# State, Capital, Crisis

**Heide Gerstenberger**[1]

Riensberger Str. 25, 28213 Bremen
gerstenb@uni-bremen.de

**Abstract**

The article argues that any state theory has to take into consideration the fundamental changes of the logic of power that was brought about by the advent of capitalism. While a territorial logic of power was a central characteristic of European states before capitalism, the power of states has been detached from national territories through the mobility of capital. Technological developments have not only enhanced this mobility but also possibilities of production that are no longer determined by physical nature of a certain kind. The present international order of sovereign nation states was inherited from the pre-capitalist epoch. But the plurality of nation states has not only been reproduced in the processes of de-colonization but has become a functional element of globalized capitalism.

## In guise of an introduction: territorial waters and Exclusive Economic Zones

Some readers may have heard or read about the Cod Wars between Britain and Iceland. There were three. They had been preceded by a conflict that broke out in 1952 when the Government of Iceland extended the breadth of its territorial waters from 3 to 4 nautical miles. Britain retaliated by banning Icelandic ships from British ports. But this only inspired the Icelandic fishermen to look for new customers and to start processing their own catches. The landing ban was a complete failure. In Iceland, however, it had soon become clear that four nautical miles did not really help matters. After all, fish was of utmost importance to the income of its population. In 1958 Iceland therefore decreed that from now on the breadth of its territorial waters were to be 12 nautical miles. While, following this

decision, German and Belgian trawlers left Icelandic fishing grounds, British trawlers continued to invade them. Most of them covered their registration number on entering the disputed fishing grounds. Some of them even hoisted the Jolly Roger alongside the Union Flag. Britain sent in a rather large fleet of the Royal Navy in order to defend the vital economic interests of the fishermen in Grimsby and Hull.[2] Frigates and tugboats accompanied British trawlers. They were, however, not able to effectively hinder the Icelandic Coast Guard in applying the trawlwire cutter which had been invented by its director. The ships of the Coast Guard sneaked in behind the trawlers and cut their trawlwires. These were thereby lost, together with the whole catch. The trawlers had to go back to Britain to fetch new drawlwires and nets. They lost time and money.

In 1972 the breadth of the exclusive fishing zone of Iceland was extended to 50 nautical miles and in 1975 to 200 nautical miles. In all of these conflicts British trawlers as well as ships of the Royal Navy rammed the ships of the Coast Guard. In none of them were they able to overcome the effects of the non-military instrument that the Icelandic Coast Guard was using. The difference between the military forces was impressive. During the last of the cod wars the Icelandic Coast Guard had 8 rather small ships with a total crew of 170, while the British employed 41 ships with a total crew of almost 6,000. (Jónsson, 1982, 162-163) After a very large British frigate that was able to run 30 knots rammed a small and rather slow ship of the Icelandic Coast Guard in January 1975 Iceland broke its diplomatic relations with Britain. (Jónsson, 1982, 169) Two members of NATO were now engaged in a very severe conflict. The war went on for more than another year. In the end the 200 nautical miles zone was accepted.

At first sight it seemed almost impossible that Iceland would be able to make Britain accept its regulations. But not only could Iceland make effective use of the non-military device of the trawlcutter and have the threat to close an important NATO base on the Iceland, but also of diplomatic demarches. In order to further the acceptance of its fishing zone Iceland concluded treaties with several states, amongst them the Soviet Union. And once again its government pointed out that the traditional three nautical miles breadth could not be considered a custom of international law because not only had the US government already in 1945 claimed exclusive right to the natural resources on its continental shelf but other states had also unilaterally extended the breadth of their territorial waters and fishing grounds. One of the states that had claimed an exclusive maritime zone of 200 miles in the 1970s had been Somalia.

[2] According to Jannes Jónsson they might have been successful because the parliamentary seats of Grimsby and Hull were marginal seats that could easily float from one party to another. (1982, 95)

The Cod Wars influenced deliberations in the United Nations Conferences on the Law of the Sea. The first of these conferences had been convened in 1960. It confirmed the Freedom of Navigation that some states had claimed since the 17th century and which had finally become formally and globally accepted when the United Kingdom abolished its navigation laws in 1849. Freedom of Navigation implies that the High Sea is outside the jurisdiction of any nation state. In confirming the extra-national status of the High Sea the United Nations Conference on the Law of the Sea also confirmed the traditional understanding of piracy as a criminal act that takes place on the High Sea. Armed robbery in territorial waters, therefore, is not piracy, but just that: it is armed robbery, to be dealt with by the respective coastal state.

