

تحليل العلاقة بين الذكاء الاصطناعي والدول الفاشلة: إرث النظام الويستيغالي تحت التهديد

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الملخص

لقد أحدث الذكاء الاصطناعي، باعتباره أعظم إنجاز تكنولوجي للبشرية، ثورة في حياة الإنسان في جوانب مختلفة. في حين أنه، للوهلة الأولى، يعتبر أداة تميل إلى مساعدة الدول في أداء وظائفها في العالم الحديث، فإن الذكاء الاصطناعي، من خلال دفع الدول إلى الفشل، يجب أن يُنظر إليه على أنه تهديد كبير للبنية الويستيغالية للأمة وينتج هذا بشكل خاص عن ميزاته الرئيسية بما في ذلك الحكم الذاتي. من خلال اختيار طريقة البحث التحليلي واستخدام الاستدلال القائم على القياس، تهدف المقالة إلى الإجابة على هذا السؤال الرئيسي وهو إلى أي مدى يعمل الذكاء الاصطناعي كعامل خارجي جديد يدفع الدول إلى الفشل؟ علاوة على ذلك، سيتم الرد على هذا السؤال إلى أي مدى يمكن تعديل المفهوم الويستيغالي للدول القومية وحتى اختقائه مع ظهور الذكاء الاصطناعي. ولهذا الغرض، فإن المقالة، قياساً على الجهات الفاعلة غير الحكومية ولا سيما الجماعات المتمردة، يرى أن الذكاء الاصطناعي كعنصر فاعل جديد قد لا يتسبب في أن تصبح الدول دولاً فاشلة فحسب، بل قد يؤدي أيضاً، من خلال تقويض سيادة الدولة، إلى إلغاء نموذج الويستيغالي. لذلك، إن منع ظاهرة الدول الفاشلة والاحتفاظ بالدولة القومية الويستيغالية يعتمد إلى حد كبير على استخدام الذكاء الاصطناعي بحذر شديد.

الكلمات الدالة: الذكاء الاصطناعي، الدول الفاشلة، النظام الويستيغالي، السيادة، القانون الدولي، ممثلو الجهات غير الحكومية.

Analysis of the Relation between Artificial Intelligence and Failed States: The Legacy of the Westphalian System under Threat

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Abstract

Artificial intelligence (“AI”), as the greatest technological achievement of mankind, has revolutionized the human life in different aspects. While, at first glance, it is considered as a tool having the tendency to help States in performing its functions in the modern world, AI, by pushing States to failure, is to be viewed as a major threat to the Westphalian structure of Nation-States. This is particularly resulted from its main features including autonomy. Choosing analytical research method and using analogy-based reasoning, the paper aims to answer this main question that to what extent and how AI acts as a new external factor pushing States to failure. Furthermore, this question will be answered that to what extent the Westphalian conception of Nation-States may be modified and even disappeared by the emergence of AI. For this purpose, the paper by analogy with non-State actors, notably rebel groups, argues that AI as a new actor not only may cause States to become failed States, but also, by undermining State sovereignty, may abolish the Westphalian model of Nation-States. Therefore, preventing from the phenomenon of failed States and retaining the Westphalian Nation-States is largely dependent on using AI with the extreme caution.

Keywords: Artificial Intelligence, Failed States, Westphalian Nation-States, Sovereignty, International Law, Non-State Actors.

1. Introduction

The Artificial Intelligence (hereinafter “AI”) is to be viewed as a revolution (Gicquello, 2020), the newest and greatest technological achievement of mankind which has revolutionized human life in many different aspects. Despite the fact that, at least in the first place, AI is regarded as an instrument having the ability of contributing States to exercise their functions (including but not limited to improving judicial decision making, enhancing the accuracy of facial recognition (Deeks, 2020) and protecting human rights), by leading States to failure, it is to be viewed as a major threat to States.

Choosing analytical research method and using analogy-based reasoning, the paper aims to answer this main question that to what extent and how AI acts as a new external factor pushing States to failure. Furthermore, this question will be answered that to what extent the Westphalian conception of Nation-States may be modified and even disappeared by the emergence of AI. For this purpose, the paper firstly goes through the definition of the term “Artificial Intelligence”. In this respect, by referring to both doctrinal definitions and those provided by the European Commission (“EC”) and the United Nations Human Rights Council (“UN OHCHR”), the main and challenging features of AI, i.e., its autonomy and independence are taken into account. Afterwards, the phenomenon of failed States in international law will be elaborated. In this section, this issue is considered that failed States which are unable to perform their obligations internally (against their populations) and externally are a big danger to the international order (Patrick, 2006).

