

Sovereignty Suspended: Building the So-Called State

Rebecca Bryant and Mete Hatay
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‘An Impossible Possibility’

Sovereignty Suspended: Building the So-Called State is a significant yet flawed academic book. On the one hand, it reflects what is unquestionably the painstaking research, considered thinking and nuanced arguments of two experienced writers with much to say on subjects of utmost importance. On the other hand, *Sovereignty Suspended* suffers from a fundamental flaw, which I shall identify in this review.

In the opening sentence of the Introduction of their book, Bryant and Hatay set the scene for what follows. ‘In early 2016,’ they recall, ‘the World Economic Forum in Davos, Switzerland, welcomed the so-called president of the so-called Turkish Republic of Northern Cyprus (TRNC).’¹ With these words, Bryant and Hatay indirectly remind us that the World Economic Forum has emerged as an influential yet controversial institutional actor on the global stage. At the same time, Bryant and Hatay imply that, whereas the ‘TRNC’ is a so-called ‘state’ lacking international legitimacy and recognition (save for the recognition accorded by Turkey, which occupies the territory *de facto* administered by the ‘TRNC’), its ‘President’ holds a so-called executive office bearing the same shortcoming.

The ‘two aims’ of *Sovereignty Suspended* are set out in its Introduction:

‘This book uses extensive archival and ethnographic research in one de facto state for two aims: (1) to ask what the case of de facto state-building can tell us about state-building as such; and (2) to use this case to interrogate the singularity of the “de facto”.’²

Since the publication of *Sovereignty Suspended*, in 2020, these ‘two aims’ have retrospectively increased in importance. After all, both before and after re-invading

¹ Rebecca Bryant and Mete Hatay, *Sovereignty Suspended: Building the So-Called State* (Philadelphia, PA: University of Pennsylvania Press, 2020), 1. For a recording of the event in question, see ‘Davos 2016 – Reuniting Cyprus’, 21 January 2016, World Economic Forum YouTube Channel, www.youtube.com/watch?v=B7hg0Yls1No (accessed 16 December 2022).

² Bryant and Hatay, *Sovereignty Suspended*, 4.

Ukraine, on 24 February 2022, Russia has purported to recognise new *de facto* ‘Republics’ and other secessionist entities.³ Despite widespread international condemnation,⁴ these entities have joined a number of others already dotted around the world. That being said, to Bryant and Hatay, the ‘TRNC’ is distinguishable for the following reasons:

‘Our case, in contrast, is one of a territorial state being built *ex nihilo* in a space that had not previously existed as such and that had to be ethnically cleansed and resettled. Moreover, it was an administration being built in full knowledge that only a negotiated solution with the Greek Cypriot government of the Republic of Cyprus would bring recognition, or legitimacy for their new entity. *Realizing* one’s state, then, was always a project for the future, deferred until after a settlement...’⁵

A Fundamental Flaw

In the Introduction to *Sovereignty Suspended*, Bryant and Hatay ask an interesting question and offer a follow-up comment:

‘Throughout the book, we ask what *de facto* state-builders were thinking as they crafted an entity that the rest of the world told them should not exist and would never have statehood. It is a state whose sovereignty is suspended from its inception, a state whose ultimate form, and the sovereignty that will presumably come with it, are indefinitely deferred.’⁶

³ See *inter alia* the following publications on the official website of the Kremlin in Moscow: ‘Signing of documents recognising Donetsk and Lugansk People’s Republics’, 21 February 2022, en.kremlin.ru/events/president/news/67829; ‘Executive Order On Recognition of Zaporozhye Region’, 29 September 2022; www.en.kremlin.ru/acts/news/69463; ‘Signing of treaties on accession of Donetsk and Lugansk people’s republics and Zaporozhye and Kherson regions to Russia’, 30 September 2022, www.en.kremlin.ru/events/president/news/69465; and ‘Federal Constitutional Law On the Accession of the Donetsk People’s Republic to the Russian Federation and the Establishment of a New Constituent Entity of the Russian Federation, the Donetsk People’s Republic’, 5 October 2022, www.en.kremlin.ru/acts/news/69513 (all accessed 19 December 2022).