The third and – until now[3] last – conference on the Law of the Sea started in 1973. It lasted until 1982. One of its main concerns was the definition of the breadth of territorial waters. It was decided that this should amount to 12 nautical miles, to be measured from the coastal low water line. I leave aside special regulations for islands, deltas and so on. While states have to accept "innocent passage" of their territorial waters they have full jurisdiction over this extension of their territory. But this United Nations Conference not only defined territorial waters but also Exclusive Economic Zones. The breadth of the latter came to be determined at 200 nautical miles. No foreigner may fish, search for oil or for other natural resources in these waters without having obtained a license from the respective coastal state. When Iceland claimed that its fishing grounds were to have the breadth of 200 nautical miles the Convention on the Law of the Sea (usually cited as UNCLOS) had not yet been concluded, let alone ratified. This situation notwithstanding, the Icelandic claim was not only finally accepted by Great Britain but also taken into account for the deliberations on the Law of the Sea.

I have two reasons for drawing attention to the Cod Wars. The first one was already hinted at when I mentioned that, amongst other states, Somalia had early on claimed a zone of exclusive fishing rights. At the time this was only a unilateral claim. Since the ratification of UNCLOS in 1994 any coastal state has a right to an "Exclusive Economic Zone" (EEZ). But in the case of Somalia this regulation is not valid, because international law still depends on national enforcement. Since there has been no effective government in Somalia since 1991, Somali fishermen have lost and still lose most of the catches in the Exclusive Economic Zone of their country to very big foreign fish trawlers. And they have also been unable to prevent the dumping of waste, even of atomic waste, in these waters. It is for this reason

[3] It is not at all improbable that a further conference will become necessary because coastal states of the Arctic Region have begun to demonstrate military presence in these waters. Most of the reserves of oil and other natural resources in this region are to be found in *Exclusive Economic Zones*, but it is assumed that some of these resources may also be found outside of these zones. International regulation requires that coastal states proof that resources are on extensions of the continental shelves that belong to the respective states (Braune, 2011).

that Somali fishermen started to defend their fishing grounds by using violence. In the meantime these practices have developed into organized piracy.

My second reason for bringing up the conflicts over territorial waters and Exclusive Economic Zones is the fact that, at first sight, they seem to confirm David Harvey's concept of a territorial logic of power. (Harvey, 2003, 103-104) Undoubtedly, many coastal states have endeavored to extend their territorial waters and thereby their national territory in the course of the 20th century. And whereas you and I were to drown if we were to try walking on these extensions of national territories, states do not have to be able to swim on their territory. They only have to be able to enforce the jurisdiction over their extended realms.

Looking more closely at my example, however, it becomes clear why Harvey's concept of a territorial logic of power does not help us to grasp the nature of states in the era of globalized capitalism. This shortcoming stems from the fact that it is derived from the era of pre-capitalist states.

**The detachment of the logic of state power from "national territory"**

When modern states first came into existence in Europe in early modern times the territorial logic of power was, indeed, one of their central structural traits. As long as the riches of nobles and princes were mainly dependent on the possibility of taxing peasants and merchants - as long as they were dependent on an agrarian production with a relatively static output - strategies to enlarge the economic base of domination necessarily had to be strategies that aimed at enlarging the territory. Princes and nobles did not only follow material rationality, they also fought for their honor. But they did fight – or marry – in order to enlarge the territorial base of their domination. War was endemic to the world of pre-capitalist territorial states. One expression of this structural characteristic is the traditional definition of the breaths of territorial waters by the range of cannon shot. In spite of the fact that this varied, it became customary amongst European territorial states to claim and accept territorial waters of three nautical miles.

Capitalism has broken the territorial logic of power. Political backslidings do occur, the most important one being the establishment of colonial states, i.e. institutions that were designed to favor private acquisition in certain overseas territories. But colonialism proved to be a strategy that was thoroughly unsuccessful. In the course of time every one of the private trading companies which had set up colonial state power went bankrupt and the costs of repressing the population that was to be exploited as well as the costs for keeping out potential competitors remained exceedingly high when governments of colonial powers took over the administration. Many officials of trading companies, many farmers, tradesmen or capitalists profited from colonialism, but the states did not (Giraud, 1996, 13). And – exceptions apart – colonialism did not open up profitable markets for the products of "national capitals". When this insight was already starting to be accepted amongst political circles of leading colonial powers the second most

important political relapse into the pre-capitalist logic of power occurred. Following this logic, the government of Nazi-Germany decided that the territory of the German state was too small to make its autonomy possible, and therefore had to be enlarged by war. While this government was, indeed, the government of a capitalist society and while many big capitalists endeavored to profit from the war as well as from forced labor, the political strategy of enlarging the territory of the state was not only vicious but also historically outdated.

But what about the Exclusive Economic Zones? As far as fish are concerned they do indeed ask for a pre-capitalist political strategy because the natural resources of oceans follow the same political logic as pre-capitalist agrarian production. Of course, fish can nowadays be produced in special farms but, as far as fishermen in poor countries are concerned, fish still are a gift of nature. This gift can be ruined by various sorts of environmental pollutants as well as by overfishing but money cannot produce more of it. The extent of national waters therefore is decisive for access to fish. This explains the presence of the traditional territorial logic of power in many coastal states.