Then, in Section 4, the main hypothesis of the paper with regard to the relationship between the AI and failed States will be examined. In this respect, by using analogy method, it is argued that AI may push States to failure in a rather similar way to non-State actors, including rebel groups. This is derived from AI’s autonomy and its detrimental effects on human rights and peace and security resulting in saying goodbye to such legal fictions that “a sovereign State is one that acknowledges no superior power over its own government” (Brand, 2002) or “Sovereignty is the absolute, and perpetual power of a commonwealth” (Bodin, 1992). Lastly, in Section 5, this question is taken into consideration that whether the emergence of AI can be regarded as an element accelerate eroding and abolishing of States as a Westphalian Western Leviathan (emerged after the 1648 Peace of Westphalia) (Beigzadeh, 2023).

2. Artificial Intelligence as a New Actor Aggravating the State Failure

Artificial intelligence refers to “the science and engineering of making intelligent machines, especially intelligent computer programs” (McCarthy, 2007). Historically, working on intelligent machines began after World War II. By designing Turing test, Alan Turing was the first one who started research on intelligent machines in 1947. In his article published in 1950 (Turing, 1950), by stating that if the machine could successfully pretend to be human to a knowledgeable observer, then you certainly should consider it intelligent, he determined the criterion for considering a machine as an intelligent one (McCarthy, 2007). Nonetheless, the term “Artificial Intelligence” has its origin in the 1956 Dartmouth Conference of Scientists and Mathematicians (Dartmouth, 1956) consisted of prominent scientists such as John McCarthy, Marvin Minsky and Herbert Simon (Rhim & Park, 2019). They were of the view that AI is to be defined as a machine that behaves “in ways that would be called intelligent if a human were so behaving”. (Eysenck, M. & Eysenck. C., 2022)

In addition to these doctrinal definitions, the explanations provided by the EC and David Kaye, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, are also accepted universally. According to the EC, AI refers to “systems that display intelligent behavior by analyzing their environment and taking actions – with some degree of autonomy – to achieve specific goals”. (European Commission, 2018). In view of Kaye, “AI is often used as shorthand for the increasing independence, speed and scale connected to automated, computational decision-making”. (United Nations General Assembly, A/ 73/ 348, 2018). According to these definitions, it can be understood that to consider a machine as an example of AI, some factors are to be taken into consideration. They are “scale, speed, degree of autonomy and generality”, writes Professor Nilsson (Kirk, 2019). On this basis, AI is to be deemed as an independent and autonomous entity using its knowledge in a manner not predetermined by its inputting data (Hars, 2022). Then, despite it is regarded as a new technological revolution, thanks to its special features (particularly, its independence and autonomy) AI is to be considered as a major current challenge for the main actor of international law (i.e., States), to the extent that AI may threaten the power and sovereignty of State by pushing it towards failure. This being said, by analyzing the concept of State failure and its elements, this issue is to be considered that to what extent and how AI may aggravate the failure of States, compared to other influential external actors.

3. Conceptualizing the State Failure and its Features in AI Age

According to Francis Fukuyama, “since the end of the Cold War, weak and failing States have arguably become the single most important problem for international order” (Patrick, 2006). State failure, therefore, is not a new phenomenon. Somalia, Bosnia, Cambodia, Mozambique, Liberia, the Democratic Republic of Congo (“DRC”), Sierra Leone, Lebanon, Afghanistan and Tajikistan are regarded as just some examples of failed States (Nagan & Hammer, 2004) throughout the history of international law.

