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Regulatory State, Fragmentation,  
and Diplomacy***

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***BREAKING THE 'WESTPHALIAN' FRAME:  
REGULATORY STATE, FRAGMENTATION, AND DIPLOMACY***

***Kanishka Jayasuriya***

***Introduction: globalisation and fragmentation***

The objective of this paper is to broadly outline the way in which the process of globalisation has transformed the internal architecture of the state leading to the emergence of a new form of regulatory state that has serious ramifications for diplomatic practice. This new regulatory state is best understood as a form of economic constitutionalism that decentres and fragments traditional centres of political authority. This chapter suggests that this is a shift towards a new regulatory state and a fragmentation that challenges the traditional 'Westphalian' frame of sovereignty, which is at the core of both the practice and theory of diplomacy. It needs to be recognised that the new regulatory state is becoming established in both developed and developing countries. What is significant about its emergence in the developing countries is that it relates not only to adjustments to international change, but is also increasingly meshed with powerful international (public as well as private) actors and institutions. It is, therefore, subject to tighter and more rigorous disciplinary pressures which accentuates the fragmentation of the state. With this fragmentation of the state comes not only the breakdown of traditional diplomatic domains and activities but also the creation of ***new actors, new arenas, and new fields of diplomatic activity*** – all of which cuts across the traditional Westphalian notion of sovereignty. However, we need to first locate the dynamics of this fragmentation in the complex relationship between globalisation and the state.

The shift towards a fragmented state can be located in the deep-seated structural changes of the global political economy. To adequately understand these changes we need to adopt an internal, rather than an external, perspective on globalisation.<sup>1</sup>

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1. For a useful analysis of the complex way by which globalization shapes the traditional internal/external division of the national state see I. Clark, (1999) *Globalisation and International Relations Theory* (Oxford: Oxford University Press, 1999), and W. Reinicke, *Global Public Policy: Governing without Government* (Brookings Institution, 1998).

Much of the literature on globalisation<sup>2</sup> takes, what could be termed, an external perspective on sovereignty in that the focus is on the external constraints on state action. The standard account of how globalisation affects sovereignty maintains that the rapid integration of the global economy or the increasing intensity of trade and financial flows serve to limit the functions of the sovereign state.

However, the problem with this external model of globalisation is that it leaves untouched the fundamental binary divide between internal and external that is constitutive of the 'Westphalian' model of sovereignty. This analysis serves to obscure the way in which the internal sovereignty of the state is being transformed by the process of globalisation. As against this externally driven model of globalisation, it will be argued that the main sources of change are to be found in the changes to the internal structure of firms, markets and the state. Increasingly, the emergent global economy – precisely because globalisation is a microeconomic process – requires regulation of areas previously considered to be in the domestic domain. This, in turn, means examining the way state structures operate at the interstices of the domestic and international arena. Globalisation, brings with it a new ensemble of governance institutions; it is these new structures that shape and influence the architecture of domestic states. And this is, of course, the point: **globalisation changes the internal architecture of the state**. For example, the growing complex global financial markets require an almost equally complex process of harmonization 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 independently from traditional centres of executive authority and work at the interstices of the domestic and international. Therefore, in this case policy harmonisation in the financial sector cannot be understood within the confines of the traditional boundaries between the international and domestic, which have been so central to the practice and theory of international law and international relations permeating our conventional 'Westphalian' image of diplomatic theory and practice<sup>3</sup> (Jayasuriya 1999).

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2. See Paul Hirst and Geoffrey Thompson, *Globalization in Question: The International Economy and the Possibility of Governance* (London: Polity Press, 1996).
  3. See K. Jayasuriya (1999) 'Globalization, Law, and the Transformation of Sovereignty: The Emergence of Global Regulatory Governance', in *Indiana Journal of Global Legal Studies*, 6 (2) (Spring): 425–55, 1999.

The more general point that needs to be made here is the way the emergent new regulatory state decentres the state. In contrast to the traditional 'Westphalian' frame, state power becomes increasingly diffused and dispersed amongst a number of domestic and international agencies and groups. It is this broad process that I have attempted to capture by the term of 'economic constitutionalism' (Jayasuriya 2001a).<sup>4</sup>

There are four key features of this new decentred regulatory state (Jayasuriya 2000, 2001):<sup>5</sup>

1. Fragmentation and dispersal of public power to relatively insulated governmental agencies and institutions.
2. Diffusion of power to various organizations and structures in civil society.
3. The creation of new hybrid forms of network between public and private agencies, cutting across traditional dividing lines between the international and domestic.
4. The fragmentation of national economic space evident with the growth of new forms of existing and new local structures of power.

In the rest of the paper an attempt will be made to elaborate on each of these elements and discuss its ramifications for the structuring of traditional domains of diplomatic activity and practice.

### ***1. Fragmentation of public power within the state***

One of the main features of the new regulatory state is the constitutionalisation of key economic institutions which in turn insulate these institutions from the politics of bargaining. Economic institutions themselves – such as central banks – take on a juridical character. These developments can be clearly observed in the emergence of governance programs in

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4. See K. Jayasuriya, 'Globalisation, Sovereignty, and the Rule of Law: From Political to Economic Constitutionalism?' Special Issue, *Constellations*, 8 (4): 442–60 2001.

