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Recommended Citation

Krasner, Stephen D. (1997) "Pervasive Not Perverse: Semi-Sovereigns as the Global Norm," *Cornell International Law Journal*: Vol. 30: Iss. 3, Article 3.
Available at: <http://scholarship.law.cornell.edu/cilj/vol30/iss3/3>

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Pervasive Not Perverse: Semi-Sovereigns as the Global Norm

Stephen D. Krasner*

Introduction

The contemporary world is beset by conflicts and issues that seem to challenge the utility of sovereignty as conventionally understood. Ethnic groups slaughter each other in the former Yugoslavia and in parts of central Africa. Israelis and Palestinians make apparently incompatible and irreconcilable demands about the same territory. Growing globalization seems to prevent national governments from exercising effective control over their own macro-economic and social policies. Transnational private groups organize against governments without regard to territorial boundaries. The state system, which many analysts see as having been established by the Peace of Westphalia in 1648,¹ appears to be under an unprecedented level of challenge along many fronts. The whole notion of sovereignty appears fragile, incorporeal, undefinable, and perhaps inconsequential for the modern world.

These attitudes about the changing nature, perhaps the irrelevance, of sovereignty are historically myopic, analytically flaccid, and empirically inaccurate. Sovereignty has always been problematic. No element of sovereignty—control, authority, non-intervention, recognition, even territoriality—has ever gone without challenge. Unlike the situation in well-established domestic polities, which are characterized by widely shared values and deeply embedded institutional structures, the most important of which is a judiciary that can decide among competing claims, institutional arrangements in the international system have always been weak. The international system is an anarchy; there is no final court of appeal. Norms and principles associated with sovereignty have often been in tension with each other. In some cases, they are logically contradictory. Non-intervention in the internal affairs of other states is one central principle associated with sovereignty, but if the international environment is anarchical, there is no reason to suppose that states would not intervene in the affairs of other states. Self-help and non-intervention are contradictory.

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1. For examples of this view of Westphalia, see Paul Krugman, *What Should Trade Negotiators Negotiate About?*, 35 J. ECON. LIT. 119 (1997); J.L. BRIERLY, *THE LAW OF NATIONS: AN INTRODUCTION TO THE INTERNATIONAL LAW OF PEACE* 5 (Sir Humphrey Waldock ed., 6th Ed., 1963); CHARLES TILLY, *COERCION, CAPITAL, AND EUROPEAN STATES, AD 990-1990*, at 167 (1990); GIDEON GOTTLIEB, *NATIONS AGAINST STATE: A NEW APPROACH TO ETHNIC CONFLICTS AND THE DECLINE OF SOVEREIGNTY* 24 (1993); T.J. LAWRENCE, *THE PRINCIPLES OF INTERNATIONAL LAW* 116 (7th ed. 1923).

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Historically, one or the other of the major principles associated with sovereignty has always been under challenge. The state system did not begin with the Peace of Westphalia of 1648, a document that was filled with contradictory principles that reflected both medieval and more modern concerns. Territorial states existed before Westphalia and other forms of political organization, including the Holy Roman Empire, persisted long after the Peace was signed. All of the major international treaties of the last several hundred years have included contradictory principles, especially involving non-intervention and autonomy on the one hand and various efforts to exercise external authority on the other. Only a very few states have actually possessed all of the major attributes that are associated with sovereignty—territoriality, autonomy, recognition, and effective control—the United States being the most obvious case. At the other extreme, states like the eastern European satellites during the Cold War enjoyed territory and recognition, yet their autonomy and control were severely compromised.²

Hence, in some sense, almost all of the states of the world have been semi-sovereigns. Rarely have states enjoyed full autonomy. Any member state of the European Union is now a semi-sovereign, for the decisions of a supra-national judicial body, the European Court of Justice, have supremacy and direct effect. All of the signatory states of the European Human Rights Convention have agreed to give their own citizens the right to bring cases directly to the European Court of Human Rights. Any state that borrows money from the International Monetary Fund, the World Bank, or another international financial institution is subject to conditionality requirements that involve questions of what the World Bank now terms good governance, such as the creation of commissions that are authorized to limit corruption. Taiwan, another poignant example, possesses an independent government but it is not internationally recognized.

The semi-sovereign character of many, almost all, of the states in the contemporary international system and many states in the past, suggests that stable solutions to international conflicts do not depend on conformity with all of the principles that are conventionally associated with sovereignty. Violations of sovereignty related principles, especially the norm of non-intervention and respect for autonomy, can be functional and stabilizing. Stability depends not on conformity with some idealized notion of sovereignty but rather on whether or not agreements have been entered into voluntarily. Coercive practices rarely provide stable solutions over the long term. External actors can coercively maintain stability in a particular situation for some period of time. For the intervenor, however, the costs of military intervention and threats have usually outweighed the benefits. The staying power of major powers has been weak. The United States may have cut and run when a dozen or so American troops were killed in Somalia, but this event was only emblematic of a more general pattern. Even the Soviet Union decided in the end that the use of force in Eastern

2. ZBIGNIEW K. BRZEZINSKI, *THE SOVIET BLOC: UNITY AND CONFLICT* 90-94, 119-21 (rev. ed. 1971).

Europe was incompatible with its own interests; it was a decision, however, which Mikhail Gorbachev and the last leaders of the U.S.S.R. might have, in retrospect, regretted. Unless external actors can find and support local interlocutors, efforts to create viable solutions to specific issues within a state by violating the sovereignty norm of non-intervention are likely to fail. With local allies, however, semi-sovereign entities can be perfectly viable, perhaps even more viable than fully sovereign states.

I. Alternative Meanings of Sovereignty

Sovereignty has engendered such confusion in part because the term itself has been used in several different ways. It has referred to domestic political structures and control, to the exclusion of external authority, and to practices associated with international recognition. These three different ways in which the term has been used—domestic sovereignty, Westphalian sovereignty, and international legal sovereignty—embody different rules and norms and emphasize different behavioral phenomena.

The classic conceptualization of sovereignty, associated with the work of Bodin and Hobbes, focused on issues related to domestic sovereignty.³ Bodin and Hobbes, writing in the midst of the religious wars in France and Britain, were anxious to establish some single source of law within the state.⁴ Above all they wanted to provide a basis for order and, having established such a basis, limit any possible challenges to legitimated authority.⁵ For Bodin and Hobbes, the alternative to some single legitimate source of law was anarchy. Order was paramount; justice was secondary. Revolt against legitimate authority could never be justified.⁶ For Hobbes, the sovereign ruler was the great Leviathan, although it would be prudent for the sovereign to rule wisely lest excess ambition precipitate foreign disaster and place his subjects in fear of their lives, a situation in which they might cease to obey. Bodin argued that there must be some single source of the law in any stable polity and he suggested that a monarchical form of government was superior to either a democracy, in which the many were the source of the law, or an aristocracy, in which the few were the source of the law.⁷ Although the monarch was the source of law, his authority derived, according to Bodin, from God. The monarch was bound to act justly and obligated to obey treaties into which he or she had entered with other sovereign rulers.⁸

3. JEAN BODIN, *ON SOVEREIGNTY: FOUR CHAPTERS FROM THE SIX BOOKS OF THE COMMONWEALTH* (Julian H. Franklin ed. & trans., 1992); THOMAS HOBBS, *LEVIATHAN OR THE MATTER, FORME AND POWER OF A COMMONWEALTH* (Michael Oakshott ed., 1960).

4. F.H. HINSLEY, *SOVEREIGNTY* 144-45 (2d ed. 1986); BRIERLY, *supra* note 1, at 65.

5. GEORGE H. SABINE, *A HISTORY OF POLITICAL THEORY* (3d ed. 1961) (Chapter 20); HINSLEY, *supra* note 4, at 120; BODIN, *supra* note 3, at 120.

6. QUENTIN SKINNER, *2 THE FOUNDATIONS OF MODERN POLITICAL THOUGHT* 284-87 (1978).

7. BODIN, *supra* note 3, at 8, 10, 13-14.

8. *Id.*; SKINNER, *supra* note 6, at 289.

The emphasis that Bodin and Hobbes placed on some single source of authority, some single originator of law, has disappeared from modern political thought. Stable polities have taken many different forms—autocratic and democratic, federal and unitary, parliamentary and presidential. Nevertheless, the central characteristic of domestic sovereignty remains the authority structure within a given state.