Needless to say, in the existing structure of international law, States “are the essential building blocks of the international political system” (Giorgetti, 2010). There are situations, however, where States (whose sovereignty and effective control are undermined) cannot perform their obligations internally (against their populations) and externally (against other States). Indeed, failed States, by definition, are not able to provide public goods (including providing healthcare systems, protecting fundamental human rights, maintaining peace and security and preserving order) to their citizens. To explain it more, they are “no longer able or willing to perform the job of a Nation-State in the modern world” (Giorgetti, 2010). Loss of effectivité and sovereignty together with the inability of State to perform its obligations (whether internally and externally), therefore, are regarded as the common features of all failed States. Nonetheless, based on the degree of failure, State failure has a different range starting with weak or fragile States and ending with collapsed States, as an entity who present a total vacuum of authority. In this respect, the view expressed by Chiara Giorgetti may be helpful. She stated that “if we imagine that sovereignty is white and that complete State collapse is black, State failure does not come in either color, but in many shades of gray”(Giorgetti, 2010). This failure may have different origins, but one of the main causes is the interference by outside powers (Einsiedel, 2005). To date, State failure is often resulted from the presence of non-State actors, notably rebel groups and national liberation movements, in a given territory. Activities of Islamic State (“ISIS”) in Syria, Taliban in Afghanistan and Congo Liberation Movement (“MLC”) rebel group led by Mr. Bemba in DRC (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, 2005) are just some clear examples in this regard. Due to the impacts of failed States for international community, the International Commission on Intervention and State Sovereignty in its report on the Responsibility to Protect, stressed that failed States “are quite likely to generate situations which the international community simple cannot ignore” (Einsiedel, 2005). This consideration was also taken into account by the United Nations Security Council in its Resolution 2178, by expressing that “foreign terrorist fighters may pose a serious threat to their States of origin, the States they transit and the States to which they travel, as well as States neighboring zones of armed conflict

in which foreign terrorist fighters are active and that are affected by serious security burdens, and noting that the threat of foreign terrorist fighters may affect all regions and Member States, even those far from conflict zones” (United Nations Security Council, 2014). It follows that the phenomenon of failed States caused by non-State actors, by itself, may pose significant challenges to the current structure of international law. As mentioned earlier, this problem is aggravated by the emergence of AI as a new influential actor in State failure, to the extent that due to autonomous and unpredictable behavior of AI, the process of State failure may be accelerated.

4. The Role of AI in State Failure through the Lens of Analogy

As discussed in previous section, in the context of modern international law, State sovereignty may be targeted and even violated by outside forces (Reisman, 1990) including non-State actors (for example, rebel groups or terrorist groups). This is in line with the ICJ’s dictum in Nicaragua Case, according to which there is a connection between the principle of State sovereignty and the principle of non-intervention (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, 1986), meaning that intervention of other actors in a territory of a given State or in matters which are essentially within the domestic jurisdiction (The Charter of the United Nations, 1945) of that State may simultaneously endanger its sovereignty. In these circumstances, a State whose sovereignty is weakened and it is not able to exercise its functions, is to be considered a failed State. Afghanistan, for instance, is just one example of a failed State which was not able to ensure peace and security and protect human rights (especially women’s rights) due to the presence of Taliban and failure of central government (Englehart²⁰¹⁷). The is also true for Syria due to the activities of Hay’at Tahrir al-Sham (HTS) -formerly known as Al-Nusra Front- in that State (Stanford University, 2021). Accordingly, another rebel and terrorist group, which claimed for statehood and to be regarded as a big danger for some States, including Iraq, Syria and Afghanistan, was ISIS (Mahmoudi²⁰¹⁶). In all said scenarios, States in question inevitably lose their sovereignty and control over their territory and consequently become unable in performing their functions against their citizens and international community.

By the appearance of the Information Age, Walter Wriston stated that “sovereignty, the power of a nation to stop others from interfering in its internal affairs, is rapidly eroding” (Perritt JR, 1998). Over the years, there were some cases in which the Westphalian Nation-States have used their sovereignty as bargaining chips (Cassel, 2001). A perfect example can be seen with regard to protection of human rights by States resulted in limiting of their sovereignty. In