But we have to be a little bit more specific. The breadth of the Exclusive Economic Zone is directly decisive for the income of fishermen who endeavor to make a living by hauling in their catches without having to compete with foreign trawlers, but as far as other natural resources in the deep sea are concerned most developing countries still lack the possibility to extract them and therefore can only profit from selling licenses to foreign investors. Buyers of these licenses can rely on their purchasing power; they do not need political domination. Where political influence seems to be of advantage it can usually be acquired through the payment of bribes to corrupt officials.

On the whole, therefore, Ellen Meiksins Wood is correct in assuming that present-day imperialism is not focused on political dominance over additional territories but on economic dominance. She has even strictly upheld this view against all those commentators who interpreted the war against Iraq as a strategy to secure access to oil. According to Wood the oil-producing countries of the Middle East have no interest whatsoever in denying their oil to anybody who is ready to pay the price demanded. (Wood, 2006, 27) She contends that wars are no longer fought over territories, but over the possibility to establish an international order that is "congenial" to the movement of capital on a global scale. (Wood, 2006, 26) We could point out exceptions to this thesis. It is, for example, very evident that the military conflict between the South and the North of Sudan – recently to have been at least provisionally ended by constituting two separate states – has been fought over access to oil and hence over territory. Nevertheless, Wood is certainly correct in maintaining that, on the whole, economic power has become detached from territorial political domination. (Wood, 2006, 26) David Harvey probably would not insist otherwise. Because already in 2007 he remarked – and I do admire him

for this remark – that he used the generic term of a territorial logic of power in order to obscure the absence of a theory of state in his work. (Harvey, 2007, 26) I have already explained that, in my opinion, there is indeed a theory of the state in his work, but that this has not sufficiently taken into account the fundamental structural changes that came about through capitalism.

In the course of the development of technology that was fostered by capitalist competition, production has become more and more autonomous from the physical nature of a certain territory. If we wanted to grow tomatoes in Alaska and could demand the necessary capital for this whim we could do so. But we do not have to look for exotic examples because in these days more and more foreign investors are either buying or renting vast stretches of land in Africa (Bass, 2011, Liebrich, 2011). They are organizing large-scale production of foodstuffs or biofuel for export. Since additional land can now simply be bought or rented in foreign countries, it is no longer necessary to wage war in order to enlarge the agricultural basis of countries like, for example, China or Saudi Arabia. In other words: not only industrial production and service industry but even capitalist agrarian production has ceased to be confined to the territory of the state in which the respective companies are located. Of course, the strategy to invest in land destroys the means of existence of thousands and thousands of African peasant families. Their situation resembles the situation of Icelandic fishermen whose economic existence was threatened by foreign trawlers. But the governments of African states in which these peasants are living have long lost the political cloud of threatening to change sides which they – no less than Iceland – could make use of during the Cold War. Instead, more often than not, members of these governments are engaged in selling off the assets of their countries in order, not only to augment public revenue, but also to reap private gains.

Let us take the discussion of the detachment of the power of nation states from the extent and the physical nature of their territory one step further. Obviously, very small countries like Singapore, Liechtenstein or Switzerland are rich countries because they are centers of international financial transactions. They would hardly profit from acting according to any territorial logic of power. Many of the transactions that are executed in these countries fall under the heading of offshore financial transactions, which means that they are being conducted under conditions that are offered by Offshore Centers.

The development of so-called Offshore Centers is not only of utmost economic and political, but also of utmost theoretical, importance. They come in three varieties: As Export Processing Zones, as Offshore Financial Centers and as Flags of Convenience. If none of these centers is actually located on water, the expression is nevertheless well founded. Offshore Centers come into existence when a state creates a legal space in which some of its laws are not valid. One could talk of a hole or an island in the realm of national law, but it makes also

sense to talk of an establishment off the shores of such a realm. Focusing on Offshore Finance Centers, Mark P. Hampton has pointed out that the respective states not only create a space of regulation but also a fiscal space, a space of confidentiality and a political space (Hampton, 1966). Geographers are, of course, reminded of David Harvey's concept of producing spaces. Exceptions and recent developments apart, offshore conditions are only offered to foreigners.

Offshore banks are exempt from the national regulations for private banks. They are, for example, exempt from national reserve requirements and can, therefore, grant a loan without having to demand the same amount of securities as a private bank operating in the respective state. I am going to limit my discussion of offshore banks to this one example but I do want to point out that offshore banks and offshore financial centers not only exist in Panama, New Jersey, Vanuatu or other far off small islands or small countries but that offshore departments of banks also exist in Frankfurt or London. In these departments business in so-called Eurodollars is transacted. The term is misleading, because today it no longer refers exclusively to the dollars that were deposited in European private banks since the 1960s but to any transaction in foreign currency. A Eurodollar transaction today can, for example, be a loan in Yen that has been deposited in a bank in Frankfurt.