⁴ See *inter alia* the following publications of the UN and the General Assembly Resolution to which they refer: ‘General Assembly resolution demands end to Russian offensive in Ukraine’, UN News, 2 March 2022, <https://news.un.org/en/story/2022/03/1113152>; ‘Ukraine: UN General Assembly demands Russia reverse course on “attempted illegal annexation”’, UN News, 12 October 2022, <https://news.un.org/en/story/2022/10/1129492>; and ‘The UN and the war in Ukraine: key information’ <https://unric.org/en/the-un-and-the-war-in-ukraine-key-information/> (all accessed 19 December 2022).

⁵ Bryant and Hatay, *Sovereignty Suspended*, 5.

⁶ *Ibid.*, 6.

Herein lies a fundamental flaw in *Sovereignty Suspended*. When referring to ‘sovereignty’ as being ‘suspended’ and ‘deferred’, Bryant and Hatay do not appear to have in mind the enforced *de facto* suspension of the *de jure* sovereignty and effective control of the Republic of Cyprus over the areas occupied by Turkey since 1974.⁷ Instead, Bryant and Hatay appear to have in mind the purported ‘suspension’ of the ‘sovereignty’ which the so-called ‘TRNC’ claims to have been endowed with since its ‘independence’ on 15 November 1983. However, in view of its illegality *ab initio*, the ‘TRNC’ is legally incapable of being endowed with any form of *de jure* sovereignty, be it ‘suspended’ or ‘deferred’. Put simply, the ‘TRNC’ has always been a nullity and a subordinate *de facto* administration of Turkey, the occupying power in effective control of 36 per cent of the territory as well as 57 per cent of the coastline of the Republic of Cyprus.⁸

To be fair to Bryant and Hatay, they indicate that the ‘TRNC’ was created by what they term ‘violence’.⁹ Moreover, they stress that, upon its purported establishment, this entity ‘was immediately condemned by the United Nations’ and it ‘remains unrecognized by any state besides Turkey.’¹⁰ Even so, Bryant and Hatay could have done more to clarify why that is so, particularly in view of UN Security Council Resolutions 541 (1983)¹¹ and 550 (1984),¹² which they do cite but do not adequately explore, and the Judgments or Advisory Opinions of several national and international courts.

⁷ The concept of suspension is built into Article 1 of the Protocol under which the Republic of Cyprus acceded to the European Union on 1 May 2004: ‘The application of the *acquis* shall be suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control.’ See ‘Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded - Protocol No 10 on Cyprus’, *Official Journal*, L 236, 23/09/2003, P. 0955 – 0955, EU website, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12003T/PRO/10> (accessed 19 December 2022).

⁸ To quote Kofi Annan, the then UN Secretary General, in 2003: ‘112. The area currently under Turkish Cypriot control is slightly more than 36 percent of the territory of the 1960 Republic of Cyprus, including 57 per cent of the coastline.’ See ‘Report of the Secretary-General on his mission of good offices in Cyprus’, 1 April 2003, UN Security Council Document S/2003/398, paragraph 112, UN Digital Library, <https://digitallibrary.un.org/record/491574?ln=en> (accessed 19 December 2022).

⁹ Bryant and Hatay, *Sovereignty Suspended*, 170, 182 *et al.*

¹⁰ *Ibid.*, 163.

¹¹ UN Security Council Resolution 541 is available on the UN Digital Library at <https://digitallibrary.un.org/record/58970> (accessed 19 December 2022).

¹² UN Security Council Resolution 550 is available on the UN Digital Library at <https://digitallibrary.un.org/record/67600> (accessed 19 December 2022).

The latter include the Advisory Opinion of the International Court of Justice in The Hague, in the case formally known as *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*. To quote two pertinent passages in this Advisory Opinion handed down in 2010, which Bryant and Hatay do not cite:

‘81. Several participants have invoked resolutions of the Security Council condemning particular declarations of independence: see, *inter alia*, Security Council resolutions 216 (1965) and 217 (1965), concerning Southern Rhodesia; Security Council resolution 541 (1983), concerning northern Cyprus; and Security Council resolution 787 (1992), concerning the Republika Srpska.