The second element of domestic sovereignty is control. Authority does not guarantee control.⁹ Authority involves questions of whether or not an agent is regarded as having a legitimate right to act in a particular sphere—a policeman can make arrests but cannot give course grades; an internal revenue agent can make judgments about tax payments but cannot activate the military reserves. Control involves the actual exercise of authority—the police might not be able to control crime; tax collectors might not be able to collect taxes. With the ratification of the Eighteenth Amendment to the Constitution, the government of the United States tried to enforce the prohibition against the production, sale, and importation of intoxicating liquors for more than a decade. When it was unable to do so, the Twenty-first Amendment ended this exercise.

Many recent discussions about the erosion of sovereignty have emphasized the loss of state control over transborder movements rather than over exclusively domestic activities.¹⁰ High levels of capital mobility, it has been suggested, erode the ability of the state to pursue an independent monetary policy.¹¹ Disease vectors move across continents with the speed of modern jet planes. Modern communications—telephones, fax, e-mail—make it easier for non-governmental organizations to coordinate their activities in many different countries. Multinational corporations source components around the world. These transborder flows ostensibly make it more difficult for states to exercise effective control within their own borders.

The actual extent to which globalization has eroded state control is much less certain than many popular accounts suggest. There is still a great deal of variation among national economic policies with regard to social welfare and taxation, much more variation than naive versions of globalization would suggest possible. Even capital market integration, the area where globalization is supposedly most advanced (one frequently alluded to figure is the trillion dollar a day foreign exchange market) is very far from perfect.¹² Regardless of the empirical accuracy of arguments

9. Janice E. Thomson, *State Sovereignty in International Relations: Bridging the Gap Between Theory and Empirical Research*, 39 INT'L STUD. Q. 2 (June 1995), at 214.

10. JAMES ROSENAU, *TURBULENCE IN WORLD POLITICS: A THEORY OF CHANGE AND CONTINUITY* (1990); RICHARD N. COOPER, *THE ECONOMICS OF INTERDEPENDENCE: ECONOMIC POLICY IN THE ATLANTIC COMMUNITY* (1968).

11. For a critical view of this perspective, see Eric Helleiner, *A Challenge to the Sovereign State: Financial Globalization and the Westphalian World Order* (Paper prepared for the workshop "State and Sovereignty in the World Economy," Laguna Beach, Feb. 1997).

12. For a very well documented discussion that demonstrates that the level of state control is much higher than many discussions of globalization suggest, see Geoffrey

about globalization, the almost conventional assertion that sovereignty is being eroded by transborder flows is an illustration of sovereignty understood as control. Domestic sovereignty, a concept which can be traced back to Bodin and Hobbes, involves both the nature of domestic authority structures and the ability of any such structures to exercise effective control over both transborder flows and exclusively domestic activities.

The second meaning of sovereignty, international legal sovereignty, is concerned with establishing the status of a political entity in the international system. Is a state recognized by other states? Is it accepted as a juridical equal? Are its representatives entitled to diplomatic immunity? Can it be a member of international organizations? Can it enter into agreements with other entities? This is the concept used most frequently in international legal scholarship, but it has been employed by scholars and practitioners of international relations more generally.¹³

The classic model of international law is a replication of the liberal theory of the state. The state is treated at the international level as analogous to the individual at the national level. Sovereignty, independence, and consent are comparable to the position that the individual has in the liberal theory of the state. States are equal in the same way that individuals are equal.¹⁴

Almost all rulers have wanted international legal sovereignty, the recognition of other states, because it provides them with both material and normative resources. International legal sovereignty is a ticket of admission. It gives a state certain basic rights in the international arena including juridical equality, the right to consent to international law, and the ability to enter into treaties.¹⁵ Recognition provides the acts of a state with protection from legal attacks in the judicial systems of other states; the act of state doctrine holds, in the words of one U.S. Supreme Court decision, that "[e]very sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory."¹⁶ Recognition also provides immunity from both civil and criminal actions for diplomatic representatives.¹⁷ In addition, international recognition can be a signal to domestic constituents, affecting the level of support for a specific government. The People's Republic of China has assiduously

Garrett, *The Nation-State in the Global Economy: Obstinate or Obsolete*, ___ INT'L ORG. ___ (forthcoming). For an important early analysis by economists on the surprising lack of international capital market integration, see Martin Feldstein & Charles Horioka, *Domestic Savings and International Capital Flows*, 90 ECON. J. 314 (1980).

13. OPPENHEIM'S INTERNATIONAL LAW 14, 158 (Sir Robert Jennings & Sir Arthur Watts eds., 1992) [hereinafter OPPENHEIM]; MICHAEL ROSS FOWLER & JULIE MARIE BUNCK, LAW, POWER, AND THE SOVEREIGN STATE: THE EVOLUTION AND APPLICATION OF THE CONCEPT OF SOVEREIGNTY 12 (1995); Thomson, *supra* note 9, at 219.

14. J.H.H. Weiler, *The Transformation of Europe*, 100 YALE L.J. 2403, 2479-80 (1991); Brierly, *supra* note 1, at 37-40.

15. FOWLER & BUNCK, *supra* note 13, at 12; OPPENHEIM, *supra* note 13, §§ 47, 107; Thomson, *supra* note 9, at 219.

16. *Underhill v. Hernandez*, 168 U.S. 250, 252 (1897).

17. OPPENHEIM, *supra* note 13, §§ 492-512, at 1072-97.

attempted to prevent other states from acting in ways that might suggest that Taiwan or Tibet are independent states.¹⁸ China protested against the visit of the President of Taiwan to the United States, even though the trip was organized around President Lee's return to his alma mater, Cornell University.¹⁹ The Dalai Lama was not given a formal presidential-level meeting with Clinton when the two met in the spring of 1997, due to American concerns about antagonizing China.²⁰ At least one motivation for Chinese policy is the fear that diplomatic recognition of Taiwan or Tibet might increase instability within China.²¹

Recognition has never been automatic. It has always been a political act. The criteria that states invoke have varied over time and have included the ability to defend and protect a defined territory, the existence of an established government, the presence of a population, and the absence of any formal obligation to submit actions to some external authority.²² Regardless of the historical moment, the criteria in vogue have never been consistently applied. States with effective control over their own territory have not been recognized, such as China and the Soviet Union when their respective communist regimes first gained control.²³ Entities that are devoid of independence, have been accepted as members of international organizations. For example, India was a member of the League of Nations even though it was a colony of the British Empire.²⁴

The third way in which the term sovereignty has been used is Westphalian sovereignty. The Westphalian model is an institutional arrangement for organizing political life that is based on two principles: territoriality and autonomy.²⁵ States exist in specific territories. Within these territories, domestic political authorities are the only arbiters of legitimate behavior.

The basic rule of Westphalian sovereignty is non-intervention in the internal affairs of other states. This rule has virtually nothing to do with the Peace of Westphalia signed in 1648. In fact, that document established a regime for religious toleration in Germany that violated the principle of non-intervention.²⁶ The principle of non-intervention was first explicitly

18. Samuel S. Kim, *Taiwan and the International System: The Challenge of Legitimation*, in *TAIWAN IN WORLD AFFAIRS* 145, 145-79 (Robert G. Sutter & William R. Johnson eds., 1994).

19. Elaine Sciolino, *Angered Over Taiwan, China Recalls Its Ambassador in U.S.*, N.Y. TIMES, June 17, 1995, at 5.

20. *Clinton Visits Dalai Lama Informally*, N.Y. TIMES, Apr. 24, 1997, at A3.

21. *Why Taiwan Scares China*, N.Y. TIMES, Mar. 19, 1996, at A23.

22. FOWLER & BUNCK, *supra* note 13, at chap. 2; Thomson, *supra* note 9, at 228; OPPENHEIM, *supra* note 13, § 55; Beverly Crawford, *Explaining Defection from International Cooperation: Germany's Unilateral Recognition of Croatia*, 48 *WORLD POL.* 500 (1996).

23. OPPENHEIM, *supra* note 13, at 148-50, 158-73.

24. *Id.* at 145-46.

25. Thomson, *supra* note 9, at 219, 227; John Gerard Ruggie, *Territoriality and Beyond: Problematizing Modernity in International Relations*, 47 *INT'L ORG.* 152 (1993).