5. See K. Jayasuriya, (2000) 'Authoritarian Liberalism, Governance and the Emergence of the Regulatory State in Post-Crisis East Asia', in R. Robison, M. Beeson, K. Jayasuriya and Hyuk-Rae Kim (eds), *Politics and Markets in the Wake of the Asian Crisis* (London: Routledge, 2000); K. Jayasuriya, 'Globalisation and the Changing Architecture of the State: Regulatory State and the Politics of Negative Coordination', in *Journal of European Public Policy* 8 (1): 101–123, 2001.

multilateral organisations. Not only is most lending tied to the effective implementation of governance programs, but multilateral agencies have followed up on these concerns with extensive aid programs for institutional strengthening or capacity building. The tenor of recent economic reforms in transitional economies and in Southeast Asian countries, has been a tendency towards establishing credible and independent regulatory institutions (Jayasuriya & Rosser 2001).<sup>6</sup> The NICs and Japan have not been immune from the expansion of these programmes to re-engineer the state so that it will have greater regulatory capacity. Michel Camdessus, the former Managing Director of the IMF, notes that the:

IMF's role in governance issues has been evolving over the years, and good governance has taken on increasing importance on our traditional mandate of promoting economic stability and what I call high quality growth (Camdessus 1998: 1).<sup>7</sup>

Furthermore, he argues that the Asian crisis is ample demonstration of the disastrous effects of ineffective governance and lack of market transparency. This obviously has considerable implications for the future of the developmental state. All the recent IMF bailouts of Thailand, South Korea, and Indonesia, require these governments to make substantial efforts to reform their governance regimes.

However, the difference between the early governance programs of the World Bank and the new agenda of what some have termed the Post Washington Consensus (PWC) lies in the attention that is now being paid to enhancing the regulatory capacity of the state. Whereas early governance programs were broadly concerned with the effective implementation of structural adjustment programs, the PWC is more directly concerned with the creation of market order.

The clearest example of the economic constitutionalism and the politics of anti politics that it embodies is the emergence of independent central banks. Central banks have become key players because they provide the link between international regimes and the domestic state. It is a moot point to say

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6. See K. Jayasuriya and A. Rosser 'Economic Orthodoxy and the East Asian Crisis'. *Third World Quarterly*, 22 (3): 381–396, 2001.

7. M. Camdessus 'The IMF and Good Governance'. Address delivered at Conference on *Governments and Enterprises Facing Corruption* organised by 'Transparency International', Paris, January 21, 1998, p. 1.

that the state is being globalised. What is more important is that some domestic state institutions and agencies, more than others, are critical for the implementation of international regimes. In this context, central banks are at the interstices of the engagement between the international economic order and the domestic state. The increasingly juridical character of central banks is a key feature in the management and regulation of this international economic order.

A major reason for this enhanced power of central banks is the growing importance of monetary policy in an era dominated by the pressure for more global financial integration. This latter trend resulted not only in a shift of policy instruments from fiscal to monetary policy, but also a shift of power *within* the state towards agencies such as central banks. While it is a truism to say that external factors will increasingly impinge on the domestic political process, the more urgent theoretical and empirical task is to examine the specific linkages that exist between external and international forces and domestic politics. Central banks are likely to play an important role in this linkage between the external and domestic political environment as they are ideally placed to provide the mechanism through which international forces are transmitted into the domestic political economy.

Nothing is more indicative of these shifts than recent changes to the South Korean central bank, the Bank of Korea (BOK). As Maxfield has noted, the BOK has not had a great deal of legislative or policy autonomy from the executive government. In fact, in South Korea real economic policy making power lay with the Economic Planning Board and the Finance Ministry while the 'central bank does little more than implement credit policies in line with overall government spending plans' (Maxfield 1994: 561).<sup>8</sup> However, recent changes in the BOK such as for example statutory guarantees of legal independence have significantly enhanced the independence of the Korean central bank.

This fragmentation of power has clear implications for traditional diplomacy. At one level, the creation of independent agencies produces insurmountable difficulties for the traditional diplomats located in a Ministry of Foreign Affairs, who are increasingly unable to act authoritatively on behalf of various domestic agencies which not only have a degree of institutional autonomy but also may have diplomatic agendas different from those being

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8. S. Maxfield, S. (1994) 'Financial Incentives and Central Bank Authority in Industrialising Nations', *World Politics* 46: 556-88, 1994, p. 561.

pursued by Foreign Ministries. On the other side of the ledger, many of the institutions such as central banks or environmental regulators now find themselves being asked to play a more international role negotiating and implementing international agreements. Put simply, just as the public power is fragmented so are diplomatic functions which are now not just concentrated in a traditional Ministry of Foreign Affairs but is dispersed amongst a wide array of independent sites of public power.