The growths of the amount of Eurodollars started in the mid 1970s when, having raised the price of oil, OPEC states earned huge profits, most of which they deposited in European banks. In the meantime transactions in foreign currencies have gone on growing impressively. This implies that the world economy is, by now, decisively influenced by the unrestricted mobility of a massive pool of unregulated private capital. (Hampton, 1996, 109)

Some national laws are valid in all of the offshore centers. It is hoped, for example, that a murder committed in an Export Processing Zone will be dealt with according to national criminal law. Officially, environmental laws and some labor laws are often also valid in these zones. But in practice they usually can be violated without any repercussions. Until this very day some US companies, therefore, transfer production processes that impair the environment to *Maquiladores* in Mexico. Export Processing Zones are located on physical spaces. While these are part of the respective national territories they are exempt from the national realm of law.

Such exemptions from national regulation also explain why today most ships of the world fleet are being operated under a so-called flag of convenience. This means that they are not registered in the country where the profits of the operation of a ship are reaped, but are; instead, registered in one of the countries which offer their ship registers on the respective world market. The advertisements of these offers are very precise. Since every ship register demands that the owners of a ship establish a company in the respective state, the advertising agency offers to very quickly found such a company. In the course of a very few days it will have at its

disposal an address with a letter box, the necessary documents and stamps and, if need be, at least one shareholder. The material advantages of flags of convenience are low registration fees, low or non-existent taxes on profits from the operation of the ship as well as, and this is the most important advantage, the absence of any regulation concerning the nationality of the officers and crew-members of a ship. Shipping companies, therefore, are able to legally hire seamen from all over the world and to pay them according to levels of pay in their home countries. And seamen as well as potential seamen all over the world are competing with each other to be hired. The creation of flags of convenience and their factual acceptance by the governments of formerly leading seafaring nations have produced a legally constructed globalized labor market for seafarers. There are small exceptions that I leave aside. But on the whole, the shipping business – which not so very long ago, was the most strictly regulated business of nation states – has become thoroughly deregulated, so much so that in the meantime the International Maritime Commission, a subdivision of the United Nations, has come not only to establish international regulations but also the mechanisms for controlling their practice.

To sum up: Any kind of offshore phenomenon has to be understood as the direct invasion of globalized capital into the legal space of a nation state. It is an invasion that acts upon invitation. Since sovereignty empowers a state not only to use its regulation power but also to create legal spaces where it refrains from using this power, the creation of an Offshore Center amounts to the transformation of parts of national sovereignty into a commodity. The specific advantages of an Offshore Center are offered on the respective world market.

Offshore conditions are instruments to be made use of in the globalized competition over investments. As far as poor countries are concerned the creation of Offshore Centers amounts to a strategy of economic development. Already established financial centers use them to defend their position on the world market.[4]

While it was only with the technical development of new means of communication and of transport that the creation of Export Processing Zones became economically rational, flags of convenience as well as the offer of possibilities for tax evasion are much older. But the impressive and very rapid growth of the offshore phenomenon only started in the mid 1970s, at the same time, that is, that the growth of investments in production slackened while the proportion of total investments in financial markets increased. On the one hand this increase was provoked by those profit squeezes in the sphere of production that had been brought about by successful trade union struggles in the years of full employment. On the other, it became a definite possibility with the end of the

[4] See for example the recently concluded treaty between the German and the Swiss governments over measures against tax evasion. In order to have Swiss banks accept that they transfer the taxes that have been avoided to the German government, this had to accept the continued validity of the Swiss bankers' discretion. Those who have evaded German tax laws by depositing money in Swiss banks will lose money but not their anonymity.

system of fixed currency exchange rates that had been decided upon in Bretton Woods in 1944. This monetary order had been based on the guarantee of the US government to exchange dollar in gold whenever this was desired by a national bank. In 1971 the US government decided that since its gold reserves had been dangerously diminished, it could no longer uphold this guarantee. Two years later the Bretton Woods monetary system was at an end. From then on it was possible to speculate on changes in the exchange rate of currencies. If this development would anyway have led to an increase of investments in financial markets it would not, in itself, have decided the immense importance which the financial sector has acquired by now. This was only made possible by the fact, that, commencing in the late 1970s, one government of an industrial state after another accepted the demands of capital owners and repealed its legal restrictions on capital mobility. Since that time national economic policy has been dictated by the imperative to induce capital, be it "national" or "foreign", to invest in the national economy. This development has aptly been termed: the transformation of states into competitive states. (Hirsch, 1998) It has been legitimated by claiming that it safeguards possibilities for the employment of the national labor force. As Joachim Hirsch and John Kannankulam (2011) have pointed out, the discourses on the necessity of competitive policies have sometimes led to alliances between classes, pressuring and sometimes persuading trade unions to refrain from fighting for higher wages. But the competitive character of states is also being reconstituted by all those who fear that immigration endangers their chances for jobs and their social security. The military defense of the Schengen border against irregular immigration is based on the material egoism of citizens of the Schengen states.