26. Stephen D. Krasner, *Westphalian and All That*, in *IDEAS AND FOREIGN POLICY* (Judith Goldstein & Robert O. Keohane eds., 1993).

articulated by Wolff and Vattel during the latter part of the 18th century. Wolff wrote in the 1760s that, “[t]o interfere in the government of another, in whatever way indeed that may be done is opposed to the natural liberty of nations, by virtue of which one is altogether independent of the will of other nations in its action.”²⁷ During the 19th century, the Latin American states, which were relatively weak, were the strongest advocates of non-intervention. Two doctrines illustrate such advocacy. The objective of the Calvo and Drago doctrines, both articulated by Argentinean jurists, was to delegitimize European gunboat diplomacy, the use of force to collect public and private debts.²⁸

If non-intervention is the norm, what constitutes intervention? International lawyers have emphasized coercion as a critical component of intervention. For instance, Oppenheim’s text maintains that intervention is a situation where one state engages in forcible or dictatorial measures related to matters over which another state has the right to exercise sovereignty such as “its political, economic, social and cultural systems, and its foreign policy.”²⁹ The intervention must be coercive. Non-forcible acts, such as withholding recognition, withdrawing aid, discontinuing exports, or lodging a complaint, do not constitute intervention.³⁰ Weaker states have often argued for a broader definition of what constitutes intervention or, conversely, a more relaxed specification of coercion. For example, the Charter of the Organization of American States stipulates that:

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements.³¹

27. CHRISTIAN WOLFF, *JUS GENTIUM METHODO SCIENTIFICA PETRACTATUM* § 256 (Joseph H. Drake trans., 1934) (originally published 1764), *quoted in* ANN VAN WYREN THOMAS & A.J. THOMAS, *NON INTERVENTION: THE LAW AND ITS IMPORT IN THE AMERICAS* 5 (1956). Vattel reasoned from the logic of the state of nature: If men were equal in the state of nature, then states were also free and equal and living in a state of nature. For Vattel, a small republic was no less a sovereign state than a powerful kingdom. Vattel wrote that no state had the right to intervene in the internal affairs of other states. He applied this argument to non-European as well as European states claiming that:

The Spaniards violated all rules when they set themselves up as judges of the Inca Athualpa. If that prince had violated the law of nations with respect to them, they would have had a right to punish him. But they accused him of having put some of his subjects to death, of having had several wives, &c.—things, for which he was not at all accountable to them; and, to fill up the measure of their extravagant injustice, they condemned him by the laws of Spain.

EMMERICH DE VATTTEL, *THE LAW OF NATIONS, OR, PRINCIPLES OF THE LAW OF NATURE, APPLIED TO THE CONDUCT AND AFFAIRS OF NATIONS AND SOVEREIGNS* 155 (Joseph Chitty trans., 1852). *See also* BRIERLY, *supra* note 1, at 37-40.

28. THOMAS & THOMAS, *supra* note 27, at 56-62.

29. OPPENHEIM, *supra* note 13, at 431.

30. *Id.* at 430-34.

31. Charter of the OAS, *quoted in* Lori Damrosch, *Changing Conceptions of Intervention in International Law*, in *EMERGING NORMS OF JUSTIFIED INTERVENTION: A COLLECTION OF ESSAYS FROM A PROJECT OF THE AMERICAN ACADEMY OF ARTS AND SCIENCES* 94 (Laura W. Reed & Carl Kayser eds., 1993).

These weaker states see the concept of sovereignty as a defense mechanism against aggression.

Using a more expansive conceptualization of intervention, Westphalian sovereignty is violated when an external actor, usually a state (although sometimes an international organization), intrudes upon authoritative decision making within another state. Examples of violations of Westphalian sovereignty include: IMF conditionality requirements, which involve altering domestic policies, institutional arrangements, and sometimes even personnel;³² provisions for Catholic minority rights that were included in the Dutch constitution at the insistence of the major powers at the conclusion of the Napoleonic wars;³³ equal civic and political rights for all religious groups, that were accepted by the successor states of the Ottoman Empire during the 19th century as a condition for recognition by the major powers;³⁴ economic sanctions against South Africa to end apartheid;³⁵ changes in civil military institutions in central European states as a condition for membership in NATO.³⁶ Narrower definitions of intervention, which emphasize the right to use legitimate force within a state's boundaries or which regard any voluntary action as acceptable, would not regard any of these situations as violations of the rule of non-intervention.

The claim by one state that it had the right to use force to change or protect the nature of the government in another would be a violation of Westphalian sovereignty under any definition of intervention. Such claims were made by the Holy Alliance after the Napoleonic Wars,³⁷ by the United States in Central America and the Caribbean during the first two decades of the twentieth century,³⁸ and by the Soviet Union in Eastern Europe during the Cold War.³⁹

Westphalian sovereignty is a basic ontological assumption for most political scientists working in the area of international politics. The two theoretical approaches that have dominated the study of the international system by American political scientists since the 1960s are neo-realism and

32. SIDNEY DELL, ON BEING GRANDMOTHERLY: THE EVOLUTION OF IMF CONDITIONALITY (1981) (International Finance Section, Department of Economics, Princeton University, Essays in International Finance, No. 144).

33. J.A. LAPONCE, THE PROTECTION OF MINORITIES 39 (1960).

34. Stephen D. Krasner & Daniel Froats, *The Westphalian Model and Minority-Rights Guarantees In Europe*, in THE INTERNATIONAL SPREAD OF CIVIL CONFLICT (David Lake & Donald Rothchild eds., 1998).

35. INTERNATIONAL ORGANIZATIONS AND ETHNIC CONFLICT 35-36 (Milton J. Esman & Shibley Telhami eds., 1995).

36. NATO, PARTNERSHIP WITH THE COUNTRIES OF CENTRAL AND EASTERN EUROPE, June 7, 1991, art. 9; NATO, STUDY ON NATO ENLARGEMENT, Sept. 1995, chap. 5B, para. 72.

37. Stanley Hoffmann, *The Problem of Intervention*, in INTERVENTION IN WORLD POLITICS 12 (Bull Hedley ed., 1984).

38. DANA GARDNER MUNRO, INTERVENTION AND DOLLAR DIPLOMACY IN THE CARIBBEAN, 1900-1921 (1964).

39. BRZEZINSKI, *supra* note 2; H. GORDON SKILLING, THE GOVERNMENTS OF COMMUNIST EAST EUROPE (1966).

neo-liberal institutionalism.⁴⁰ Both assume that states are unified, rational, autonomous, actors. These neo-realist or neo-liberal states are constrained by the external environment. Within these external constraints, however, they (or their rulers) are free to choose the course of action that will maximize their utility.⁴¹ Neo-realism emphasizes the importance of power and the dangers inherent in an international system that always poses the threat of violent death.⁴² Neo-liberal institutionalism is more concerned with analyzing how states resolve market failure problems, situations in which each individual state acting rationally in its own self-interest creates an outcome that is Pareto sub-optimal.⁴³ Both neo-realism and neo-liberalism, however, assume that states are free of external authority.⁴⁴ A poor, weak state might have little room for maneuver, but its decisions would reflect its own preferences.

II. The Contradictions of Sovereignty

The three kinds of sovereignty—international legal, domestic (including both control and authority structures), and Westphalian—are often treated as if they were a coherent package. States are understood as entities with established and internationally recognized authority structures, enjoying stable and effective control within and across their borders, while free of external intervention. Both logically and behaviorally, this conception of sovereignty, sovereignty as an integral package of mutually consistent principles and norms, is wrong.

The existence, or lack thereof, of one kind of sovereignty does not imply the absence or presence of others. Domestic sovereignty can be deeply eroded without any necessary impact on international legal sovereignty or Westphalian sovereignty. Many failed African states, for example, have little control over policies or behavior within or across their borders. Their domestic institutional structures are fragile at best, comprised sometimes of no more than the head of state, a few cronies, and a presidential guard. Taxes are not collected; roads are not maintained; schools do not operate; and civil servants are not paid. Nevertheless, such states maintain their international legal sovereignty. Their representatives sit at the United Nations. Their ambassadors enjoy diplomatic immunity. They are parties to international agreements and members of international organizations.

