most proponents of new imperialism or renewed hegemony adopt an ‘outside in’ approach to globalisation, where the compulsive pressures of globalisation are located external to the state. Instead it is argued in this paper that these pressures of globalisation are located within the institutions of the state itself. This was of course a point that was central to Poulantzas’

(1978a; 1978 b) analysis of the state nearly three decades ago. He argues that international functions of the state are no longer simply added on to the state but are the ‘expressions of their internalised transformations’ (Poulantzas 1978 :82). In a paper that seeks to build on these ideas, Panitch observes that Poulantzas’ achievement stands in contrast to the ‘various “regime” theories dominant in the field of international relations are manifestly unhelpful in understanding this development, misrepresenting as cooperative understandings what were in reality structural manifestations of a hierarchically organized international political economy’ (Panitch 2002: 13). And this is really the nub of our argument: the internal transformation of the state and the consequent interlocking web of regulatory governance within advanced capitalist countries that is the most distinctive property of the new transnational regulatory governance. This framework allows us to transcend the very distinction between the ‘external’ and the ‘internal’ that so defines the realist understating of the global political economy—be it in the form of new hegemony or a new imperialism. On the contrary the thesis of this paper is that the new transnational regulatory governance is not a supra national entity above the national state but instantiated within it. Adopting such an approach has a two-fold advantage. First, it views the process of neo liberalism as a political rather than economic process, and this enables us to see neo liberalism as a constantly moving set of political projects within the state. Second, it brings back—as Panitch (2002) so well argues—the state as the central site through which new programs of governance are being implemented and resisted. At a theoretical level, this means we should pay more attention to theories of the state in attempting to understand the dynamics of the new global order.

What is most evident in this new regulatory order is the growth of a set of transnational connections and structures that link various capitalist states—a process that creates new forms of complex sovereignty in the global economy (Jayasuriya 1999). More especially the emergence of this transnational regulatory governance signals a dramatic change from ‘Westphalian’ models of sovereignty. Instead, what we have is the development of a new form of complex sovereignty that defines these new structures of transnational regulatory governance. We now turn to the analysis of this post Westphalian order and complex sovereignty.

COMPLEX SOVEREIGNTY IN THE POST WESTPHALIAN GLOBAL ORDER

Emerging forms of ‘complex sovereignty’ break down the internal structural coherence of the state replacing it with autonomous regulatory agencies whose purpose is to mediate between

the international and the local or national. The growth of polycentric centres of power within the state,² therefore, internationalises certain agencies (e.g. central banks) within the state while at the same time serving to break down the boundaries between domestic and international politics/law. Again, these emergent properties of sovereignty pose important, even revolutionary, implications for the study of international law and politics. But—contrary to those who seek to describe this as a new ‘medievalism’—the argument advanced here reinforces the thesis that this is a transformation, not an erosion, of sovereignty.

One of the cardinal features of the modern state—it is modern because, as Ruggie (1993) points out, the conjoint development of territoriality and sovereignty is part and parcel of the rise of modernity—is the development of ‘internal sovereignty’ or internal coherence within the state.³ A focal feature of the early state was the conflict between autonomous centres—be they corporate or ecclesiastical—as they sought to defend their prerogatives and immunities. However, one of the major achievements of the nineteenth century state was the development of the state as the exclusive centre of all authoritative decision making where the state institutionalised the principle of internal sovereignty and thereby established a unitary ‘monistic’ legal order (Poggi 1978).

However—and this is the nub of the thesis developed here—with the globalisation of economic relations there is a growing incongruity between a territorial notion of sovereignty and the flow of economic activity which disrupts the internal unity or coherence of the state. Increasingly various agencies and institutions within the state develop a high degree of autonomy and independence;⁴ this fragmentation of the domestic order of the state is central to the development of international forms of regulatory governance. In short, the global governance of the economy requires the internationalisation of state agencies and institutions, but this can only occur if these institutions possess a degree of autonomy from other institutions within the state. In other words, the fragmentation of the state is the form that sovereignty takes in an increasingly global economy.