More generally, this dispersion of diplomacy to various distinct public agencies also reflects the increased technical complexity of many international issues. For example, in areas such as climate change, diplomatic negotiations are of such a highly complex nature that there is an increasing need for specialist technical personnel at the very heart of structures of international governance; these personnel comprise, what Haas<sup>9</sup> (1990) has called, 'epistemic communities'. Hence, an important consequence of the increasing complexity of global governance is the shifting of diplomatic activity to those sites with a concentration of specific expertise and knowledge. While traditional diplomacy still plays an important role in these 'epistemic communities', they are often subordinate to broader professional and expert networks. In short, it becomes much more difficult to maintain diplomacy as an autonomous arena of 'professional' diplomatic practice. The rules and routines which structured diplomacy as a specific social field – to use Bourdieu's<sup>10</sup> language – becomes more and more difficult to uphold as governance becomes complex and fragmented across various domains.

## ***2. Dispersion of power to civil society***

Equally important as the dispersal and fragmentation of public power is the erosion of the very boundary between public and private. The public/private boundary is being confounded by the increasingly interdependent public and private sphere, thereby in effect, creating an array of organizations and institutions that have the attributes of both public and private spheres. As Francis notes, in contrast to the liberal perspective, an alternative framework would highlight the fluidity and the 'complex interdependencies and

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9. P. Haas (1990) *Saving the Mediterranean: The Politics of International Environmental Cooperation* (Columbia University Press, 1990).

10. P. Bourdieu, P. ***Outline of a Theory of Practice*** (Cambridge University Press, 1977).

intersection between state and market actors, and the proliferation of hybrid institutional forms' (Francis 2001: 279).<sup>11</sup>

However, the distinctive feature of the regulatory state lies not so much in the capturing of public power by the private – which public choice theorists have often described the process of state capture – but in the *diffusion* of public power to private organizations. It is this public or the state-like nature of organizations in civil society that has most distinguished the emerging regulatory form of state. From this angle, the important dynamic here is not the emergence of some putative alternative to the state in the form of civil society, as some of the more optimistic notions of civil society would have it, but rather, the fragmentation and dispersal of public power to organizations and institutions within civil society. The regulatory state leads not to the capture of public power by private interests as in public choice theory, or the empowerment of civil society against the state (civil society theorists), but to the instantiation of the 'public power' in private organisations.

One of the strengths of this perspective lies in the ability to move away from the notion of state power as a 'thing' – a fixed quantum that the state possesses – to a more nuanced view of power as the capacity to enable governance. This focuses on the mechanisms and capacities required to exercise power – in broad terms, governance – rather than the leakage or otherwise of state functions to a non-state sector. This is important for our understanding of the emerging regulatory state in which a transition from an emphasis on government to governance can be identified. In the social policy area, this transition is reflected in the reconstitution of civil society organizations which are located in and out of the state. The 'public in private' perspective then, on the one hand, captures the diffusion and dispersal of public power to non-governmental organizations located outside the formal state apparatus; on the other hand, it underlines the manner in which many of these organization operate 'in' and 'out' of the state. No doubt, there is tremendous variation in the relative dependency, origin, and purpose of the NGO–state relationship, but the point that needs to be underscored here is the increasing accentuation of stateness in civil society; there is a dispersal of state power. This, most emphatically, does not lead to the diminution of state power. In fact, it can be argued that the depoliticisation – heralded by

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11. Corina-Barbara Francis (2001) 'Quasi-Public, Quasi-Private Trends in Emerging Markets Economies', *Comparative Politics* April: 275–94, 2001, p. 279.

negotiated governance – enhances the ability of the state to govern civil society.

Ding's (1994) analysis<sup>12</sup> of the emergent civil society in China highlights the way in which associations are both in and outside of the state, underscoring our point about the increasing importance of the 'private in public' mode of governance. Similarly, Unger and Chan<sup>13</sup> in a path breaking analysis of state corporatism in China, points to a similar complexity in disentangling the boundaries of the private and the public.<sup>14</sup> Examples cited include state controlled trade unions which are under competing pressures to articulate labour interests that may sometimes conflict with declared state policies and interests. Many public enterprises while under state ownership are increasingly controlled by managers who act much like private capitalists. In essence, the unfolding logic of the market leads not to the bifurcation of state and society, but to the increasing emergence of new forms of 'private in public' governance, especially prevalent in the putative growth of new forms of social policy organization and delivery. Consequently, this has entailed a relationship between the development of market reform and citizenship, which considerably diverges from the standard liberal model of citizenship. No doubt, these new types of citizenship practices are evident in a range of advanced industrial societies, but the imperatives of developing new modes of social contract in conjunction with neo-liberal economic reforms in a number of East Asian states provide us with an important opportunity to explore these 'new citizenship regimes' in formation.

Saich<sup>15</sup> (2000) notes that in China, social organizations have effectively negotiated with the state to involve them in the formulation and delivery of welfare services. These organizations often have close relationship with the state, but yet operate outside the parameters of the formal state apparatus. The Chinese Communist Party (CCP), in an effort to simultaneously manage change and retain legitimacy, has used these intermediate organizations as

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12. X.L. Ding, 'Institutions, Amphibiousness and the Transition from Communism: the Case of China', *British Journal of Political Science* 24 (1), 293-368, 1994.
  13. J. Unger, and A. Chan, 'China, Corporatism and the East Asian Model', *Australian Journal of Chinese Affairs* 33: 29-53, 1995.
  14. For an analysis of how Chinese market reforms have been dominated by bureaucratic entrepreneurs, see L. Gore, (1998) *Market Communism: the Institutional Foundations of China's Post Mao Hyper Growth* (Oxford University Press, 1998).
  15. Tony Saich, 'Negotiating the State: The Development of Social Organisation in China', *The China Quarterly*: 124-41, 2000.

mechanisms to mediate conflict between various constituencies whilst at the same time use these organizations as a vehicle for legitimacy.