Nor is their Westphalian sovereignty necessarily compromised. Weak domestic sovereignty makes a state vulnerable to external intervention, but

40. For the most important exposition of neo-realism, see KENNETH WALTZ, *THEORY OF INTERNATIONAL POLITICS* (1979). For the most important exposition of neo-liberal institutionalism, see ROBERT O. KEOHANE, *AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY* (1984).

41. See generally, e.g., NEOREALISM AND NEOLIBERALISM: THE CONTEMPORARY DEBATE (David Baldwin ed., 1993).

42. See generally WALTZ, *supra* note 40.

43. KEOHANE, *supra* note 40, at chap. 6; Arthur Stein, *Coordination and Collaboration*, in NEOREALISM AND NEOLIBERALISM: THE CONTEMPORARY DEBATE (David Baldwin ed. 1993).

44. See generally WALTZ, *supra* note 40.

such intervention will only occur if other actors, especially other states, have an interest in doing so. Many failed states are inconsequential. Their collapse does not affect the interests of more powerful actors in the international environment. Such actors could intervene, could violate the norms of Westphalian sovereignty, but they have no interest in doing so. Hence, failed states have international legal sovereignty but not domestic sovereignty, and they might, or might not, have Westphalian sovereignty.

In contrast, some states may have stable and well institutionalized domestic authority structures, one element of domestic sovereignty and international legal sovereignty, but not have Westphalian sovereignty. This is the situation that characterizes all of the states of Western Europe. These states are members of either or both the European Union and the European Convention on Human Rights. The European Union has a set of supra-national institutions, including the European Court of Justice (ECJ), the European Parliament, and the European Commission, which can make authoritative decisions about some aspects of policies within member states. The members states of the Union have accepted the principles of supremacy and direct effect with regard to the rulings of the ECJ. The rulings of the European Court take precedence over the rulings of national courts and the ruling of the ECJ are directly applicable in national judicial systems. The European Parliament and Commission have significant authority over the implementation of the single market.⁴⁵

Similarly, the signatories to the European Convention for the Protection of Human Rights and Fundamental Freedoms⁴⁶ have also established a set of supra-national authority structures, the European Commission on Human Rights and the European Court of Human Rights, that compromise the Westphalian sovereignty of the member states. The Commission, which is composed of experts who act in their individual capacity, can receive complaints from individuals, non-governmental organizations, and member states and can refer questions to the European Court of Human Rights whose decisions are binding on states.⁴⁷ Between 1953 and 1990 the Commission received 15,457 petitions, almost all from individuals. From this total, 14,636 were declared inadmissible, 96 resulted in friendly settlements, 430 led to a Commission report, and 251 led to judgments by the Court.⁴⁸ Decisions of the Commission and the Court have led to changes in detention practices in Belgium and Germany, alien law in Swit-

45. For a discussion of the European Court of Justice, see Ann-Marie Burley & Walter Mattli, *Europe Before the Court: A Political Theory of Legal Integration*, 47 INT'L ORG. 41 (1993). For an explication of the four decision-making structures affecting different issues in the European Union, see Geoffrey Garrett & George Tsebelis, *An Institutional Critique of Intergovernmentalism*, 50 INT'L ORG. 269 (1996).

46. November 4, 1950, 312 U.N.T.S. 221.

47. JACK DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE* 214 (1989).

48. Andrew Moravcsik, *Lessons from the European Human Rights Regime*, in INTER-AMERICAN DIALOGUE, *ADVANCING DEMOCRACY AND HUMAN RIGHTS IN THE AMERICAS: WHAT ROLE OF THE OAS?* 45-46 (1994).

zerland, and trial procedures in Sweden.⁴⁹ Hence, all of the countries of Western Europe are international legal sovereigns, but they do not have Westphalian sovereignty.

Taiwan is an example of a state that has Westphalian and domestic sovereignty but does not have international legal sovereignty. Taiwan is recognized by only a limited number of small and generally inconsequential states.⁵⁰ None of the major powers recognize Taiwan.⁵¹ Taiwan is a member of only a small number of international organizations.⁵² Nevertheless, Taiwan has domestic and Westphalian sovereignty. It has a stable domestic government structure which has effective control over activities within its own borders. External actors have not had much influence over the domestic authority structures within Taiwan.

Taiwan is not a unique case. Until the 1970s, all of the major powers, with the exception of the Soviet Union, refused to recognize the People's Republic of China as the government of China.⁵³ Instead, representatives from Taiwan, a small island whose population was only a small fraction that in China, held China's seat in the United Nations. After the Bolshevik revolution, the major powers refused to recognize the new government.⁵⁴

International legal sovereignty has been granted to entities that have not had domestic or Westphalian sovereignty. The dominions of the British Commonwealth have been treated as independent states even though their juridical independence has been ambiguous, since the final court of appeal in the Commonwealth remains the Judicial Committee of the Privy Council.⁵⁵ Beyelo-Russia and the Ukraine were admitted to the United Nations, even though they were part of the Soviet Union.⁵⁶ India signed the Treaty of Versailles and was a member of the League of Nations even though it was a colony of Great Britain.⁵⁷ Andorra was admitted to the United Nations in 1993, even though authorities in France and Spain have a veto over matters related to its security.⁵⁸ The Order of Malta has been recognized as a sovereign person by some sixty states even though it has

49. *Id.* at 35-58; DAVID P. FORSYTHE, *HUMAN RIGHTS AND WORLD POLITICS* 52, 57, 59 (1983); JACK DONNELLY, *INTERNATIONAL HUMAN RIGHTS* 82-83 (1992); DAVID P. FORSYTHE, *HUMAN RIGHTS AND WORLD POLITICS* 19 (1989). The text of the Convention and protocols can be found in IAN BROWNLIE, *BASIC DOCUMENTS ON HUMAN RIGHTS* 326-62 (3d ed. 1992).

50. Kim, *supra* note 18, at 151.

51. *Id.* at 153, 155.

52. *Id.* at 160.

53. OPPENHEIM, *supra* note 13, at 148-50.

54. *Id.*

55. DAVID W. MCINTYRE, *THE COMMONWEALTH OF NATIONS: ORIGINS AND IMPACT, 1869-1971*, at 184-87 (1977); NICOLAS MANSERGH, *THE COMMONWEALTH EXPERIENCE* 182-83 (1969); OPPENHEIM, *supra* note 13, at 249-50.

56. OPPENHEIM, *supra* note 13, at 249-50.

57. *Id.* at 145-46.

58. *ENCYCLOPEDIA BRITANNICA* on line, *BOOK OF THE YEAR 1994-95* and 96, entry for Andorra; *CONSTITUTION OF ANDORRA, 1993*, arts. 66, 101; FOWLER & BUNCK, *supra* note 13, at 118-20.

essentially no territory.⁵⁹

III. Paradoxes and Contradictions

There is an inherent paradox in the juxtaposition of international legal sovereignty and Westphalian sovereignty, and a fundamental contradiction between the international environment whose defining feature is anarchy, the absence of any authoritative global institutions, and the principle of non-intervention. International legal sovereignty implies that states can do anything they please as long as they are free of coercion. If states can enter into any contractual arrangements they desire, they can choose to compromise their Westphalian sovereignty. Indeed, almost all states have done exactly that by entering into one or more international human rights accords, all of which subject their domestic behavior to some degree of international scrutiny.⁶⁰ In many instances, signing on to such conventions has had little impact on the actual behavior of states. Nevertheless, such agreements can have unexpected consequences. The 1975 Helsinki Final Act commitments to human rights were viewed by the communist governments of Eastern Europe as empty phrases, but they helped to galvanize human rights groups in Poland, Czechoslovakia and other eastern bloc countries.⁶¹ In the case of the European Human Rights Convention, the leaders of postwar Europe knew very well that they wanted to establish an international regime that might contribute to the consolidation of democracy in Europe, a development that was not a foregone conclusion in the wake of the second World War.⁶² There is nothing problematic for international legal sovereignty with signing any one of the twenty-plus United Nations human rights conventions, the Helsinki Accords, or the European Human Rights Convention. Nevertheless, all of these agreements violated Westphalian sovereignty by subjecting the domestic authority structures of the signatory states to external influence.