A good example of this fragmentation or the disaggregation of the state is the development of independent central banks. Central bank independence provides a means of purchasing—albeit not always successfully—domestic stability through the credible commitment to pursue ‘market friendly’ monetary policy. One reason for the enhanced power of central banks is the growing importance of monetary policy in an era dominated by the demand for more global financial integration. It is important to recognise that these changes reflect not just a shift of policy instruments from fiscal to monetary policy, but also a reconfiguration of authority within the state towards agencies such as central banks. This was

not just a technical change to a new set of policy instruments, but a significant change in the mode of coordination within the state. In turn, this trend towards more independent central banks reflects profound structural changes in the international political economy, particularly the increasing importance of global transnational financial structures. Therefore, the emergence of independent central banks and the reconfiguration of the state that this implies are a manifestation of the deeper structural changes taking place in the global political economy, especially in the nature of international markets (Jayasuriya 1999).

For our purposes what needs to be acknowledged is that although independent central banks are actively engaged in the regulation of international financial markets (e.g. through their critical role in implementing structural adjustment programs of the IMF), they participate in these regulatory systems as independent actors. In turn, these agencies are often required to implement international regulations or agreements at the national level (Slaughter 1997); they remain ambiguously situated between the global and the national. The broader argument here is about the way that structural changes in the global political economy lead to changes in the form of state sovereignty. These changes serve to radically reconstitute our understanding of the traditional boundaries between the international and the domestic spheres because agencies such as independent central banks are simultaneously part of the domestic order and a range of global regulatory mechanisms. Such global regulatory mechanisms serve to underline the central insight of Kautsky's notion of ultra-imperialism which was to pinpoint the way global capitalism's old fashioned inter-state rivalry was to be made redundant in favour of a set of collaborative arrangements drew together the core capitalists powers .

This allows us to move beyond the somewhat sterile debate between multilateralism and unipolarity. What this debate overlooks, I think, is the fact that recent changes in the global order reconstitute systems of internal governance. While unipolarity suggests a reinforced hegemony within the international system, it obscures the more important reality that new and innovative forms of governance are being constituted to manage the global economic and political order. Unipolarity or new imperialism remains stuck within the outdated categories of Westphalian statehood. For example, in the area of foreign economic policy, to the extent that multilateralism at both levels—regional and national—was chiefly concerned with trade liberalisation, it is now clear that this trade liberalisation agenda has run out of steam. Indeed, the pressing issues in the global economic environment are not so much trade liberalisation between 'national economic entities' but the imposition of new forms of regulatory governance within the state. This regional governance is distinguished by an

emphasis on the development of policy coordination and harmonization. This is a form of regulatory governance that should not be viewed as a departure from the disciplines of the global economy, but as an attempt to instantiate the disciplines of neo liberalism within the broader ensemble of regional governance.

One such dimension of this post trade liberalisation agenda is the development of regional regulatory frameworks. This process has now been extensively documented in the EU but a similar dynamic discernable in the evolving process of regionalisation in East Asia is the mesh between emerging regulatory states and new patterns of regional governance. A crucial facet of this regional governance is the way it manages to locate the *regional* within the *domestic*. This reflects a recognition that region wide regulatory frameworks such as monetary coordination and macro economic policies can be implemented and policed at a local level. One nascent illustration of the emergence of this system of regional multilevel regulation is the ASEAN regional surveillance process (ASP) which was endorsed by ASEAN Financial Ministers in December 1998 (Manupipatpong 2002). What is clearly discernable with this ASP process is that it links the national and international regulatory governance through the internationalisation of various state agencies and actors. From this perspective, the regulatory state is not a state form confined to the territorial boundaries of the national state. Rather, it should be seen as a system of multilevel governance which connects international organizations, such as the IMF, with regional entities such as the Asian Development Bank (ADB), and various national, and even sub national or local entities.

But perhaps the most interesting development of these new regulatory mechanisms is through what has been termed the new bilateralism, that is, the increasing propensity of governments to enter into preferential trading agreements on a bilateral rather than a multilateral or regional basis. In fact bilateralism is ‘arguably the most dramatic development in intergovernmental relations in the western Pacific since the financial crises of 1997-98’ (Ravenhill 2004: 61). There are three important dimensions to this new bilateralism. First, and most importantly, bilateral arrangements are much more than a set of agreements about trade; it involves fundamental changes in the internal governance within the state. For example, it may involve requirements on corporate transparency that necessitates significant changes in national regimes of corporate governance. Similarly, most trade agreements with less developed countries place a stronger emphasis on the imposition of market disciplines than on the trade liberalisation itself. (Phillips 2004). Therefore, these bilateral agreements should be seen as part of a broader regulatory project reshaping the state by imposing economic disciplines.