If these discourses were instigated by the spokesmen of national capital in the spheres of national politics they also formed part of an international strategy to promote the liberation of markets and to restrict state expenditure, especially expenditure on health, social security or education. In the meantime it has been amply proved that the success of this movement, which has become known as "neoliberalism", has been internationally orchestrated. But, though it has, indeed, been set in motion by international organizations like the World Bank or the International Monetary Fund it has also been realized through the decisions of the governments of nation states.

In the meantime the result of these strategies is very obvious. Today, capital owners bully each government to fight for international decisions that take into account their specific interests.[5] Examples of this are legion. They flow from the renunciation of the political regulation of international markets. Not only have restrictions on capital mobility been abolished, but not even the severe financial

[5] The ways in which the heavy investments of French banks in Greece have shaped recent deliberations about European politics versus Greece are illustrative to this connection.

crisis of 2008 has led to the prohibition of even the most dangerous instruments for financial speculation or to the introduction of a tax on currency transactions.

For the realization of the ongoing liberation of markets, capital owners have made use of the competition between national economies, hence of the plurality of states. In other words: they have made use of and thereby reconstituted the separate sovereignty of territorial states. If the origins of this plurality go back to pre-capitalist times, the sovereignty of nation states has, until this very day, remained the base of international law.

**On the plurality of national sovereignty**

I will presently go on to debate if and why the plurality of states is a structural characteristic of globalized capitalism. But let me first illustrate the continuing relevance of national sovereignty for international law by pointing to resolution Nr. 1851 which the United Nations Security Council adopted on the 16th of December 2008. (S/RES/185, 2008) This resolution authorized member states of the United Nations to seize and dispose of "vessels, arms and other related equipment used in the commission of piracy and armed robbery off the coast of Somalia, or for which there are reasonable grounds for suspecting this use." (Nr. 3) That this amounts to an authorization for the violation of the United Nations Law of the Ocean is obvious in the statement of the Security Council that it only acts because the Transitional Federal Government of Somalia is at present not able to interdict piracy and prosecute pirates in its territorial waters. In spite of this exceptional substitution of national sovereignty the Security Council reaffirms "its respect for the sovereignty, territorial integrity, political independence and unity of Somalia." Since we all know that the sovereignty of many a poor state is daily overpowered by the decisions of international organizations as well as by the demands of foreign investors, you might wonder why I refer to this example. The reason lies in the fact that in the very act of authorizing the violation of the sovereign rights of Somalia, resolution Nr. 1851 not only reaffirmed these rights but thereby also national sovereignty as the continuing base of international law.

This brings us back to the plurality of states, to its causes and to its relevance for the development of capitalism in the era of globalization. The question about the causes is very easily answered as far as it refers to the historically first nation states. Unquestionably the plurality of states is inherited from the competition between princes over competences of domination in pre-capitalist Europe which has already been referred to. Depending upon the outcomes of military strife and of appropriation by marriage the extent of domination competences was, for a long time, very volatile, only achieving a certain amount of stability after the religious and political compromise that has become known as the Peace of Westphalia. The decision that from now on princes should accept that other princes had the right to decide if either Roman Catholic or Protestant Christian religion should be practiced in their state implied the acceptance of sovereignty over a certain territory (and

hence over its inhabitants) as the base of peaceful relations between sovereign powers.

Benno Teschke has convincingly demonstrated that contrary to established scholarly opinion, the sovereignty which was constituted in 1648 was not yet national sovereignty but dynastic sovereignty: It was an element of personal domination. (Teschke, 2003) When this personal domination was done away with either through the drama of a revolution or through a series of structural reforms, sovereignty no longer belonged to princes and to those who had either bought or been awarded some competences of domination. From now on sovereignty was no longer to be the property of individual persons but of nations. Citizens of nation states became the heirs of dynastic sovereignty, even if this does not signify that from now on the body of citizens could actually decide politics.

If the possibility of influencing political strategies in a certain state varies according to its legal constitution and the history of its political public, every state which has been accepted as such by other states is defined as a nation state. In other words: for the sake of legitimating customary as well as formally concluded international law it is assumed that the competence of any state to act as a subject of international law is the common property of its citizens. This has even influenced governments that could clearly not boast of being legitimated by institutionalized processes of election. During the last hundred years there has been hardly any dictator who has not claimed to act in the interests of the people or to derive his legitimacy from leading the struggles against colonial domination. But I am not going into this. Instead, I want to point to a fundamental historical change in the constitution of nation states.