Sovereign lending, especially to weak states, has also been characterized by the paradoxical relationship between international legal sovereignty and Westphalian sovereignty. Early modern European sovereigns, monarchs, were very dependent on international bankers. Interest rates were high because, if the king defaulted, the banker was not in a position to sue.⁶³ These arrangements were perfectly consistent with Westphalian sovereignty; there was no effort by lenders to influence the domestic authority

59. H.J.A. SIRE, *THE KNIGHTS OF MALTA* 237-42, 249-50, 271 (1994); OPPENHEIM, *supra* note 13, at 329.

60. For the texts of the major human rights agreements, see generally IAN BROWNLIE, *BASIC DOCUMENTS ON HUMAN RIGHTS* (3d ed. 1992).

61. Daniel Thomas, *Social Movements and International Institutions: A Preliminary Framework*, Paper presented at the American Political Science Association Annual Convention, Washington, D.C. (1990) (on file with the *Cornell International Law Journal*).

62. Moravcsik, *supra* note 48, at 44.

63. Douglass C. North & Barry R. Weingast, *Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England*, 49 J. ECON. HIST. 803 (1989); BENJAMIN J. COHEN, *IN WHOSE INTEREST?: INTERNATIONAL BANKING AND AMERICAN FOREIGN POLICY* 84-90 (1986).

structures of borrowers. During the 19th century, and especially since the 1950s, sovereign lending to developing states has been governed by norms that are inconsistent with Westphalian sovereignty. International financial institutions (IFIs), such as the World Bank and the International Monetary Fund, attach conditionality requirements to their loans. Conditionality, rejected at the 1944 Bretton Woods meetings where the Articles of Agreement of the Fund and the Bank were drafted, has become the norm.⁶⁴ Conditionality requirements, first attached to strictly economic policies, have become more and more expansive. They now include not just specific practices, such as quantitative import restrictions, but issues associated with institutional structures and personnel as well. At their annual meeting in 1996, for example, the president of the World Bank and the managing director of the International Monetary Fund committed themselves to a more aggressive attack on corruption in the Third World.⁶⁵ The IMF withheld loans to Kenya when its leaders failed to create an anti-corruption agency and dismissed a high ranking official who had been battling against government dishonesty.⁶⁶ The World Bank has organized programs to help countries, including Latvia, Tanzania, Uganda, and Ukraine, limit internal corruption.⁶⁷ The Bank official coordinating these new policies stated that, "You will see us giving a much higher profile to governance and corruption concerns in a selective way, delaying disbursements until we are satisfied, or suspending it altogether."⁶⁸ The World Bank's 1997 *World Development Report*, subtitled *The State in a Changing World*, argues among other things that the "clamor for greater government effectiveness has reached crisis proportions in many developing countries where the state has failed to deliver even such fundamental public goods as property rights, roads, and basic health and education."⁶⁹ The Report continued, describing the situation in Sub-Saharan Africa as one in which there is an urgent priority to "rebuild state effectiveness through an overhaul of public institutions, reasserting the rule of law, and credible checks on abuse of state power."⁷⁰

Human rights conventions and sovereign lending by international financial institutions are examples of interactions in which international legal sovereignty is the basis for compromising Westphalian sovereignty. It is only because states are recognized as sovereigns that they can compromise their sovereignty; or, less obscurely, only recognized states can enter into agreements that might challenge their exclusive authority within their own territory. More generally, states have frequently entered into international agreements that have compromised their own domestic autonomy

64. DELL, *supra* note 32, at 4.

65. Paul Lewis, *Two Global Lenders Use Leverage to Combat Corruption*, N.Y. TIMES, Aug. 11, 1997, at A4.

66. *Id.*

67. *Id.*

68. *Id.*

69. WORLD BANK, *WORLD DEVELOPMENT REPORT, 1997, THE STATE IN A CHANGING WORLD 2* (1997).

70. *Id.* at 14.

because they have confronted problems that they could not solve unilaterally. The European Union is only the most extreme example. Various environmental agreements and some trade arrangements, especially those with more legalized dispute settlement mechanisms such as NAFTA and the WTO, are examples of arrangements in which international legal sovereigns enter into agreements that undermine their Westphalian sovereignty.

These arrangements have never posed any problem for the international legal perspective on sovereignty. For international legal scholars, the defining attributes of sovereignty are recognition and the absence of coercion. Compromises of Westphalian sovereignty, even voluntary compromises, are more problematic for political scientists who have assumed not only that states are the basic actors in the international system but also that these states are autonomous, free to choose their own policies and institutional arrangements, subject only to constraints imposed by the power of other states and not by the ability of other states or international organizations to penetrate the domestic political structures of their counterparts. There is, therefore, a paradox between international legal sovereignty and Westphalian sovereignty. The presence of the former implies that the latter can be compromised.

The fact that the international environment is anarchical poses a logical contradiction for Westphalian sovereignty. There is no higher authority to judge the actions of states. In the final analysis, states can do anything that they want; or, more accurately, rulers can choose any policy subject only to the constraints imposed by other states and their own domestic constituents. But if states can choose any policy, then intervention in the internal affairs of other states is always an available option. If autonomy, Westphalian sovereignty, is compromised coercively, such actions would be inconsistent with both international legal sovereignty and Westphalian sovereignty. Nevertheless, there is no reason to expect that such coercive interventions would not take place.

The beginnings of the Cold War in Europe offer an example of coercive activity to alter domestic political structures. The Soviet Union was much more heavily engaged in such activity, but the United States also considered the use of force.

Europe was the focus of the political struggle between the Soviet Union and the United States. These two states dominated the military situation. Their domestic political and economic structures were informed by radically different political ideologies. The rulers in both countries were determined to reproduce their preferred political structures in those states in Europe that fell within their sphere of influence. The Westphalian model was hardly worth a nod. In Western Europe, the United States operated largely through contractual arrangements with sympathetic leaders, although in Germany its position as an occupying power provided it with opportunities for coercive leverage as well.⁷¹ In Eastern Europe, the Soviet

71. MANFRED JONAS, *THE UNITED STATES AND GERMANY: A DIPLOMATIC HISTORY* 286-87, 290-92 (1984).

Union pursued a more complicated strategy, first using imposition to establish and maintain communist regimes, but later engaging in contractual relationships with communist rulers in the satellite states who, nevertheless, remained dependent on the Soviet army for the basic survival of their regimes.⁷²

After World War II, the basic constitutional structures, policies, and personnel of the Eastern European states, with the exception of Yugoslavia and Albania, were determined by the Soviet Union. In the most extreme cases, areas (parts of Poland, Germany, Czechoslovakia, and Romania) and whole countries (Latvia, Estonia, Lithuania) were simply absorbed into the Soviet Union. In the rest of Eastern Europe, Stalin imposed communist regimes.⁷³ Soviet rulers were motivated by both concerns about national security and the authority of Marxism-Leninism.⁷⁴ In both World Wars I and II, and the Napoleonic wars as well, Russia had been invaded from the west. The smaller states of Central Europe provided a buffer. These states could, however, only be reliable security allies if they were dominated by communist regimes. Absent control over their domestic regimes, the strategic logic for the Central European states would have been to balance against the Soviet Union provided that they could find an ally in the West.

The relationship between the control of Eastern Europe and Soviet security faded, even disappeared, with the development of secure second strike capability. By the 1970s, the territorial and political integrity of the Soviet Union depended upon hardened missile sites and nuclear submarines. Still, Soviet leaders persisted in maintaining control of Eastern European regimes until the Soviet Empire, and the Soviet Union, collapsed. Once communist regimes had been established in Eastern Europe, their failure would have jeopardized, and indeed did jeopardize, the stability of the Soviet Union itself.⁷⁵ Soviet rule was legitimated by Marxism-Leninism, a teleological ideology claimed by its adherents to provide a scientific understanding of human society, especially the inevitable evolution from capitalism to socialism to communism.⁷⁶ A reversal of this process, the transformation from socialism to capitalism suggested that Marxism-Leninism was wrong, a prospect that affected not just the legitimacy of the regimes of Eastern Europe, but that of the Soviet Union as well. Hence, once communist regimes were established, the rulers of the Soviet Union could not let them revert to some other institutional form without jeopardizing their own position.

With the outbreak of the Cold War in 1947, Stalin consolidated communist control in Eastern Europe by creating institutional structures and policies that mimicked those of the Soviet Union. The satellite states

72. David Lake, *Anarchy, Hierarchy, and the Variety of International Relations*, 50 INT'L ORG. 1 (1996) (noting the distinction between Soviet and American strategies).