Second, the shift towards bilateralism permits what may be called those ‘pivotal states’ at the centre of the regional geopolitical economy to establish deeper integration amongst themselves as well as be entrenched within the broader strategies of transnational governance. Within Southeast Asia, Singapore clearly performs such a role: it has FTA agreements with Australia, Japan, New Zealand, and the US; and also has a number of other agreements under active negotiation (Dent 2004). In this case, we see how Singapore becomes a bilateral hub through which the new bilateralism is reconfiguring the regional order. Yet another example of this process of deep integration is the emerging Singapore-Thailand economic and political partnership which has been formalised as the Singapore-Thailand Enhanced Economic Relationship (STEER) framework. As Dent notes:

This is institutionally anchored in the STEER framework, first announced in February 2002 and formally established by an inaugural summit convened in August 2003. At this meeting, Singapore and Thailand announced their intention to create a bilateral foundation for greater economic integration within the ASEAN based on a ‘one economy, two countries’ (Dent 2004: 7-8).

STEER itself is a part of a broader partnership between Thailand and Singapore. Once again, the point here is how these framework agreements are not so much about trade liberalisation as the increasing integration of these states through these bilateral agreements with a broader framework of transnational governance. There is also within this framework a strong geopolitical element: both Thailand and Singapore have close security links with the US and have been crucial to the so-called war on terror. It is these geopolitical hubs that are crucial in the emerging system of transnational regulatory governance. True enough, the US is weaving a complex hub and spoke architecture within the region, strongly reminiscent of cold war strategies, but at the same time this hub and spoke arrangement depends to a great extent on the creation of ‘regional nodes’ such as Singapore, which are used as a means of integrating other states within the region to new regulatory forms of governance.

Finally, one of the under explored features of bilateralism is that it accommodates and allows the negotiation of the complex interests of domestic capital within the global political economy. As we move from an international to a global economy it becomes impossible to counterpose the interests of domestic capital to foreign capital. Domestic capital itself is fractured and connected to the global economy and global capital. From this perspective, it is impossible to draw a simplistic typology of protectionist and internationalist interest within the capitalist class, because capital (both foreign and domestic) has contradictory and mixed interests in various foreign economic policies. And more to the point, these contradictory interests are played out within the state, and bilateralism provides a means of accommodating

this complex play of interests. Again at the heart of this new transnational regulatory governance is the fact that the tensions and contradictions of global capitalism are mirrored in conflicts inside the state as foreign economic policy is effectively nationalised. Ravenhill notes that one of the major reasons for FTAs within the Asia Pacific has been due to the fact that the

increased interest of business groups in preferential trade agreements was stimulated by the growth of such arrangements elsewhere and the start of schedules for their implementation. Domestic business interests found themselves disadvantaged in markets where their competitors enjoyed preferential access (Ravenhill 2004: 65).

At the same time the wide range of exclusions allowed by the FTA has enabled sections of domestic capital to protect certain key interests. The point then is that global economy means that the 'concept of the domestic bourgeoisie is related to the process of internationalization, and does not refer to a bourgeoisie "enclosed" within a "national" space' (Poulantzas 1978: 74). It is the complex interplay between domestic and foreign capital that is accommodated through the growth of the new bilateralism. Perhaps the most interesting dimension of this new bilateralism is the means through which it provides for the incorporation of economic and military globalisation within the new framework of transnational regulatory governance. In the next section the wide array of regulatory forms that distinguish the transnational regulatory governance will be discussed in more detail.

MODALITIES OF THE TRANSNATIONAL REGULATORY GOVERNANCE: CONTRACTS, NETWORKS, AND ZONES OF GOVERNANCE

Contractual governance

This new transnational regulatory governance brings in its wake new forms and modalities of governance that fundamentally transforms 'Westphalian' modes of sovereignty. At the outer edges of this new state of exception one finds the surprising re-emergence of the notion of trusteeship.⁵ Trusteeship, a concept of the late colonial state, has made a surprising return to political theory and practice. Trusteeship depends on the exercise of unconstrained executive power, and indeed, it is this operation of executive immunity that is most amply demonstrated in the cases of Kosovo, East Timor, as well as the intervention in Afghanistan and Iraq. For example, the internationally appointed Ombudsperson in Kosovo makes a case 'to place Kosovo completely outside the purview of any international human rights monitoring or judicial mechanisms, where it will remain for the conceivable future' (quoted in Bowring 2002: 14). This provides a striking example of the operation of a global state of exception