With this diffusion of power, civil society organisations take on 'international' or global roles. For example, recent World Bank initiatives have placed great emphasis on the engagement of civil society in various social programs (Jayasuriya & Rosser 2001).<sup>16</sup> These forms of engagement often lead to the direct participation of non governmental actors in international negotiations and – at least in part – taking on some diplomatic functions. Similarly, given the growing importance of an increasingly privatised governance regime, organisations such as international ratings agencies or accountancy standards organisation, become important players in the international arena. Engagement with these international 'private' actors takes place in sites that are quite distinct from the traditional diplomatic fields.

The new organisational forms of power have important implications for our understating of traditional diplomacy. Our usual image of diplomacy – and of course this is central to the 'Westphalian frame' – is one of a set of practices constituted within the interstices of public power. Hence, the notion that this public power, which to some extent is diffused within various civil society organisations runs contrary to our understanding of by 'whom' and 'where' diplomatic practice is conducted. Nevertheless, the fact remains that new forms of global governance create new international actors operating outside of traditional public institutions.

In this context, it is useful to explore the ramifications of the rise of 'private diplomacy' in several developing countries. To give some examples:

- The rapid increase in civil wars and associated violence has led to an increasing involvement of a range of private actors who facilitate, mediate, and even monitor, peace agreements between states and warring parties. The European based International Crisis Group<sup>17</sup> has been a particularly influential diplomatic actor in a number of crisis areas.
- It is the case that in countries such as Bosnia or Afghanistan, non governmental humanitarian organisations are in the forefront in the delivery and implementation of a range of welfare programs. Indeed, just

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16. See K. Jayasuriya and A. Rosser 'Economic Orthodoxy and the East Asian Crisis'. *Third World Quarterly*, 22 (3): 381–396.

17. See their web site < <http://www.crisisweb.org/>> for a comprehensive overview of their activities.

as there is a blurring of the boundary between domestic, private, and public actors, there seems to be parallel trend in the global sphere. International civil society is no longer independent of domestic and global public power; it is increasingly involved in the exercise of that public power.

- The area of economic diplomacy has witnessed the expanding global role of domestic business organisations and agencies. For example, in the Indian context Sridharan<sup>18</sup> (2002) documents the influential role played by Indian business organisations. She notes that ‘no less remarkable is the fact that every high powered ministerial visit abroad has begun including an influential group of business leaders. These business delegations have grown larger and larger’ (Sridharan 2002: 69).<sup>19</sup>

These examples serve to highlight the fact that fragmentation, which is so distinctive of the new regulatory state, diffuses public power to areas that are traditionally considered to be within the sphere domestic or international civil society. One important consequence of this dispersion of power has been the rise of ‘private diplomacy’. However, to understand this new private diplomacy we need to move beyond the traditional Westphalian notions of sovereignty.

### ***3. Fragmentation of the state and network governance***

One of the important features of governance mechanisms in the global economy is the emergence of a system of regulatory networks. As the state becomes fragmented, domestic regulatory agencies develop connections with their foreign counterparts as well as transnational regulatory bodies, thereby taking on an ‘international’ function. This reconstitution of sovereignty in a world of rapid globalization takes the ‘internal’ form of fragmentation and polycentricity, and the ‘external’ form of ‘network governance’. In fact, regulatory systems have taken on an enhanced role in the management of the global economy and poses important challenges to our conception of the way international law is formulated and enforced; these regulatory webs do not

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18. K. Sridharan, ‘Commercial Diplomacy and Statecraft in the context of Economic Reform: The Indian Experience’, *Diplomacy and Statecraft* 13 (2): 57–82, 2002.

19. *Ibid*, p. 69.

depend on formal international treaties or rely on international organisations for their enforcement. In short, the emergence of an international regulatory state depends on, and in fact, requires, the active participation of agencies within the state. Again, the importance of the reconstitution of sovereignty in these new systems of global regulation should be recognised. Following the work of Picciotto we can describe this as a form of 'network governance'. As Picciotto observes:

these contacts can aptly be described as taking place through networks, in a number of senses. Firstly, they are informal or semi-formal in nature: even when they are publicly visible, they are often not founded on conventional legal instruments such as treaties, but on 'gentlemen's agreements' which may be semi-secret (Picciotto: 1996: 112).<sup>20</sup>

Often these regulatory networks<sup>21</sup> rely on the application of formal standards rather than a set of 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<sup>22</sup> (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.

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20. S. Picciotto, 'The Regulatory Criss-Cross: Interaction between Jurisdictions and the Construction of Global Regulatory Networks', in W. Bratton et al *International Regulatory Competition and Coordination: Perspective on Economic Regulation in Europe and the United States* (Oxford: Clarendon Press, 1996), p. 112.