73. BRZEZINSKI, *supra* note 2, at 1-41.

74. *Id.*

75. Christopher Jones, *Soviet Hegemony in Eastern Europe*, WORLD POL., Apr. 1976, at 28.

76. For an illuminating discussion of Marxism, see MICHAEL DOYLE, *THE WAYS OF WAR AND PEACE* 327-64 (1997).

adopted new constitutions in the period 1947-1952, which were modeled on that of the Soviet Union.⁷⁷ The supremacy of the Party was underlined; in every factory, enterprise, town and village the party committee was the source of authority for all issues. Stalin emphasized the intensification of the class struggle to unmask class enemies, and the use of terror became pervasive in Eastern Europe, including secret trials, forced labor, deportations from major cities, and Party purges after 1949.⁷⁸ Taxes on peasants were increased and the collectivization of agriculture intensified, although with uneven results.⁷⁹ Over ninety percent of the land was collectivized in Bulgaria, but only about fifteen percent in Poland.⁸⁰ The educational system was changed to become closer to that of the Soviet Union. Industry was nationalized and resources were focused on heavy industry. All of the communist states adopted multi-year development plans based on the Soviet model. Stalin imposed uniformity on the satellite states where he could, Yugoslavia being the obvious exception.⁸¹ The Soviet Union had a sphere of influence that made it possible to engage in coercion and imposition to alter the basic constitutional structures of the satellite states.⁸²

The Soviets did not just establish the communist regimes of Eastern Europe, they also penetrated these polities on an ongoing basis. Bilateral consultations with the Soviet leadership were obligatory. Even after the death of Stalin, Soviet leaders insisted on the right to decide who would head the government in the satellite states. Close relations were maintained between the central committee of the Communist Party of the Soviet Union (CPSU) apparat and the party apparats in Eastern Europe. Frequently, appointments to major Party positions in Eastern Europe were only given to those individuals with extensive experience in Moscow.⁸³

Soviet penetration of the domestic polities of the satellite states was extensive with regard to the secret police and the military. The Soviets often directly controlled the internal security apparatuses of the Eastern European states. The Soviet secret police maintained their own autonomous operations in Eastern Europe and were empowered to arrest nationals of these states.⁸⁴ The Soviets organized the Polish secret police. The head of the Polish Security Ministry had Soviet officers as his personal guards and was advised by an official of the Soviet Ministry of State Security. At one point, eight out of twenty sections in the Polish Ministry of Internal Security were headed by Soviet officers.⁸⁵ The Inspectorate of

77. BRZEZINSKI, *supra* note 2, at 71, 84-85.

78. *Id.* at 90-94.

79. *Id.* at 98-100.

80. *Id.*

81. *Id.* at 89.

82. *Id.* at 67-103; DAVID W. PAUL, CZECHOSLOVAKIA: PROFILE OF A SOCIALIST REPUBLIC AT THE CROSSROADS OF EUROPE 45-46 (1981); Rey Koslowski & Friedrich V. Kratochwil, *Understanding Change in International Politics: The Soviet Empire's Demise and the International System*, 48 INT'L ORG. 228 (1994).

83. BRZEZINSKI, *supra* note 2, at 117-20.

84. *Id.* at 121.

85. *Id.* at 120.

Party Cadres in the Bulgarian Central Committee was staffed with former members of the Soviet secret police.⁸⁶ Similar levels of penetration occurred in other countries. In the later 1940s, the secret policy in the satellite states were subject to orders directly from Moscow.⁸⁷

Most critically, the Soviets tightly regulated the militaries of the satellite states. Initially, the Soviet Union discouraged armies in Eastern Europe, but, after 1948, the armed forces of the satellites were built up.⁸⁸ The question of loyalty became critical. Marshal Rokossovsky, a Soviet officer was appointed as head of the Polish ministry of defense in 1949.⁸⁹ Initially, Soviet officers commanded all of the branches of the Polish armed forces. There were about 17,000 Soviet officers with command positions in the Polish army in the late 1940s.⁹⁰ In other countries, Soviet officers acted as advisors not only to the central command but at the regimental level as well. Soviet practices were adopted.⁹¹ Only in Czechoslovakia, where local party officials were well organized, was Soviet direct penetration of the military more limited.⁹²

After Stalin's death, the level of direct Soviet penetration, such as through the appointment of officers, declined, but the Eastern Bloc militaries were organized in such a way to make it very difficult for them to function independent of Soviet forces. The Warsaw Treaty Organization (WTO) was established in 1955.⁹³ The military doctrines of the Warsaw Pact emphasized the importance of joint military operations among Socialist states.⁹⁴ In 1961, Marshall Grechko, then the leading military official of the Warsaw Treaty Organization, introduced a system of joint military exercises that precluded the development of autonomous defense strategies by the members of the Pact.⁹⁵ In addition, the chief of staff of the Pact was the head of the directorate of the Soviet General Staff.⁹⁶ The leaders of the Eastern European militaries were educated at the leading Soviet military academy where promising individuals could be identified making it easier for Moscow to promote their subsequent careers.⁹⁷

In sum, relations among the states of Eastern Europe during the Cold War were incomprehensible from the perspective of the Westphalian model. The Brezhnev Doctrine, articulated by Brezhnev after the repression of Czechoslovakia in 1968, stated that a communist country had the right of self-determination only to the extent that the interests of the Soviet

86. *Id.* at 119-20.

87. *Id.* at 90-94, 119-21.

88. *Id.* at 122.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.* at 122; SKILLING, *supra* note 39, at 175-76.

93. BRZEZINSKI, *supra* note 2, at 173.

94. Christopher D. Jones, *National Armies and National Sovereignty*, in *THE WARSAW PACT: ALLIANCE IN TRANSITION?* 96-102 (David Holloway & Jane M.O. Sharp eds., 1984).

95. *Id.* at 91-96.

96. Malcolm Mackintosh, *The Warsaw Treaty Organization: A History*, in *THE WARSAW PACT: ALLIANCE IN TRANSITION?*, *supra* note 95, at 44-45.

97. Jones, *supra* note 94, at 91-102; Mackintosh, *supra* note 96, at 44-45, 51-52.

commonwealth were not jeopardized. "Each of our parties," Brezhnev stated, "is responsible not only to its working class and its people, but also to the international working class, the world communist movement."⁹⁸ The Soviet Union asserted its right to intervene in any communist state to prevent the success of "counter-revolutionary" elements.⁹⁹

The Soviet Union could act with impunity in Eastern Europe during the Cold War because it was not challenged by other major powers, notably the United States. The Americans accepted a Soviet sphere of influence. There was nothing to prevent Stalin and his successors from imposing their preferred domestic structures on the countries of Central and Eastern Europe.

Lest such practices be associated only with autocratic regimes, it should be recognized that the United States has acted in similar ways with regard to Central America and the Caribbean, areas where the United States had a sphere of influence. By 1900, no other power could challenge its initiatives or offer assistance to rulers who were subject to U.S. pressure. American officials became involved in the domestic affairs of a number of smaller neighboring states, often with regard to issues of sovereign lending, but also with respect to basic institutional structures.¹⁰⁰

In the 1904 State of the Union Message, President Theodore Roosevelt articulated what came to be known as the Roosevelt Corollary. He said:

Chronic wrong-doing or an impotence which results in a general loosening of the ties of civilized society, may in America as elsewhere ultimately require intervention by some civilized nation, and in the Western Hemisphere the adherence of the United States to the Monroe Doctrine may force the United States, however reluctantly, in flagrant cases of such wrong-doing or impotence to the exercise of an international police power.¹⁰¹

The parallels with the Brezhnev Doctrine are obvious. Thus, the Westphalian model did not guide American relations with its small southern neighbors in the first part of the 20th century.