unencumbered by legislative or judicial framework. At the same time, in the case of the trusteeship there is an apparent recalibration of the practice of international equality that participation in the international community is contingent on meeting certain standards or values. As a result, failure to meet these standards will ensure that the protection of the international legal order will not be extended to those members of the international community. Indeed this trusteeship goes along with the contemporary rendering of a colonial version of

“mission civilisatrice”—the colonial-era belief that that the European imperial powers had a duty to ‘civilize’ their overseas possessions. Although modern peace builders have abandoned the archaic language of civilised versus uncivilized, they nevertheless appear to act upon the belief that one model of domestic governance—liberal market democracy—is superior to all others (Paris 2002: 638).

In this new era where legitimacy trumps legality, membership of the international community becomes that is granted as a privilege rather than as one of ‘right’; a notable and the most decisive change in the Westphalian system of sovereignty.

While trusteeship as an international practice is manifest at the outer edges of the global order, many more states are subject to various forms of global governance. These states, while not subject to trusteeship condition, nevertheless impose strict conditions on membership of the international community. One of the features of this new governance is the emergence of new forms of ‘contractual governance’—term used here in a very broad sense to signify implicit or explicit contracts. This is obvious in the familiar governance programs of International Financial Institutions (IFIs), but is also evident in such instances as the accession agreements between EU candidate member states and the EU to meet an agreed set of preconditions or standards in order to gain the benefits of membership of a particular international regime or organization.

Further, this contractual governance works through ‘chains of contract’ where, for example, one international (the World Bank) or regional entity delegates policy authority to a domestic agency which in turn imposes a further set of contractual obligations on public or private sector organizations. Take for instance, the Basle Accord on capital adequacy which works through the adoption of best practice standards by national regulatory authorities and implementation of compliance regimes by individual private sector entities. Another example is the money laundering standards; here again, ‘best practice’ standards are implemented by local regulatory authorities who in turn impose compliance standards on individual financial entities.

Another important element of the new contractual governance is the way in which transnational agencies set broad flexible goals which are then progressively enforced and supervised down a chain to national and sub national levels. In this context, Weber notes that ‘these trends and transformations that “local” social policy (particularly of low income states) have increasingly come to be set and defined at the level of global institutions’ (Weber 2001: 13). These chains of contract form a very important aspect of global governance. As Cammack observes, these ‘chains’ are linked through a succession of contracts and partnerships at lower levels which are required to assume ownership of the program. As he notes, with reference to the World Bank’s comprehensive development framework:

In this broader context, it is the fundamental goal of the Bank’s strategy to impose ‘country ownership’ of the CDF both because it recognises that it lacks the means to enforce the strategy itself, and because the legitimisation of its project vis a vis its citizens around the world depends upon its adoption by national governments, which remain indispensable intermediaries in the project for global governance (Cammack 2002: 37).

In fact, the obligation to assume ‘country ownership’ is built into the very institutional architecture of the World Bank/IMF poverty reduction strategy. Hence, while participation and empowerment are the catchwords for these strategies, it remains tied to a very specific model of economic participation and independence.

These ‘chains of contract’ have the effect of *internationalising the state*. Within this new institutional architecture local agencies and organisations are the conduits through which international standards are transmitted. For example, in the poverty reduction strategy the very flexibility that social policy programs give local agencies is set against the broader constraints of general guidelines around which all local programs must be constructed. In the policy literature parlance this builds into the governance of social policy programs in a form of multi level governance. But the most important ramification of this multi level governance lies in the very internationalisation of component elements of the state structure.

Network governance

At the same time, regulatory and governance resources are dispersed outside the narrow precincts of the national system. Within a framework of globalisation, domestic governance often requires the cooperation, monitoring, and compliance with actors and agencies within the broader global system. To give one example, the growing complex global financial markets require an almost equally complex process of harmonisation of securities regulation.

But this legal harmonisation can only be achieved by institutionalised structures of cooperation between networks of specific domestic and international agencies—networks and institutions that operate relatively independent of traditional centres of executive authority, and operate at the interstices of the domestic and international.