The Court notes, however, that in all of those instances the Security Council was making a determination as regards the concrete situation existing at the time that those declarations of independence were made; the illegality attached to the declarations of independence thus stemmed not from the unilateral character of these declarations as such, but from the fact that they were, or would have been, connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character (*jus cogens*).¹³

It follows that, despite the purported ‘declaration of independence’ made on 15 November 1983, Turkey remains the occupying power in the north of the Republic of Cyprus. To quote the European Court of Human Rights in a Judgment handed down on 29 January 2019 (but not cited in *Sovereignty Suspended*), ‘the Court notes that Turkey is regarded by the international community as being in occupation of the northern part of Cyprus’ and ‘the international community does not recognise the “TRNC” as a State under international law.’¹⁴

It also follows that *Sovereignty Suspended* may be an eye-catching title but, by intimating that the ‘TRNC’ is invested with or entitled to a ‘suspended’ form of sovereignty, it creates an impression which is apt to mislead.

¹³ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, 403-453 at 437, International Court of Justice website, www.icj-cij.org/public/files/case-related/141/141-20100722-ADV-01-00-EN.pdf and www.icj-cij.org/en/case/141/advisory-opinions (accessed 19 December 2022).

¹⁴ *Guzelyurtlu and Others v Cyprus and Turkey* [2019] ECHR 100 [193], [https://hudoc.echr.coe.int/spa#{%22itemid%22:\[%22001-189781%22\]}](https://hudoc.echr.coe.int/spa#{%22itemid%22:[%22001-189781%22]}) (accessed 19 December 2022).

‘The Aporetic State’

Whereas *Sovereignty Suspended* has three Parts entitled ‘The border that is not one’ (Part I), ‘Enacting the aporetic state’ (Part II) and ‘The aporetic subject’ (Part III), each part has three chapters; thus, the book is subdivided into nine chapters, in addition to the Preface, Introduction, Conclusion and miscellaneous other contents. As the term ‘aporetic’ appears in the titles of Part II and Part III, as well as in the title of the Introduction named ‘The Aporetic State’, an obvious question arises. Why has such prominence been given to an evocative English adjective of ancient Greek origin?

Bryant and Hatay write that the term ‘aporetic’ applies to ‘the gap between the real and the realizable’, something which ‘constitutes’ what they depict as ‘the *aporetic* state.’¹⁵ In venturing this thought, Bryant and Hatay draw inspiration from the French philosopher Jacques Derrida:

‘In his brief book *Aporias*, Jacques Derrida poses the aporia, the space of non-passage, in tension with the border, which he defines as that which one is able to cross even when one knows one should not. The aporia is in tension with the border, because it represents the point at which crossing is impossible despite there being no border to stop us.’¹⁶

Bryant and Hatay move on to note that ‘what is significant for Derrida about the aporia is that it represents an impossible possibility, a refusal or prohibition, that is both unknown and inexplicable, seemingly arbitrary.’ From this philosophical starting point, Bryant and Hatay suggest that, in their book, ‘the aporia represents the known distinction, present in *de facto* states from their very inception, between the *real* and the *realizable*.’ In the next sentence, Bryant and Hatay go further, by suggesting that ‘*De facto* states are those entities, such as the TRNC, that look like states and act like states but do not have the international recognition that makes them *de jure*, or states “in law”’.¹⁷

‘The Paradox of the De Facto’

If *Sovereignty Suspended* has any overarching argument, it is the circuitous one found in Chapter 4 entitled ‘The So-Called State’. There, Bryant and Hatay define

¹⁵ Bryant and Hatay, *Sovereignty Suspended*, 3.

¹⁶ *Ibid*, 3.

¹⁷ *Ibid*, 3.