Cuba became independent with the help of the American military.¹⁰² Spain was decisively defeated in 1898 and driven out of the Western hemisphere as well as the Philippines.¹⁰³ In 1901, the Platt Amendment, attached to the Military Appropriations Act, stipulated the conditions under which the U.S. military would withdraw from Cuba, including a prohibition on Cuban transfer of land to any power other than the United States, limitations on Cuba's treaty making power, the grant of a naval base at Guantanamo Bay, and the right of the United States to intervene to preserve Cuban independence.¹⁰⁴ Cuba reluctantly incorporated the terms of

98. Mackintosh, *supra* note 96, at 50.

99. *Id.*

100. MUNRO, *supra* note 38.

101. LESTER D. LANGLEY, *THE UNITED STATES AND THE CARIBBEAN IN THE TWENTIETH CENTURY* 29 (1989).

102. MUNRO, *supra* note 38, at 25-30.

103. *Id.*

104. *Id.*; LANGLEY, *supra* note 101, at 21-22.

the Platt Amendment into its constitution. The Amendment was also part of a formal treaty between the United States and Cuba which was signed in May 1903 and ratified by both governments in 1904.¹⁰⁵

In 1906, following a period of civil strife, the leaders of Cuba precipitated American military action by resigning from office. William Howard Taft, who had headed an American mission of inquiry in 1905, became the provisional governor and was succeeded by another American. Troops were sent again in 1912 when internal disorder threatened American economic interests.¹⁰⁶ The would-be rulers of Cuba had to accept American conditions to get American troops off the island. They did not have enough power to resist. The alternative to accepting the Platt Amendment was non-existence.

Cuba was not the only Caribbean state to experience American imposition. The United States established a customs receivership in the Dominican Republic in 1905 after the German, Italian, and Spanish governments threatened to intervene to protect their creditors.¹⁰⁷ In 1911, the United States sent 750 Marines into the Dominican Republic to stifle civil disorder and forced the resignation of the president by threatening to cut off the short-term loans on which the government depended.¹⁰⁸ The United States occupied the Dominican Republic again in 1916 after a surge of political unrest, and declared martial law. The American commanding officer appointed U.S. officials as ministers of War and Marine and of the Interior, and as commanding officers of the national guard. Elections were suspended in 1917 and the press was censored. The U.S. occupiers also reorganized and expanded the educational system.¹⁰⁹

American troops landed in Haiti eight times between 1867 and 1900. As a result of pressure from the United States, American banks were included in the scheme for customs receivership that was established for Haiti in 1909-10.¹¹⁰ In 1915, in the midst of civil disorder, American rulers again sent in troops and also chose the new president. From 1915 to 1929 U.S. military tribunals made rulings on political cases. A treaty that provided for American control of customs and construction of roads, as well as supervision of schools and the constabulary, was approved by the Haitian legislature under threat that American troops would remain in the country. American officials wrote a new constitution and dissolved the Haitian legislature when it refused to approve it. The U.S. occupying force supervised the referendum which approved the new document. In 1919, the Marines killed more than 3,000 Haitian who were fighting against American rule.¹¹¹

105. LANGLEY, *supra* note 101, at 21; MUNRO, *supra* note 38, at 25-30, 36.

106. MUNRO, *supra* note 38, at 128-40.

107. LANGLEY, *supra* note 101 at 27-29.

108. MUNRO, *supra* note 38, at 262-68.

109. LANGLEY, *supra* note 101, at 35-38, 77-85; MUNRO, *supra* note 38, at 262-68.

110. LANGLEY, *supra* note 101, at 69-77.

111. *Id.* at 69-77.

Central America was also a target of American intervention. The area was fraught with both domestic and international conflicts. American rulers wanted to control any trans-isthmian canal and were anxious about European threats to American economic interests, largely in agriculture and railways.¹¹² The United States supported rebel groups in Panama after the government of Colombia rejected its proposals for American control over a zone around the proposed canal.¹¹³ In Honduras in 1911, the United States forced out the president and chose his successor.¹¹⁴ In 1910, the United States intervened in the Nicaraguan civil war. A hundred Marines remained in the country until 1925, a tangible demonstration of the American commitment to the government. In 1916 U.S. officials effectively selected the president, Chamorro, after securing the Bryan Chamorro Treaty (1914) which gave the United States control over any canal that might be constructed in that country.¹¹⁵

With the Good Neighbor policy of the 1930s, American intervention in Central America and the Caribbean became more constrained. Nevertheless, the United States has never simply allowed its small neighboring countries to go their own way. American leaders supported the Bay of Pigs invasion designed to bring down the newly established communist government in Cuba and, when this effort failed, considered plans to assassinate Castro.¹¹⁶ The Reagan administration provided support for the Contra rebels in Nicaragua and invaded Grenada to overthrow its communist regime.¹¹⁷ In 1989, American troops invaded Panama, arrested its head of state, Manuel Noriega, and brought him to Florida where he was tried and jailed on drug charges.¹¹⁸ In 1994, under the auspices of the United Nations, American forces occupied Haiti.¹¹⁹

In sum, major powers, once having established effective spheres of influence, have not hesitated to intervene in the internal affairs of weaker states. In an anarchical environment, there is no authoritative actor capable of preventing such actions. The states that have been the target of such actions are semi-sovereigns, if that term is understood to apply to an entity that may have international legal sovereignty but does not have effective control over its own domestic affairs including its basic structures of authority.

112. WALTER LAFEBER, *INEVITABLE REVOLUTIONS: THE UNITED STATES IN CENTRAL AMERICA* 45-50 (1983).

113. MUNRO, *supra* note 38, at 60-64.

114. LAFEBER, *supra* note 112, at 45-50.

115. *Id.*; MUNRO, *supra* note 38, at 184, 208.

116. H. WILLIAM BRANDS, 2 *THE UNITED STATES IN THE WORLD: A HISTORY OF AMERICAN FOREIGN POLICY* 259-60, 342 (1994).

117. *Id.* at 363-65.

118. *Id.* at 401.

119. For a skeptical view of U.S. policy in Haiti, see Richard K. Betts, *The Delusion of Impartial Intervention*, 73 *FOREIGN AFF.* 20, 27-28 (1994).

IV. Semi-Sovereignty and the Balkans

The tragic developments that have taken place in the former Yugoslavia during the 1990s galvanized the international community. One major focus of these efforts has been to guarantee minority rights. These guarantees have inevitably involved compromises of Westphalian sovereignty. These compromises have usually been achieved through coercive measures, including the use of force. The human rights provisions of the Dayton Accord and the conditions attached to recognition by the European Union in 1991 are only the most recent additions to a book whose opening chapters include the founding moments of all of the states of the Balkans. From Greece in 1832 to Bosnia in 1995, every single state that has been established in the Balkans has experienced external intervention by the major powers designed to secure rights for minority groups, first religious and then ethnic.

Greece was the first Balkan state to secure its independence from the Ottoman Empire. The Greek civil war was a success only because of the intervention of the major European powers, most importantly at the Battle of Navarino in 1827 when a combined British, Russian, and French fleet sunk the Egyptian navy, the Ottoman's most formidable seagoing force.¹²⁰ The major powers were involved primarily because of their mutual distrust. Russia wanted greater influence in the area and possibly direct access to the Mediterranean. Britain wanted to prevent Russian initiatives. The monarchical regime that emerged after a decade of war in Greece, the fiscal arrangements for the new state, the provisions for the protection of minorities, and the individuals who occupied major positions, including the crown, were all imposed by the major European powers.¹²¹

In February 1830, Britain, France, and Russia signed three protocols in London regarding Greece. The protocols established that Greece would be a monarchy, a decision that ignored the constitutional choices of the provisional Greek governments during the 1820s.¹²² The major powers first designated Leopold of Saxe Coburg as king, and when he prudently turned down this offer to become King of Belgium, they designated Otto, the underage second son of the King of Bavaria. The Greek leaders accepted these accords because they had little choice. France, England, and Russia were to act as guarantors of the settlement.¹²³

The arrangements for Greece also included provisions for religious toleration. In some ways, this policy was only a continuation of efforts by Russia and France, in particular, to protect the rights of Christians within

120. H. TEMPERLEY, *THE FOREIGN POLICY OF CANNING, 1822-27*, at 406-08 (1966).

121. CHARLES JELAVICH & BARBARA JELAVICH, *THE ESTABLISHMENT OF THE BALKAN NATIONAL STATES 48-50* (1977); WILLIAM MILLER, *THE OTTOMAN EMPIRE AND ITS SUCCESSORS, 1801-1927* 102-03 (1936); TEMPERLEY, *supra* note 120, at 406-08; L.S. STAVRIANOS, *THE BALKANS SINCE 1453*, at 286-87 (1958); Steven Schwartzberg, *The Lion and the Phoenix*, 24 *J. MIDDLE EASTERN STUD.* 287, 294 (1988).