As already explained, the territorial states of early modern Europe were the result of war, later to be stabilized by international law. Their sovereignty was based on power. Obviously the economic and political conditions that caused this early plurality of states are no longer in existence. This notwithstanding, the second half of the 20$^{th}$ century saw the advent of a whole number of new nation states. The plurality of states was not only accepted as the continuing base of international law, but, starting with the 1950s, a large number of newly created nation states were to be constituted by admission to the United Nations. By bestowing on them the sovereign rights of a nation state the United Nations made the post-colonies their equals in the realm of international law.

It was a tricky process. Since the colonial powers had defined their coercive institutions in the colonies as states, anti-colonial struggles had to be considered as civil wars. According to international law, participants in civil war were to be considered rebels: no chance for them to be formerly accepted amongst the international community. This problem was solved, because it had to be solved. In order to be able to accept the fact that anti-colonial struggles had effectively overthrown or at least decisively weakened the power of colonial states, the United

Nations declared that all people had a natural right to freedom, sovereignty and to the safeguard of their territory. Declaration Nr. 1514 that was concluded in 1960 came under the heading: "on the granting of independence to colonial countries and peoples." This is telling: the sovereignty of post-colonial states was not to be taken to have been achieved through war but to have been granted by the so-called international community. Declaration 1514 orchestrated the process of decolonization. (Chemillier-Gendreau, 1995) This process had not only been set in train by the struggles of dominated people but also by the realization of more and more leading politicians of colonial powers that colonial domination was extremely costly and more and more difficult to legitimate.

By bestowing sovereignty on formerly colonized peoples the United Nations transformed the boundaries of former colonies, which had been drawn somewhat randomly into the boundaries of new states. The same act also constituted the people living in a former colony as a nation, regardless of differences in history, language and custom. Unnecessary to explain that, especially in Sub-Saharan Africa, there existed hardly any base for the development of an imagination of national unity.

However, the Cold War offered ample possibilities to profit from national independence. In order to secure the alliance of the governments of newly independent states the opposing blocks were ready to implement and to finance development strategies. And they usually continued to do so even after it had become obvious that large sums were being appropriated for the private use of leading politicians in the post-colonies. Practices of large-scale political corruption were inaugurated in the times of the Cold War. But this was not their only cause. The conception of the state as an apparatus to be made use of for private appropriation had been derived from historical experience. Notwithstanding the establishment of administrative and legal structures in colonies, colonial states were, after all, nothing else but institutions for the safeguard of conditions furthering private appropriation. If – especially after World War I – discourses in and amongst colonial powers started to paint colonial domination as a means for the economic development of colonies, the practices that were actually employed confirmed the nature of colonial state power as being a means for exploitation. Of course, this domination also transformed the social relations amongst the dominated population. One of these transformations was frequently the construction of tribes as political entities. Neither the adoption of the constitutional forms of bourgeois states nor the constitutions of member states of the Soviet Union could overcome this legacy of colonial domination.

After the end of the Cold War money transfers dropped decisively, but the chances to privately profit from national sovereignty did not. And this refers not only to the private appropriation of tax yields, to the creation of jobs for friends and relatives but also to many other forms of everyday political corruption, which

according to Patrick Chabal and Jean-Pascal Daloz (1999) have become routine aspects of social and political life in Africa.

And then came crisis and then came globalization. To cut a long story very short: The crisis of their economy has brought many post-colonies under the "tutelary government" of the World Bank, the International Monetary Fund and other private as well as public lenders (Mbembe, 2001, 74). Being forced to implement various cuts on state expenditure, governments were forced to posit themselves in opposition to their people, especially to those in need of health care, education, social security, clean water and all the other prerequisites that enable individuals to safeguard their dignity. But at the same time when indirect private government (Mbembe 2001, passim) reduced the sphere of autonomy in many post-colonies, globalization offered new opportunities for transforming parts of sovereignty into commodities. Not only the creation of Offshore conditions which has already been referred to but also the sale of licenses for extracting the national resources of a country create possibilities for public revenue. It also creates opportunities for large-scale corruption. And these are considerably advanced if ministers and state officials are ready to also sell licenses for the dumping of waste, if they tolerate money laundering and smuggling, for example the smuggling of diamonds or ivory, and if they tolerate or even themselves organize the international sale of weapons, drugs and human beings, thereby using the competences of the state to create illegal markets. Jean-François Barnard and others have summed up the numerous examples of these practices as "the criminalization of the state (Bayart, Ellis and Hibou, 1997/1999; Bayart, 2004)." According to them, criminal practices have invaded the political arena in Africa.

I am not going to contradict this analysis but to point out, that these criminal activities are not only present in local and regional conditions but are constantly being reproduced by international demand. Illegal markets are not restricted to transactions between post-colonies but are part and parcel of international criminal networks. And the corruption of state officials in post-colonies has been and still is an element of the investment strategies of many a firm. In other words, the plurality of sovereign states is made use of by international capital. This not only reproduces the plurality but it also strengthens existing governments. Those who endeavor to change political and economic conditions in their countries have to reckon with an alliance between international capital and the national power block. It is only when their struggles endanger the continuity of an existing government that foreign allies consider changing sides.