21. Picciotto's (ibid) 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. D. Zaring's recent work – 'International Law by other Means: The Twilight Existence of International Financial Regulatory Organisation', *Texas International Law Journal* 33: (2): 281-330, 1998 – provides an 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, G. Underhill, 'Keeping Governments out of Politics: Transnational Securities Markets, Regulatory Cooperation, and Political Legitimacy', *Review of International Studies* 21 251-78, 1995, where he underlines the importance of network governance.

22. Anne-Marie Slaughter, 'The Real New World Order'. *Foreign Affairs* 76: (5): 183-97, 1997.

Therefore, if network governance is the preferred form of management, regulatory harmonisation is the conceptual framework for international regulatory networks. Again, the EU provides a useful illustration. The construction of the European Single Market has made it imperative that there be a complementary process of regulatory harmonization, or a system of mutual recognition (Beeson & Jayasuriya 1998).<sup>23</sup> An analogous argument can be made at the global level that the constitution of the global economy requires similar mechanisms of regulatory harmonization at the national level. But this depends on the creation of 'islands of sovereignty' within the state. For a global economy to operate there has to be a high degree of cooperation in areas that fall within the traditional domain of the national state in order to facilitate a system of global governance. Hence, this global governance requires the nationalization of international law, which can only be achieved through the reconstitution of sovereignty. In other words, the form of sovereignty is determined by the changing structure of the capitalist economy.

In this context, the Basle Accord on capital adequacy standards – set of standards agreed to by central banks to maintain adequate capital levels – provides a useful example of this type of regulatory mechanisms. Capital adequacy has become important because of the increasing integration of the financial services industry. As a result, there has been a demand for greater regulation or management of this increasingly mobile banking sector. As Peter Cook, the second chairman of the Basle Committee points out:

There was, in effect, a supervisory vacuum in this global market, which needed to be filled. Neither the supervisors, nor indeed the banks themselves, had fully appreciated the degree to which the banking environment was changing in character and the new and increasing risks involved in international business. Supervisors were still very much domestically oriented within the framework of different national banking systems<sup>24</sup> (quoted in Reinicke 1998: 104).

However, what is significant in these new regulatory frameworks is the interpenetration of specific public and private agencies in regulatory governance, creating a complex multi layered system of regulation.

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23. See M. Beeson and K. Jayasuriya, 'Competing Political Rationalities of Regionalisms: APEC and the EU in Comparative Perspective', *The Pacific Review* 11 (3): 311–36, 1998.

24. Peter Cook quoted in Reinicke, *Global Public Policy*, p. 104.

Apart from these broad changes in global governance there is greater emphasis on the development of regional regulatory frameworks. This is evident in the focus on the development of policy coordination and harmonization – a form of regulatory regionalism 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 a regional framework. In this context, Phillips<sup>25</sup> (2001) makes a strong case, that in effect, the relaunching of Mercosur in June 2000, provided the basis for a new program of regional integration based on a system of policy harmonization in areas such as monetary policy and surveillance programs. She makes the highly significant point that:

... subregionalism in the Mercosur has come to rest on a principle of policy coordination which implies, *in the long term*, the articulation of a new form of market governance. This form of market governance rests in the first instance on a significant regionalisation of governance mechanisms. While this process does not imply the wholesale elimination of more 'national' forms of economic governance, progressively the trend is towards convergence upon a regionally coordinated policy norms and objectives and the location of market governance at the subregional level<sup>26</sup> (Phillips 2001: 580).

A similar dynamic discernable in the emerging process of regionalisation in East Asia is the mesh between emerging regulatory states and new patterns of regional governance. This regional governance manages to locate the regional within the domestic. This is to be understood in the sense that there is a simultaneous recognition that region wide regulatory frameworks, such as monetary coordination and macro economic policies, can be implemented and policed at a local level. 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. One nascent example of the emergence of this system of regional multilevel regulation is the ASEAN regional surveillance

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25. N. Phillips, 'Regionalist Governance in the New Political Economy of Development: 'Relaunching' the Mercosur', *Third World Quarterly* 22 (4) 565–83, 2001.

26. Ibid, p. 580.

process (ASP) which was endorsed by ASEAN Financial Ministers in December 1998<sup>27</sup> (Manupipatpong 2002).

Manupipatpong argues that:

Another gap that the ASP can potentially fill has to do with current efforts to encourage countries to adopt internationally agreed standards and codes in order to enhance the effective operation of market forces and the resilience of financial systems. These standards and codes include the IMF code of good practices on transparency in monetary and financial policies, the IMF code of good practices on fiscal transparency, and the OECD principles of corporate governance<sup>28</sup> (Manupipatpong 2002: 114–115).

What is clearly discernable with this ASP process is that it links national and the international regulatory governance through the internationalization of various state agencies and actors. This has become part of a regional system of surveillance and regulation, which transmits the disciplines of a globalised economy. And this is an important point: the reproduction of the global economy requires the increasing harmonization of standards and codes such as corporate governance, transparency standards, and broad macro and micro economic policies. While the broad parameters of these standards are spelt by supranational organizations, it is through regional governance structures that these standards are fleshed out. Close collaboration with national and other levels of governance is established to implement these standards and mechanisms of policy coordination; the regulatory – or significant parts of it – are both internationalised and regionalized in the sense that the standards and mechanisms of policy coordination are instantiated within the political apparatus.