contrast, there may be situations in which not only a State should not use its sovereignty as bargaining chips, but also it should try to retain its effective control and power over its territory and citizens. Otherwise, that State, by failing to conduct its functions, becomes a failed State. As of today, this is the situation caused by the presence of non-State actors (with the power of challenging the sovereignty of States) in a given territory and *mutatis mutandis*, the same may apply for AI. This interesting parallel between AI and non-State actors (at least some of them), has its origin in this assumption that both of them may possess international rights and obligations and, as will be discussed later, under certain circumstances may be responsible for international wrongful acts (Crawford, 2012). Although in the existing framework of international law, considering AI as a new actor or subject of international law may be premature, it should not be overlooked that “obtaining legal personality is not an instantaneous act in international law” and this would be true for AI (Hars, 2022). In this regard, by viewing AI as a new actor of international legal system (or at least as an entity which is in the process of obtaining international legal personality), it should be noted that AI may pose significant challenges to the Westphalian structure of Nation-States, more than any other actors. With the emergence of AI, thus, the transformation of a State, from an entity having effective control and sovereignty to a failed State, is no longer restricted to the intervention of non-State actors such as rebel groups, terrorist groups and national liberation movement.¹ Although AI does not claim for statehood, but it can act in a way that it is more harmful than ISIS or other rebel groups. Suppose a case where AI in a same manner as non-State actors (for example, Taliban in Afghanistan), possess *de facto* control and exercise effective sovereignty over a given territory (Murray, 2016). These analogies, if nothing else, they may give much food for examination the risks and challenges of AI for the Westphalian structure of States, including AI’s impact on the State failure. This failure, to a large extent, resulted from major features of AI (i.e., independence and autonomy). These characteristics cause AI activities to go beyond State’s control and -by undermining State sovereignty-may push States in question to become unable in exercising their functions (notably protecting fundamental rights of human beings and maintaining peace and security). A similar analogy can be drawn with the rights threatened by cyber activities as another external factor, which may lead States to failure. According to the commentary of Rule 36 of the Tallin Manual 2.0 on International Law Applicable to Cyber

¹ . A perfect example of national liberation movement is Palestine Liberation Organization (“PLO”) claimed for the right to self-determination since its establishment in 1964 to 1988 (as the date, on which the General Assembly declared that the term “Palestine” should be used instead of the term PLO in the United Nations system. See: United Nations General Assembly, A/RES/43/177, Question of Palestine, December 15, 1988, <https://digitallibrary.un.org/record/53922>.

Operations prepared at the Invitation of the North Atlantic Treaty Organization (“NATA”) Cooperative Cyber Defence Centre of Excellence, “States must refrain from activities that violate the human rights individuals enjoy in cyberspace” (Tallinn Manual 2.0 On the International Law Applicable to Cyber Operations, 2017).

With regard to AI, these concerns become even more important due to the dominance of big companies in using AI and AI detrimental effects on human rights, peace and security. In this respect, Secretary-General of the United Nations noted that “the private sector’s leading role in AI has few parallels in other strategic technologies” (United Nations, 2023). Additionally, the AI’s risk for human rights of individuals was taken into consideration by some States such as France. In view of Nicole Belloubet, Minister of Justice of France, “AI is at the heart of serious questions on human rights that we need to address urgently” (Council of Europe, 2019). This is originated from detrimental impacts of AI on some fundamental rights of human beings, including the right to equality and non-discrimination, right to due process and right to privacy (Zekos, 2019). This was also reaffirmed by the Human Commissioner for Human Rights by stating that “AI can amplify bias, reinforce discrimination and enable new levels of authoritarian surveillance” (Guterres, 2023).

Having trained by biased data and algorithms, using AI in the area of education, in the labor market and even in courts may amount to violating human rights. This is the reason why Hague District Court in its judgement in 2020 halted using the algorithm-based Dutch Welfare fraud surveillance system due to its bias and its influence on fundamental rights of individuals (Morondo Taramundi, 2022). In the same vein, in *Wisconsin v Loomis*, Eric Loomis by invoking the right to due process, challenged the use of the Correctional Offender Management Profiling for Alternate Sanctions (COMPAS) biased algorithm by a Wisconsin judge in determining his sentence (*Wisconsin v Loomis*, 2016; Liddicoat, 2021). Another example resulted in violation of the right to non-discrimination is the Amazon’s recruitment software which favored hiring men than women due to its training biased data. On the other side, with regard to the right to privacy, the clear example is related to using information of Facebook’s users by Cambridge Analytica (British Political Consulting Company) to evaluating the voting intentions of Americans during the 2016 presidential campaign (Cataleta^{M.} & Cataleta, A., 2020). The issue here is not just accessing to information by big companies, but also it covers processing and using of this data for different purposes. This is the reason why the United Nations High Commission for Human Rights in 2021 stated that “The operation of AI systems can facilitate and deepen privacy intrusions and other interference with rights in a variety of