**Capitalism, violence and the plurality of nation states**

Let me conclude by pointing to a crisis phenomenon which, in my opinion, is more severe than the present monetary and financial crises. It refers to the growing presence of violence and coercion in labor and other market relations, a situation which is not easily brought into agreement with Marxist traditions of critically

analyzing capitalism. True, Marx and many of those endeavoring that analysis have stressed that violence against persons was inherent in the processes which have come to be summed up in the term "original accumulation": but they have concurred with Adam Smith and other adherents of mainstream capitalist economics that slavery as well as other forms of direct coercion are detrimental to the productivity of labor. Defenders as well as critics of capitalism are in agreement over the fact that capitalist labor relations, once established, were and still are reproduced by economic need.[6]

The historical reality of capitalism tells a different story. Contrary to the assumptions that are derived from the critique of structures of capitalism, "free labor" as theorists of capitalism have come to understand this concept is not structurally inherent in capitalist production. Neither slavery nor apartheid nor the use of direct coercion of laborers disappeared because economic rationality demanded their disappearance. It was only when the political costs of prolonging certain practices of coercion came to be considered to be too high that they came to be conceived of as hindrances to productivity. And this held true not only for developments on the fringes of the capitalist world, but also in its very centers. It was only at the end of the 19th century that laborers in highly developed industrial societies were not only free to enter a labor contract but were also free to end this contract whenever they wanted to do so. For a long time "breach of contract" remained a criminal offence in the most advanced capitalist societies, to be punished by a prison sentence. (Steinfeld, 2001; Hay, 2000; Orren, 2000) As soon as we analyze the history of capitalism we come to realize that there is no historical law inherent in capitalism that leads to the exclusion of non-economic coercion from labor relations. (Brass and van der Linden, 1997) "Free labor" is not a structural precondition for capitalist production but the result of many struggles for labor rights as well as for the extension of the right to vote. It was only with the broadening of the suffrage that governments accepted the need to regulate labor in favor of the men (and later also the women) who were employed in the national economy. In the course of time the use of extra-economic coercion in labor relations has been officially abandoned and the private use of violent coercion has been criminalized.

As far as regulation is concerned this now holds true for the whole of the capitalist world; as far as practices are concerned there are vast differences. Sometimes appalling labor conditions in the firms linked to western investors in a

[6] In order to characterize this situation it has, of late, become customary to talk of "structural violence". The term is taken from Johan Galtung (1973; 1982) but has since changed its connotation. Galtung maintained, that "peace" is something else than the mere absence of open hostilities. In his opinion it can only be achieved when poor countries are no longer exploited. But in critically analyzing imperialism Galtung only pointed to "hierarchical" situations. There is no theoretical concept of capitalism in his work. This notwithstanding, "structural violence" has become not only a catchword for any sort of permanent hierarchy (for example between men and women) but is also made use of in the context of Marxist analyses of capitalism.

foreign country as, for example, in sweatshops of subcontractors, are brought to our knowledge via particular courageous labor struggles, but all too often we have to depend on the information from internationally active non-government organizations. They use public critique and economic pressure in the form of consumer strikes in order to achieve reforms. Though the International Labor Organization is an official element of international governance, it is not in its power to constrain governments that fail to control adherence to the regulations that have been internationally agreed upon.

One might argue that the difference between labor relations is a very old story, and point especially to the fact that the use of violence was still common practice in colonies when it was already more or less effectively banished from labor relations in the mother countries. But such an argument would overlook the fundamental changes in the political economy of capitalism that have come about since the heydays of colonialism. As long as colonies were offshoots of states in the imperial centers, critics of slavery and other forms of forced labor could demand from metropolitan governments that they effectively prohibit these particular forms of exploitation. With the political emancipation of former colonies this responsibility was transferred to the governments in post-colonies. Most of them have outlawed the use of physical coercion in labor relations as well as in other market relations; some of them are striving to put these laws into practice[7]. Others factually accept their violation. And then there are members of governments who grant licenses for the dumping of dangerous waste, who close their eyes when investors make use of chemicals in production processes of which it is known that they will damage the health of laborers. And in many nation states the government is ready to overlook the trade in drugs, in human organs and in human beings. All over the world there are men and women courageously criticizing these politics. Alas, their possibilities to bring pressure to bear on national governments are very severely restricted. Contrary to the situation in the first industrialized countries, laborers and political activists of today do fight not only against national capital but also against international capital, let alone international criminal networks. And, more often than not, labor relations in post-colonies are so called informal labor relations and the men and women working under these conditions are very seldom able to organize or to make use of any form of economic pressure. National as well as foreign capital therefore can make use of the cheap labor being still abundant in many post-colonies as well as of political conditions that factually allow a wide range of appropriation practices. We can decide not to buy clothes that have been produced under inhuman labor conditions but we cannot effectively oblige the government of a sovereign nation state to restrain the freedom of investment practices. It is through these conditions that the plurality of states has become functional for globalized capitalism. The critique of the political economy of

[7] See for example the attempts to effectively punish practices of slavery in Brasilia.

capitalism has to be taken seriously: it has to always include the analysis of the political forms of capitalism.[8]

**References**

Bass, Hans Heinrich. 2011. Internationale Investoren für Afrikas Landwirtschaft – Lösung zur Ernährungssicherung? *Kurier am Sonntag*, 14. 8. 2011.