The development of these new multilevel and hybrid forms of regulatory governance has significant implications for traditional 'Westphalian' models of diplomatic practice. First, the operation of transnational governmental networks composed of regulatory agreements between various sub agencies and regulatory agencies runs counter to the Westphalian notion that intra governmental negotiations are agreements between individual states formalised in international law. However, as global governance comes to

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27. See W. Manupipatpong, 'The ASEAN Surveillance Process and the East Asian Monetary Fund', *ASEAN Economic Bulletin* 19 (1): 111–122, 2002.

28. Ibid, pp. 114–115.

depend on the operation of a regulatory network of agencies where agreements are often embodied in 'soft law' rather than in international treaties, traditional centres of diplomatic activity within Ministries of Foreign Affairs are displaced by new international functions undertaken by regulatory agencies within the international networks.

Second, the displacement of diplomatic activity is more acute in hybrid public and private networks where international functions are often taken on by actors who are at the interstices of the public and private. In these hybrid public/private networks, diplomacy is not only shunted horizontally within the public apparatus but also vertically to private actors who often act in concert with public agencies to regulate and monitor compliance with regulatory frameworks.

Finally, the impact of the network impinges, to use Bourdieu<sup>29</sup> terminology again, on the 'habitus' – the common sense or taken-for-granted assumption of diplomacy. Although it may have various 'national' memberships, a network often requires members to take on 'international' roles. In this context, operating as a member of a network denationalises diplomacy to such a degree that it runs counter to the traditional 'Westphalian' assumption that diplomacy is the representation – however defined – of the national interest. In the long term, it is the breakdown of these taken-for-granted assumptions about the 'national' diplomacy that may signal the most profound change in the nature of diplomatic activity.

#### **4. Fragmentation of national space**

Clearly, the rapid development in the growth of private and public institutions of economic regulatory institutions is a hallmark of the new regulatory state. But equally distinctive of the regulatory state is the emergence of a decentred political economy in a number of newly industrialising countries such as India and China. It is not just a process that is confined to emerging market economies. In fact, the making of a single market in the European Union (EU) provides us with a paradigm case of a de-centred political economy. What is most noteworthy in these examples is that the process of market building in a federal context – federalism used in a very broad sense here to denote the de facto federalism in China, de jure federalism in India, and of

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29. Bourdieu, *Outline of a Theory of Practice*.

course the EU which is federal in economic rather than political terms – required a deep seated transformation from an interventionist to a regulatory state. In fact, the significance of the work of Rudolph and Rudolph<sup>30</sup> (2001) lies in their ability to relate the emergence of what they term a ‘federal market system’ to the shift towards a regulatory state in India. A federal market system points to the rise of ‘new patterns of shared sovereignty between the states and the centre for economic and financial decision-making. This increased sharing shifts India’s federal system well beyond the economic provisions of its formal constitution’<sup>31</sup> (Rudolph & Rudolph 2001: 1542).

The notion of a ‘federal market system’ is preferable to Weingast’s<sup>32</sup> (1995) framework of a market preserving federalism because it enables to understand the dynamics of the changing relationship between the centre and its sub-units in terms of the underlying transformation of state functions driven by a number of structural imperatives. Weingast’s framework of market preserving federalism is trapped in the simplistic and rigid straight jacket of rational choice institutionalism. The key to understanding the operation of the kind of federal market system outlined by Rudolph and Rudolph<sup>33</sup> (2001) lies in the emergence of the regulatory state. They observe that as the ‘centre’s role as an interventionist state has faded, its role as a regulatory state has grown. The centre has imposed hard budget constraints on the states’<sup>34</sup> (Rudolph and Rudolph 2001: 1546).

Hence, the critical point here is that these emergent federal market systems are dominated by changing relationship between the centre and its component units in the federal system. It is a relationship that cannot simply as Weingast<sup>35</sup> (1995) implies be understood in terms of centralisation or decentralisation that enhanced the capacity of sub-national units at the expense of the centre. Rather, the experience of China indicates that both the centre and its sub-national units enhanced their capacity with the

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30. L. Rudolph and S. Rudolph, ‘Iconisation of Chandrababu: Sharing Sovereignty in India’s Federal Market Economy’, *Economic and Political Weekly* May 5: 1541–1552, 2001.

31. Ibid, p. 1542.

32. See B. Weingast, ‘The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Growth’, *Journal of Law, Economics and Organisation* 11: (1) 1–31, 1995.

33. Rudolph and Rudolph, ‘Iconisation of Chandrababu’.

34. Ibid, p. 1546.

35. Weingast, ‘The Economic Role of Political Institutions.’

development and consolidation of the federal market system. As Li notes in a discussion of provincial investment policy, 'central-provincial relations are merely not about compliance and control, but are characterized by mutual influence and choice. Both parties exert influence on one another, and both exercise choice within and despite such influences by the other'<sup>36</sup> (Li 1995: 802).