‘the crux’ of what they call ‘the paradox of the de facto’. This ‘crux’ is ‘that the de facto always already contains its own denial’. They reason that:

‘While that denial is most obvious in the factitiousness of their statehood, it appears already in the materiality of statecraft, which quite obviously *does* exist even as it *should not*. These practices of statecraft that always contain elements of obfuscation we call “*state*” *craft*, to emphasize state-builders’ perpetual awareness that what they are creating is not a state but a “state”.’¹⁸

In their ‘Conclusions’, Bryant and Hatay ram home this argument.¹⁹

Orwellism

On reflection, *Sovereignty Suspended* makes a twofold contribution to the academic literature.

Firstly, the book provides a wealth of material drawn from archival documents, together with details and insights which enrich our understanding of the ‘TRNC’, its apparatchiks and those living under their *de facto* governance. The latter include those discussed in Chapter 3, entitled ‘Planting People’. Among them are citizens of Turkey who were illegally encouraged to colonise the occupied areas –contrary, I might add, to Articles 1, 49(6) and 147 of the Fourth Geneva Convention of 1949.²⁰ By extension, the book enhances our understanding of the concept of the *de facto* state and its inter-relationship with demographic engineering.

Secondly, although Bryant and Hatay do not cite George Orwell, they effectively demonstrate that, from the day of its purported establishment, on 15 November 1983, the so-called ‘TRNC’ has been an Orwellian *de facto* entity steeped in absurdity, obfuscation, self-delusion and denial. To be sure, albeit in different circumstances, these forms of Orwellism have likewise gripped the non-Turkish-occupied parts of the Republic of Cyprus, not to mention the two remnants of the British Crown Colony of Cyprus which, in Orwellian fashion, have been rebranded as ‘the Sovereign Base Areas of Akrotiri and Dhekelia’. However, these are subjects outside the scope of *Sovereignty Suspended* and, thus, outside the scope of this review.

What should not go unsaid in this context is that the Orwellism of the ‘TRNC’ has

¹⁸ Ibid, 132.

¹⁹ Ibid, 269.

²⁰ *The Geneva Conventions of 12 August 1949* (Geneva: International Committee of the Red Cross, undated), 167 and 202, International Committee of the Red Cross website, www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf (accessed 19 December 2022).

been accompanied by the Orwellian ‘doublethink’ of the UN Security Council. This is symbolised by the aforementioned UN Security Council Resolution 550 (1984).

On the one hand, in Resolution 550 (1984), the UN Security Council affirms, in its Preamble, that it is ‘gravely concerned about the further secessionist acts in the occupied part of the Republic of Cyprus which are in violation of resolution 541 (1983)’. Then, in its main body, the UN Security Council *inter alia*:

‘2. Condemns all secessionist actions, including the purported exchange of ambassadors between Turkey and the Turkish Cypriot leadership, declares them illegal and invalid and calls for their immediate withdrawal.’²¹

On the other hand, in common with other toothless Cyprus-related UN Security Council Resolutions adopted outside the enforcement framework of Chapter VII of the UN Charter,²² Resolution 550 does not take any effective action with the aim or effect of clamping down on the ‘further secessionist acts in the occupied part’. In parallel, Resolution 550 fails to envisage or deliver any form of international criminal justice. This despite the countless international crimes which Turkey, plus other state and non-state actors, appear to have inflicted on the Republic of Cyprus since December 1963 and, even more so, since Turkey invaded the Republic, on 20 July 1974.

The Orwellian ‘doublethink’ of the UN Security Council is all the more shocking if one considers that, by purporting to recognise and prop up the ‘TRNC’ in its purported capacity as a ‘state’ endowed with ‘sovereignty’, Turkey has effectively denied that it is an occupying power with corresponding duties under the Law of Occupation, International Humanitarian Law and International Criminal Law. In consequence, systemic forms of illegality and inhumanity have flourished amid an ongoing climate of impunity.

To sum up, *Sovereignty Suspended* represents a substantial if flawed addition to the academic literature.

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²¹ As noted earlier, UN Security Council Resolution 550 is available on the UN Digital Library at <https://digitallibrary.un.org/record/67600> (accessed 19 December 2022).

²² *Charter of the United Nations and the Statute of the International Court of Justice* (San Francisco: United Nations, 1945), 9-11, UN website, <https://treaties.un.org/doc/Publication/CTC/uncharter.pdf> (accessed 19 December 2022).