ways... most notably through increased collection and use of personal data” (United Nations Human Rights Council, 2021). In these cases, the question is not who (including private companies, States or AI) is responsible for human rights violations. The reason is that, by reference to the 2001 Draft Articles on Responsibility for International Wrongful Acts (hereinafter “Draft 2001”), if State organs violate human rights of citizens by using AI or if private companies act in a same manner and their conduct is acknowledged and adopted by State as its own, a State in question would be responsible (International Law Commission, 2001). From the perspective of the law of international responsibility, therefore, the issue is clear. However, this assumption is to be evaluated whether AI may bear responsibility under international law. If the answer is in the affirmative, there is no doubt that AI has the international legal personality. In parallel with these considerations, the examination of the status of rebel groups may be helpful. Article 10 of the Draft 2001 does not deal with this question whether a rebel group may itself be held responsible for its own international wrongful acts. According to this Article, if these groups become the new government or succeed in establishing a new State, their conduct is attributed to the State concerned (International Law Commission, 2001). Another scenario leads to the same conclusion is the situation where a certain State is behind rebel group (i.e., the case where rebel group activities done under direction or control of that State).

In the same vein, examining AI demonstrates that, despite its autonomous behavior, there is always someone behind AI including States, private companies or a natural person. This being said, the claim that AI itself may be held responsible for its wrongful acts, for example, violating human rights, would be difficult. Nevertheless, a comparison with rebel groups shows that the responsibility of a rebel group as an independent entity is accepted in the United Nations Security Council Resolutions, including Resolution 1417 (Crawford, 2013), referring to the responsibility of rebel groups in DRC (United Nations Security Council, 2002). On this basis, while at this moment a similar analogy cannot be drawn easily with regard to AI, it may be predicted that by pushing States to failure (or even by transition from the Westphalian structure of international law), the recognition of AI’s responsibility- as an independent entity and similar to a rebel group- is severely needed. As AI (based on its autonomy) acts in a more harmful way than any other external actors which push States to failure, stepping towards the acceptance of AI’s responsibility is significant.

On the other side, using artificial intelligence for militarization purposes is a big danger to international peace and security. In view of intelligence scientists, artificial intelligence is

regarded as the third major revolution in warfare after gunpower and nuclear weapons respectively (Future of Life Institute, 2016). This being said, there is an urgent need for halting the use of AI for weaponization purposes (Garcia, 2018); otherwise, not only international peace and security is threatened, but also due to the States' failure for controlling these kinds of weapons and ensuring peace and security both domestically and internationally, all States will be gradually failed and then collapsed. Deploying AI in autonomous weapons systems during armed conflicts will inevitably threat sovereignty and effective control of all States. The main reason of this issue is that, States are not able to exercise their control over these kinds of weapons, due to the autonomy of these systems (Burri, 2017). Although anxious about AI may be akin to the States' concerns about nuclear bombs during the cold war era (Arvidsson & Noll, 2023) there is no doubt that the risk of AI for States cannot be comparable by previous harmful tools, even nuclear weapons which cause the ICJ to issue its controversial advisory opinion on the Legality of the Threat or Use of Nuclear Weapons (*Legality of the Threat or Use of Nuclear Weapons*, 1996) This is why the United Nations Security Council on 18 July 2023 held its first meeting on AI where Jack Clark -as a Co-founder of Anthropic- expressed his view that AI cause threat to peace and security and this danger is derived from AI's potential for misuse and its unpredictability- as two essential qualities of AI (United Nations, 2023).

Due to these analogies and considerations, it can be inferred that in a rather similar manner to rebel groups, AI is to be regarded as another dangerous and influential factor in State failure. Therefore, by the appearance of AI, States will lose their sovereignty and control. In these circumstances, they neither able to protect fundamental rights of their citizens (targeted by AI in an unpredictable manner), nor to maintain international peace and security (threatened by autonomous weapons using AI). The difference here is that contrary to the situations arose from the intervention of other actors, by the emergence of AI, international law does not and will not face with handful failed States, but all States (no matter how democrat that State is) are to be viewed as failed and even collapsed ones. The same analogy can be drawn with the situations caused by Covid19 pandemic, where all States, irrespective of the degree of their development, were not able to control pandemic and respond effectively to this humanitarian crisis. This being said, all States (whether they are developed or developing ones) were to be deemed "failed States", due to their failure to provide health services and control the situation emerged from the spread of this infectious disease. This is resulted from the feature of new epidemics which cannot be monitored and controlled by States in a proper manner (Giorgetti, 2013) and *mutatis mutandis*, the same may apply for AI, given its autonomy.