As we move beyond the confines of the ‘Westphalian state’ the meta governance of the emerging system of regulatory networks becomes one of the hallmarks of the governance of the new transnational regulatory state. As the state becomes fragmented, domestic regulatory agencies develop connections with their foreign counterparts as well as with transnational regulatory bodies, thereby taking on a ‘global’ function. Hence, we need to understand network governance as a set of ‘*governance webs*’ that encompass both domestic and transnational actors; it is within these webs that new forms of relational capacity are being constituted.

It is important to understand that these regulatory webs often do not depend on formal international treaties or rely on international organisations for their enforcement. Rather, the emergence of an international regulatory state depends on, and in fact, requires, the active participation of agencies within the state. This again draws pointed attention to the importance of the reconstitution of sovereignty in these new systems of global regulation. Following the work of Picciotto (1996), this may be understood as a form of ‘network governance’ whose operations⁶ rely on the application of formal standards (soft law) rather than a set of legal rules; but more importantly, the operation of these regulatory systems depend on the ‘national’ application of internationally formulated standards. In this regard, it bears out Slaughter’s (1997) contention that the reconstitution of sovereignty represents the nationalisation of international law. What this signifies is that the operation of the global economy requires extensive regulatory changes at the national level. However, what is significant in these new regulatory frameworks is the interpenetration of specific public and private agencies in regulatory governance, thereby creating a complex multi layered system of regulation.

Governing Zones of disorder

At a deeper level, transnational regulatory governance reorganises the spaces of the global polity into zones of normality or exception. To use Ong’s (2002) rather revealing terminology, it suggests a ‘new spatiality’ that points to anthropological texturing of spaces of order and disorder. In an earlier analysis of sovereignty Ong (1999), with her notion

‘graduated sovereignty’ presents a perspective on the transformation of sovereignty. Graduated sovereignty, which has broader applicability than the Southeast Asian focus of study, refers to the way in which ‘the state flexibly manages different population segments located in various zones of sovereignty, or a system of graduated sovereignty that is superimposed on the conventional arrangements of national states in Southeast Asia’ (Ong 1999: 224)

One of the main effects of this new sovereignty is the development of what Ong calls ‘zoning technologies’, that is, the use of various forms of political technologies to demarcate zones of governance. This serves to:

identify recent state strategies in Southeast Asia that focus not on an overall developmental project but rather on the management of spaces and populations in order to achieve developmental ends. In Malaysia, for instance, post developmental strategies in the 1980s regulate spaces and populations according to their relationship to modes of global production (Ong 2004: 7).

It seems clear that in a wide variety of areas ranging from the special economic zones of greater China—which is the subject of Ong’s analysis—to the way in which Southeast Asian governments such as the Philippines have managed to declare zones of emergency now thought to be more prone to ‘terrorist’ action. It is the operation of zoning technologies that is most evident in the various counter terrorism operations that are aimed at disrupting what are termed the ‘functional spaces’ of terrorism. Functional space is defined as the ability to carry out various activities in support of various organisations (Ramakrishna 2004). But of course, defining functional space in this way serves to criminalize all manner of activity from finance to the ability to travel. More to the point, these functional spaces all extend to the ideological and political space that allows these organizations to flourish. From this perspective ‘a counter terrorism thrust is needed to close the network’s all important political space ...’ (Ramakrishna 2004: 325). In all these examples, one can see the operation of the kinds of zoning technologies that Ong describes to distinguish between normal political space and those spaces that are subject to police action and monitoring. In short, in distinguishing between ‘good’ and ‘bad’ political space one sees the operation of an important zoning technology. And here is the issue: these spaces of exception are subject to exceptional and emergency measures that operate outside the normal legal and constitutional processes. It is these zoning technologies that distinguish the new complex sovereignty in Southeast Asia.