Hence the distinctive feature of these federal market systems in a globalizing world is the competition between sub national states for capital in a structure where the centre acts as a regulatory state safeguarding macroeconomic and monetary order as well as enhancing market competition within the federal system. Just as it polices and monitors 'autonomous economic administration', the regulatory state also takes on the role of monitoring the activities and functions of its various sub national units. From this perspective, the key to understanding the dynamics of federal market systems in the global economic order is the emergence of a federal authority with a range of regulatory capacities.

The emergence of this federal markets system is accompanied by the constitutionalisation of federal market institutions, creating in effect, a federal economic constitution. In the context of the federal market system, constitutionalisation refers to the entrenchment of federal economic unions in sets of rules and institutions which are beyond the reach discretionary political action. In part, this economic constitutionalisation occurs through the operations of the 'central' regulatory state which acts as a guardian of the federal market order and institutions. In essence, the regulatory state acts to enhance, as well as constrain, the functioning of sub national units within the federal market system. Economic constitutionalisation is also mirrored in the development of a new architecture of federal economic institutions. At one level, many of the regulatory institutions such as central banks and securities commissions become much more federalised in their organisation and operation. But over and above this, a federal economic constitutionalism leads to the creation of a new architecture of federal economic institutions designed to manage the federal market system.

There are obvious ramifications of this for diplomacy as local and sub-national actors take on, and expand, their diplomatic functions in areas such as commercial and environmental diplomacy. At one level, the burgeoning

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36. L. Li, 'Provincial Discretion and National Power: Investment Policy in Guangdong and Shanghai, 1978-1993'. *The China Quarterly* No. 152: 778-804, p. 802.

multi level nature of global governance requires that local sub national governments and regulatory agencies are enmeshed in global and regional regulatory governance. Hence, one important implication of these changes is that these sub national governments take on a global role that was once monopolised by national central governments.

At another level, the increasingly decentralisation of state based economic activities impels the local governments to compete internationally for international investment. Hence, in states such as India and China it is evident that sub national governments develop their own independent linkages with global and transnational actors. For example, the expansion of cross regional border zones such as the Johor, Riau and Singapore growth triangle creates a series of linkages between local governments. These linkages exist alongside more traditional intergovernmental relationships. Similarly, the decentralisation of economic activity provides incentives for states to establish direct links with sub national governments rather than deal with structures and processes of the central or national Foreign Ministry. The key point is that these developments have spurred the growth of the global or international functions of local governments to an extent where the national monopoly on certain kinds of diplomatic functions needs to be called into question.

### ***Conclusion – breaking the ‘Westphalian’ frame***

It is useful to consider diplomatic activity as an ‘autonomous social field’ with its own particular type structural relationships. In this context, what gave diplomatic activity its autonomy was a form of privileged monopoly over a set of highly specialised diplomatic practices and routines. No doubt, the manner in which the symbolic capital was enshrined in these diplomatic practices and routines has been continually challenged and contested by various groups. For one obvious example, consider the transition between diplomacy as essentially an aristocratic activity in the 19<sup>th</sup> century to the growing professionalisation of foreign policy bureaucracies of the 20<sup>th</sup> century.

However, what is unique in the emergence of the regulatory state and the fragmentation of sovereignty that it implies is the fact that the monopoly of traditional centres with regard to the instruments and activities of diplomacy is being contested. Along with the increasing fragmentation of diplomatic activity is a loss of control over the symbolic capital that gave this privileged monopoly of diplomatic routines and practices.

Central to the loss of this symbolic capital, it can be argued, is the breaking of the traditional 'Westphalian' frame of sovereignty. The movement of sovereignty towards new actors and arenas – civil society, sub national actors, global networks, and independent agencies, has disrupted the state monopoly over internal sovereignty so distinctive of the 'Westphalian' model. It is this fragmentation that lies at the heart of the emerging regulatory state and has important ramifications for the nature and organisation of diplomatic activity. However, the most significant ramifications of these developments may lie in the loss of 'taken-for-granted' and practical consciousness of sovereignty – Bourdieu's<sup>37</sup> (1977) notion of 'habitus' – that underpins the symbolic field of the traditional domain of diplomatic activity. The next step in this research agenda is to explore how the fragmentation of the state is leading to the creation of new and multiple arenas of diplomatic fields, each with its own distinctive structures and symbolic fields. This must for example, focus much more clearly on the conditions and circumstances under which non state actors or quasi public agents engage in diplomacy. At the same time, we also need to focus on the way these actors form transnational networks that do not necessarily coincide with traditional models of the 'Westphalian' state. Identifying these networks will be an important task for future research. We also need to be cognisant of the fact that these new centres of diplomatic activity carry with them new types and sources of political power that forces us to confront the most important question of all: who benefits?

### **References**

- Beeson, M. and K. Jayasuriya (1998) 'Competing Political Rationalities of Regionalisms: APEC and the EU in Comparative Perspective'. *The Pacific Review* 11 (3): 311–36.
- Bourdieu, P, (1977) *Outline of a Theory of Practice*. Cambridge University Press.
- Camdessus, M. (1998) 'The IMF and Good Governance'. Address delivered at Conference on *Governments and Enterprises Facing Corruption* organised by 'Transparency International', Paris, January 21.
- Clark, I. (1999) *Globalisation and International Relations Theory*. Oxford: Oxford University Press.