In the final analyze in this section, Nick Bostrom's view on the influences of superintelligence, stated in his book entitled "Superintelligence: Paths, Dangers, Strategies", may be helpful in understanding danger of AI on the current structure of State. In his view "Before the prospect of an intelligence explosion, we humans are like small children playing with a bomb. Such is the mismatch between the power of our plaything and the immaturity of our conduct... A sensible thing to do would be to put it down gently, quickly back out of the room, and contact the nearest adult. Yet ... some little idiot is bound to press the ignite button just to see what happens. Nor can we attain safety by running away ... nor is there a grown up in sight" (Adams, 2016). In the same vein, indeed, the Westphalian Nation-States are like small children, seem to be unaware of the risks that AI may bring, absorbed in AI and its positive effects in exercising State's functions.

This being said, States should identify the negative impacts of AI activities, including its human rights influences (Murray, 2020). On the other side, preventing State failure is easier than its reconstruction. This concern is of crucial importance since using AI may result in a situation in which no Westphalian Nation-States exist. It should be borne in mind, however, that under classical system of international law, failure of State does not necessarily result in extinction of States. In this context, solely under certain circumstances (such as merging, breaking up and annexation) States cease to exist (Jennings, 1996). This is without prejudice to this reality that the AI functions in today's world may amount to saying goodbye to the existing manifestation of the Westphalian Nation-States. This is the issue that will be considered in Section 5 below

5. AI as a Threat to Retaining the Westphalian Conception of Nation-States

Boutros Boutros Ghali, the former Secretary General of the United Nations was of the view that in failed States "the function of government suspended" (Turer, 1999). The question is whether AI cause suspending State functions in a similar way, meaning that after a short or long-time span, State concerned is able to exercise its functions or situation may be worse to the extent that the Westphalian structure of international law may be threatened by AI. International law tends to take this approach that the current structure of international law may and should purport to develop itself in a manner that accommodates the realities of AI influences on the Westphalian Nation-States. This view is partially akin to the ICJ's view in its Advisory Opinion on Reparation for Injuries Suffered in the Service of the United Nations, according to which "throughout its history, the development of international law has been influenced by the requirements of international life...." (*Reparation for Injuries Suffered in the Service of the United Nations*, 1949). But, AI influences on States cast dark shadows of

suspicion on the said approach. This is what was also written by Arvidsson and Noll, that: “AI may, but does not necessarily, solve problems in international law” (Arvidsson & Noll, 2023). Indeed, AI not only by undermining State Sovereignty and exacerbating State failure but also by abolishing the Westphalian structure of Nation-States, may even create new problems, specially it may fade cornerstones of the Westphalian peace, i.e., State sovereignty away (Fukuyama, 2004). The Westphalian system of international law-emerged in 1648- refers to the system consisting of States (as autonomous entities) having defined territories and possess sovereignty over their populations (Schachter, 1998). Indeed, Westphalian Nation-States are those having internal and external political authority and sovereignty. State Sovereignty was elaborated by Grotius in a prefect manner: “A Sovereign State is a power whose actions are not subject to the legal control of another” (Bring, 2000). This is what was also mentioned by Leo Gross in its Article entitled “The Peace of Westphalia, 1648-1948” that The Peace of Westphalia¹ “represents the majestic portal which leads from the old into the new world...In the political filed it marked man’s abandonment of the idea of a hierarchical structure of society...each sovereign within its territory free from any external earthy authority” (Gross: 1948)² It can be understood that State sovereignty is to be deemed as an integral part of international law. The importance of this assumption is to the extent that some authors believe that “international law without sovereign States is a conceptual impossibility” (Heller, 2019). Accordingly, under the current international law, the acceptance of the notion of State sovereignty is equal to acceptance of this presumption that “there is not and cannot be any positive legal rule that decides the existence or non-existence of the State” (Heller, 2019). However, as explained before, the emergence of AI may pose significant challenges to this view.