This differential governance of social and economic life that shapes this graduated sovereignty represents the kind of re-ordering of global and regional space that the state of exception entails. In essence, what this suggests is that at the global level various state and

non state actors are subject to the blunt edge of sovereign decision while others remain within a zone of legal or normal order. Moreover, it needs to be recognised that this mapping of the global order in 'spatial terms' implies a significant departure from the usual state-centric notions of the international system. This is mainly because these spaces of exception do not merely encompass traditional interstate relations, but also include a broad array of non state actors within and without the traditional boundaries of the national state. From a political economy perspective, this reordering reflects what Robertson, Bonal and Dale (2002) call 'rescaling' of the levels of governance so that:

shifting scales involves the active construction and reconstruction of territories for the purposes of governing. In particular, issues that appear fundamental at one scale disappear entirely from view at another; factions that are active participants at one scale can fade from the scene or even change at another' (Robertson, Bonal & Dale (2002: 472).

'Rescaling governance' is another term used to depict the increasing contested forms of spatial ordering provided by social theorists such as Lefebvre (1991) and Harvey (1999). In these analyses of space and power spatial structures are not just given, but are constantly produced and reproduced. At the same time, this 'spatial reordering' goes beyond mere economic governance to encompass new forms of political rule. However, what is distinctive about the global order in the state of exception is the primacy given to a 'spatial location' within the global order *itself* as a way of organizing political order within the global system.

CONCLUSION

This essay provides a theoretical framework to understand recent changes in the relationship between the US and Southeast Asia. Some have suggested that the events of September 11 have led to a new imperialism or a more military assertive role for the US in Southeast Asia. The problem with this approach to US-Southeast Asia relations is that it assumes a broadly 'outside-in' perspective on US external pressure. To the extent that the state is conceptualised in these accounts it is very much a state centric view of external subordination. While this might have some radical and even 'third worldist' overtones, it remains very much a realist understanding of the global political economy. In contrast, this paper suggests that the dynamics of these undoubtedly important external influences are to be found within the internal transformation of the state. Approaching it from this inside-out perspective allows us to locate the dynamics of the new global order in the internal transformation of the state. In terms of this analysis the events of September 11 do not so much reflect the growth of a new

imperialism as a consolidation of new forms of transnational structures and regulatory forms that remain—even while it may be dominated by the US—much more than a simple assertion of US political power. It is here that Kautsky's notion of ultra imperialism allows us to understand this new global order as a form of transnational regulatory governance that works through the instantiation of regulatory disciplines within the state.

Central to this internal transformation of the state is the emergence of a new transnational regulatory governance. Increasingly, the emergent global economy—because globalisation is a microeconomic process—requires regulation of areas previously considered to be in the domestic domain. Globalisation brings with it a new ensemble of governance institutions; it is these new structures that shape and influence the architecture of the state. A central feature of this new transnational regulatory governance is that the distinction between external and internal—which is one of the founding binaries of the Westphalian state—becomes increasingly problematic as domestic regulatory agencies develop connections with their foreign counterparts as well as with transnational regulatory bodies, thereby taking on a 'global' function. Hence we need to understand network governance as a set of '*regulatory webs*' that encompass both domestic and transnational actors. It is within these webs that new forms of governance are being constituted. It is important to understand that these regulatory webs often do not depend on formal international treaties or on international organisations for their enforcement. Rather, the emergence of transnational regulatory governance depends on, and in fact, requires, the active participation of agencies within the state—a fact which once again draws pointed attention to the importance of the reconstitution of sovereignty in these new systems of global regulation. It is the nature and analysis of this new ultra imperialism in the post Westphalian state- that needs to be at the heart of the research agenda of international relations and political economy in southeast Asia.

NOTES

1. For similar versions of this notion of set of interconnected executive structures see Jayasuriya (1999), Agnew & Corbridge (1995)
2. For a discussion of the notion of the fragmented or regulatory state see Jayasuriya (1994a; 1998). It is important to note that these agencies have relationships with specialized domestic and international constituencies.
3. I follow Poggi (1978) in using the term 'internal sovereignty' to describe the development of this internal coherence within the state.
4. Another way of looking at this is to see the state as an entity that is increasingly functionally differentiated. Much of the dominant literature in international relations and law perceives the state as an undifferentiated entity.
5. See for example Lugard (1929) for an outline of these ideas in a colonial context.
6. Picciotto's analysis of the legal governance of regulatory cooperation is a pioneering attempt to grapple with some of the major theoretical and empirical issues raised by regulatory cooperation. Zaring's (1997) recent work on international financial organisation is also an excellent overview of the implications for international law of regulatory cooperation. Of course, there is an extensive international political economy literature on these issues. See, for example, Underhill (1995) who stresses the importance of network governance.

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