Bayart, Jean-François. 2004. Le Crime Transnational et la Formation de l'État. *Politique Africaine* 93, 93-104.

Bayart, Jean-François, Stephen Ellis and Béatrice Hibou. 1999 (in French 1997). The Criminalization of the State in Africa. Oxford, Bloomington & Indianapolis: The International African Institute & James Curry, & Indiana University Press.

Brass, Tom and Marcel van der Linden (eds.). 1997. *Free and Unfree Labour. The Debate Continues*. Bern, Berlin & etc.: Peter Lang.

Braune, Gerd. 2011. Kanada zeigt militärische Präsenz in der Arktis. *Weser Kurier,* 8.8.2011, 4.

Chabal, Patrick and Jean-Pascal Daloz. 1999. Africa Works. Disorder as Political Instrument. Oxford, Bloomington & Indianapolis: The International African Institute & James Curry & Indiana University Press.

Chemillier-Gendreau, Monique. 1995. Humanité et souverainetés. Essay sur la fonction du droit international. Paris: la découverte.

Galtung, Johan. 1982. Strukturelle Gewalt. Beiträge zur Friedens- und Konfliktforschung. Reinbek bei Hamburg: Rowohlt.

Galtung, Johan. 1973. Eine strukturelle Theorie des Imperialismus. In, Dieter Senghaas (ed.), *Imperialismus und strukturelle Gewalt. Analysen über abhängige Reproduktion*. Frankfurt am Main: Suhrkamp, 29-105.

Giraud, Pierre- Noël. 1996. L'Inégalité du monde. Économie du monde contemporain. Paris: Galimard.

Hampton, Mark P. 1996. Creating Spaces. The Political Economy of Island Offshore Finance Centres: The Case of Jersey. *Geographische Zeitschrift* 84, 103-113.

[8] This is not to imply that the further development of international governance will effectively ban violence from labor and other market relations. If strategies of reform are to be discussed these should much more focus on the responsibility of those states where the profits from investing capital in foreign countries are reaped. Not only the use of bribes in foreign investments but also the violation of human rights by investors could and should be criminalized in the centers of capitalism.

Harvey, David. 2007. In what way is *The New Imperialism* really new? *Historical Materialism* 15, 157-166.

Harvey, David. 2003. The New Imperialism. Oxford: Oxford University Press.

Hay, Douglas. 2000. Master and Servant in England. Using the Law in the Eighteenth and Nineteenth Centuries. In, Willibald Steinmetz (ed.), *Private Law and Social Inequality in the Industrial Age. Comparing Legal Cultures in Britain, France, Germany and the United States*. Oxford: Oxford University Press, 227-264.

Hirsch, Joachim. 1998. Vom Sicherheitsstaat zum nationalen Wettbewerbsstaat. Berlin: J.D. Verlag.

Hirsch, Joachim and John Kannankulam. 2011. The spaces of capital: the political form of capitalism and the internationalization of the state. *Antipode* 43 (1), 12-37.

Jónsson, Jannes. 1982. Friends in Conflict. The Anglo-Icelandic Cod Wars and the Law of the Sea. London & Hamden Conn: Hurst & Comp. and Archon Books.

Liebrich, Silvia. 2011. Landräuber, Hungertreiber. *Süddeutsche Zeitung*, Nr. 179, 5.8.2011.

Mbembe, Achille. 2001. On the Postcolony. Berkeley, Los Angeles & London: University of California Press.

Orren, Karen. 2000. Master and Servant Law and Constitutional Rights in the United States during the Nineteenth Century: A Domain Specific Analysis. In, Willibald Steinmetz (ed.), *Private Law and Social Inequality in the Industrial Age*. Oxford: Oxford University Press, 313- 334.

Teschke, Benno. 2003. The Myth of 1648: Class, Geopolitics and the Making of Modern International Relations. London: Verso.

Steinfeld, Robert J. 2001. Coercion, Contract and Free Labor in the Nineteenth Century. Cambridge: Cambridge University Press.

Stuchtey, Benedict. 2010. Die europäische Expansion und ihre Feinde. München: Oldenbourg Verlag.

Wood, Ellen Meiksins. 2006. Logics of power: a conversation with David Harvey. *Historical Materialism* 14(4), 9-34.