AI leads State to a kind of State which cannot exercise its Sovereignty and territorial control over its territory. As a consequence, although State in question has *de jure* control, its *de facto* control and sovereignty will gradually fade away. Considering this assumption that sovereignty is regarded as the legacy of the Peace of Westphalia, it can be concluded that lack of sovereignty as a result of State failure caused by the emergence of AI would amount to modifying the Westphalian model of Nation-States. On this basis, it cannot be ignored that the direct consequence of AI self-awareness and autonomous is redefining the concept of

¹ . It refers to two treaties agreed at Osnabruk and Munester in 1648. See: Lyall, F. (2022). Routledge Research in International Law: Technology, Sovereignty, and International Law. Routledge, P. 3.

² . For Criticism of this claim that State sovereignty is to be considered as a cornerstone of the Peace of Westphalia, see: Stirk, P. (2012). The Westphalian Model and Sovereignty Equality. *Review of International Studies*, 3(38), 641-660, <https://doi.org/10.1017/S0260210511000192>.

sovereignty (Tzimas, 2021), shaking the Westphalian structure of international law and shifting of power away from States (Chesterman, 2021). These developments in the current structure of international law, indicates the transition to a new stage in international relations, i.e., what is called “beyond Westphalia” (Croxtton, 1999).

There is no doubt that the emergence of elements affecting the current structure of international law is undeniable. The problem, however, arises when the Westphalian structure of States cannot adapt itself to new changes. In respect of technology, it is unsurprising that States have always tried to be in line with the “technology-adaption” process (Lee, 2022). This is in compatible with the view of Judge Manfred Lachs in his dissenting opinion in the Case concerning *North Sea Continental Shelf*, according to which international law can, where necessary, keep up with “social and economic changes combined with that of science and technology” (*North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark, Netherlands)*, 1969). As mentioned before, States by losing their power cannot adapt themselves to developments caused by AI, however. Indeed, contrary to what appears in the first place, States as the main actor in the Westphalian system -as a system based on Nation-States with defined territories, permanent population and sovereignty over their populations- are vulnerable to AI as a new outside power. The existence of entities who are not able to control AI activities and its influences on their territory and citizens and who cannot perform their obligations against international community, is equal to eroding the main features of the Westphalian Nation-States (as States having internal and external sovereignty). Due to these considerations, thus, it seems that overusing AI or using AI in an uncontrolled way creates a situation in which States will lose their effective control and sovereignty and will become subject to AI acts. This is what was warned by Council of Europe Human Rights Commissioner, Dunja Mijatovic, that: “We must either govern the game or the game will govern us” (Council of Europe, 2016). Therefore, using AI by States and companies without caution will definitely amounts to failure of States and subsequently shaking the Westphalian model of international law.

6. Conclusion

Artificial Intelligence, as a new technological revolution, have many positive effects for human life. At first glance, AI is nothing more than a useful tool with the ability of helping States to

perform their obligations both internally and externally. However, by taking the detrimental impacts of AI and its special features (leading AI activities go beyond the State control) into account, the conclusion will be different. This means that AI is to be viewed as a new external influential factor in State failure.

As of today, there were cases where non-State actors (including national liberation movement and rebel groups) push a State to failure, i.e., a situation in which that State is unable to provide public goods and perform its obligations against citizens as well as international community. The evidences of the emergence of information age and particularly the appearance of AI is being demonstrated that the conclusion regarding the presence of non-State actors may *mutatis mutandis*, apply for influences of AI activities for States. The distinction here is that, as in the case of some infectious diseases including Covid19, all States irrespective of the degree of their development, will be deemed as failed States. This is specially resulted from autonomy of AI that cannot be controlled and monitored by States easily. This concern becomes more important due to harmful impacts of AI on some fundamental rights (including the right to non-discrimination, due process and privacy) and peace and security. Given the dominance of companies in using AI which has few parallels in other technological areas, controlling AI by States and protecting State sovereignty would be impossible. Additionally, as States are not able to exercise their control over autonomous weapons using AI, they cannot maintain peace and security.

The power of AI is to the extent that by undermining State sovereignty and leading States to failure may play a crucial part in disappearing the Westphalian model of Nation-States. Although the typical approach-supported by Manfred Lachs-is that international law can, where necessary, keep up with “social and economic changes combined with that of science and technology”, due to detrimental effects of AI on the Westphalian structure, States cannot solely adopt a wait and see attitude. This being said, overusing AI is just similar to playing with a nuclear bomb without paying attention to its potential irreparable harms for State and the Westphalian structure of international law.

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