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37. Bourdieu, *Outline of a Theory of Practice*.

- Deacon, B. (1997) ***Global Social Policy: International organizations and the future of Welfare***. Sage Publications.
- Ding, X.L. (1994) 'Institutions, Amphibiousness and the Transition from Communism: the Case of China'. ***British Journal of Political Science*** 24 (1), 293-368.
- Francis, Corina-Barbara (2001) 'Quasi-Public, Quasi-Private Trends in Emerging Markets Economies' ***Comparative Politics*** April: 275-94.
- Gore, L. (1998) ***Market Communism: the Institutional Foundations of China's Post Mao Hyper Growth***. Oxford University Press.
- Haas P (1990) ***Saving the Mediterranean: The Politics of International Environmental Cooperation***. Columbia University Press.
- Hirst, Paul and Geoffrey Thompson (1996) ***Globalization in Question: The International Economy and the Possibility of Governance***. London: Polity Press.
- Jayasuriya, K. (1994) 'Political Economy of Democratisation in East Asia'. ***Asian Perspective*** Fall-Winter 18 (2): 141-80, 1994.
- Jayasuriya, K. (2000) 'Authoritarian Liberalism, Governance and the Emergence of the Regulatory State in Post-Crisis East Asia'. In R. Robison, M. Beeson, K. Jayasuriya and Hyuk-Rae Kim (eds), ***Politics and Markets in the Wake of the Asian Crisis***. London.
- Jayasuriya, K. (2001) 'Globalisation and the Changing Architecture of the State: Regulatory State and the Politics of Negative Coordination'. ***Journal of European Public Policy*** 8 (1): 101-123.
- Jayasuriya, K. and A. Rosser (2001) 'Economic Orthodoxy and the East Asian Crisis'. ***Third World Quarterly***, 22 (3): 381-396.
- Jayasuriya, K. and A. Rosser (2001) 'The Political Economy of Economic Liberalisation in Southeast Asia'. In G. Rodan et al. (eds), ***The Political Economy of Southeast Asia***. 2<sup>nd</sup> edn. Oxford University Press, 2001, pp. 233-254.
- Jayasuriya, K. (1999) 'Globalization, Law, and the Transformation of Sovereignty: The Emergence of Global Regulatory Governance'. ***Indiana Journal of Global Legal Studies***, 6 (2) (Spring): 425-55.
- Jayasuriya, K. (2001a) 'Globalisation, Sovereignty, and the Rule of Law: From Political to Economic Constitutionalism?' Special Issue, ***Constellations*** 8 (4): 442-60, 2001.
- Li L. (1997) 'Provincial Discretion and National Power: Investment Policy in Guangdong and Shanghai, 1978-1993'. ***The China Quarterly*** No.152: 778-804.

- Manupipatpong, W. (2002) 'The ASEAN Surveillance Process and the East Asian Monetary Fund'. *ASEAN Economic Bulletin* 19 (1): 111-122.
- Maxfield, S. (1994) 'Financial Incentives and Central Bank Authority in Industrialising Nations'. *World Politics* 46: 556-88.
- Phillips, N. (2001) 'Regionalist Governance in the New Political Economy of Development: 'Relaunching' the Mercosur'. *Third World Quarterly* 22 (4) 565-83.
- Picciotto, S. (1996) 'The Regulatory Criss-Cross: Interaction between Jurisdictions and the Construction of Global Regulatory Networks'. In W. Bratton et al *International Regulatory Competition and Coordination: Perspective on Economic Regulation in Europe and the United States*. Oxford: Clarendon Press.
- Reinicke W (1998) *Global Public Policy: Governing without Government* Brookings Institution.
- Rudolph, L. and S. Rudolph (2001) 'Iconisation of Chandrababu: Sharing Sovereignty in India's Federal Market Economy'. *Economic and Political Weekly* May 5: 1541-1552.
- Saich, Tony (2000) 'Negotiating the State: The Development of Social Organisation in China'. *The China Quarterly*: 124-41.
- Slaughter, Anne-Marie (1997) 'The Real New World Order'. *Foreign Affairs* 76: (5): 183-97.
- Sridharan, K. (2002) 'Commercial Diplomacy and Statecraft in the context of Economic Reform: The Indian Experience'. *Diplomacy and Statecraft* 13 (2): 57-82.
- Underhill, Geoffrey (1995) 'Keeping Governments Out of Politics: Transnational Securities Markets, Regulatory Cooperation, and Political Legitimacy'. *Review of International Studies* 21 251-78.
- Unger, J. and A. Chan (1995) 'China, Corporatism and the East Asian Model'. *Australian Journal of Chinese Affairs* 33: 29-53.
- Weingast, B. (1995) 'The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Growth'. *Journal of Law, Economics and Organisation* 11: (1) 1-31.
- Zaring, D. (1998) 'International Law by other Means: The Twilight Existence of International Financial Regulatory Organisation'. *Texas International Law Journal* 33: (2): 281-330.