122. JELAVICH & JELAVICH, *supra* note 121, at 50-52; M.S. ANDERSON, *THE EASTERN QUESTION, 1774-1923*, at 74-75 (1966).

123. DOUGLAS DAKIN, *THE GREEK STRUGGLE FOR INDEPENDENCE, 1821-33*, at 281 (1973); STAVRIANOS, *supra* note 121, at 292-93.

the Ottoman Empire, efforts that extended back to the time of the Crusades.¹²⁴ The 1830 protocol stated that to preserve Greece from "the calamities which the rivalries of the religions therein professed might excite," it must "agree that all the subjects of the new State, whatever their religion may be, shall be admissible to all public employments, functions and honours, and be treated on a footing of perfect equality, without regard to difference of creed, in their relations, religious, civil or political."¹²⁵ The major powers wanted religious toleration because they were concerned about unrest in the Balkans into which they might be drawn.¹²⁶

After the Crimean War, the major powers also insisted on religious toleration in Wallachia and Moldavia, the two Ottoman provinces that were to become Romania. When Moldavia and Wallachia secured their independence in 1856, the Western powers sought to guarantee equal treatment for all, including Jews. The Treaty of Paris of 1858 implied that civil liberty and religious toleration should be granted to Jews, but the Romanian authorities ignored these vaguely worded provisions.¹²⁷ During the late 1860s, leaders in both Britain and France protested against the treatment of Jews in Romania. In Britain, Lord Stanley argued that the treatment of Jews in Romania was an affair that touched Christians as well as Jews, because, "if the suffering falls on the Jews, the shame falls on the Christians."¹²⁸ Romania rejected foreign protestations, arguing that the principle of non-intervention ought to be upheld. The British claimed that the Treaty of Paris of 1858 gave the powers the right to enforce Article 46 which provided for political and economic equality for Jews.¹²⁹

The efforts of the major powers to establish religious toleration in the Balkans reached their apogee at the Congress of Berlin in 1878. The Congress was organized to settle the first Balkan Wars. It culminated with the recognition of Romania, Serbia, and Montenegro as independent states, and Bulgaria as a tributary state of the Ottoman Empire. As a condition of international recognition, the major powers insisted that the new states accept minority rights, more precisely, religious equality. For example, Article XXVII of the Treaty of Berlin of 1878 stated that:

In Montenegro the difference of religious creeds and confessions shall not be alleged against any person as a ground for exclusion or incapacity in matters relating to the enjoyment of civil and political rights, admission to public employments, functions, and honours, or the exercise of the various professions and industries in any locality whatsoever. The freedom and outward exercise of all forms of worship shall be assured to all persons belonging to Montenegro, as well as to foreigners, and no hindrance shall be offered either to the hierarchical organization of the different communions,

124. CARLILE AYLMEYER MACARTNEY, NATIONAL STATES AND NATIONAL MINORITIES 161-63 (1934).

125. *Id.* at 164-65 (quoting the Protocol of 1830).

126. ANDERSON, *supra* note 122, at 60-75.

127. JACQUES FOUQUES DUPARC, LA PROTECTION DES MINORITES DE RACE, DE LANGUE, ET DE RELIGION: ETUDE DE DROIT DES GENS 98-112 (1922) (translated by author).

128. *Id.* at 98-112.

129. *Id.* at 98-106.

or to their relations with their spiritual chiefs.¹³⁰

Identical provisions were provided for Romania (Article XLIV), Bulgaria (Article V), and Serbia (Article XXXV).¹³¹

The major powers applied provisions for religious toleration primarily because they were concerned with international stability. The Balkans were a volatile area. Orthodox religious concerns had provided a pretext for Russian intervention, and Russian intervention in the Balkans and the Ottoman Empire threatened British interests in the eastern Mediterranean.¹³² Austria-Hungary was fearful of ethnic nationalism, prompting informal control of Bosnia and Herzegovina in 1878 and formal incorporation in 1907. Bismarck was anxious to maintain Germany's alliance with both Austria-Hungary and Russia, which was ultimately undermined by conflict in the Balkans.¹³³

In addition, there were what would now be labeled humanitarian concerns and interest group pressure. British public opinion had been agitated by reports of Turkish atrocities against the Bulgarians; Gladstone's popularization of this issue had helped to return him to the position of prime minister.¹³⁴ Jewish groups in the United States and Great Britain pressured their governments to pay attention to Romanian treatment of their co-religionists.¹³⁵ Later in the century, when it became evident that the situation for Jews in Romania was not much improved, American officials pressed Romania for reforms with the hope of limiting the flow of new emigrants.¹³⁶

The efforts to secure minority rights in the Balkans in the 19th century failed. The treatment of Jews in Romania was particularly problematic. Articles 43 and 44 of the Treaty of Berlin conditioned international legal recognition on acceptance of religious equality and recognition was only extended in February 1880 after Romanian officials had publicly declared that a Jew could become a citizen.¹³⁷ In practice, however, Romanian policy hardly changed. While the letter of the Treaty was honored by making it possible for a non-Christian to obtain citizenship, this required an act of parliament for each individual. Of the 269,000 Jews in Romania, only 200 attained citizenship.¹³⁸ Non-citizens had to pay for primary school and were excluded from professional schools in 1893, and secondary and higher education in 1898.¹³⁹ Jews were also prohibited from living in

130. Treaty of Berlin, July 13, 1878, *reprinted in MAJOR PEACE TREATIES OF MODERN HISTORY, 1648-1967*, at 985-86 (Fred L. Israel ed., 1967).

131. *Id.*

132. ANDERSON, *supra* note 122, at 211.

133. ERICH EYCK, *BISMARCK AND THE GERMAN EMPIRE 187-94* (1968).

134. A.J.P. TAYLOR, *THE STRUGGLE FOR MASTERY IN EUROPE 1848-1918*, at 268 (1954).

135. MACARTNEY, *supra* note 124, at 281.

136. FOUQUES DUPARC, *supra* note 127, at 112; Macartney, *supra* note 124, at 169, 281; RAYMOND PEARSON, *NATIONAL MINORITIES IN EASTERN EUROPE, 1848-1945*, at 98 (1983).

137. FOUQUES-DUPARC, *supra* note 127, at 98-112.

138. *Id.*

139. *Id.*

rural areas.¹⁴⁰ By the beginning of the 20th century, almost 90% of Romanian emigrés to the United States were Jewish.¹⁴¹

International efforts to secure minority rights culminated at the Versailles meetings that settled World War I. All of the new states that were created, or the polities that had their boundaries re-drawn signed agreements or made unilateral pledges regarding the protection of religious and ethnic minorities within their own boundaries. All of the Balkan states were part of this process.¹⁴² In most cases, these actions were the result of coercion or imposition, but, in a few instances, rulers in the new states welcomed international agreements on minority rights, either because they were committed to such values or because they believed that international accords would either ease their domestic minority problems or improve the condition of their co-ethnics living in other states.¹⁴³ Unlike the Berlin settlement, the Versailles arrangements provided for elaborate monitoring and enforcement through the League of Nations and the Permanent International Court of Justice.¹⁴⁴ Like the Berlin settlements, those concluded at Versailles also failed.

The minority rights established after World War I were set in peace treaties signed with Poland, Austria, Czechoslovakia, Yugoslavia, Bulgaria, and Romania in 1919,¹⁴⁵ with Hungary and Greece in 1920,¹⁴⁶ and with Turkey in 1923;¹⁴⁷ in declarations made as a condition for admission to the League for Albania in 1921,¹⁴⁸ Lithuania in 1922,¹⁴⁹ Latvia and Estonia in 1923,¹⁵⁰ and Iraq in 1932.¹⁵¹ There were also provisions for the treatment of minorities in the 1920 Convention between Poland and the Free City of Danzig,¹⁵² in the 1921 Convention on the Åland Islands,¹⁵³ in the 1922 Convention between Germany and Poland Relating to Upper Silesia,¹⁵⁴ and in the 1924 Paris Convention Concerning the Territory of Memel.¹⁵⁵ The stipulated rights were often highly detailed, including, for instance, provisions for bilingual education in areas with high minority

140. *Id.*

141. *Id.* at 98-112; JELAVICH & JELAVICH, *supra* note 122, at 178.

142. DOROTHY V. JONES, CODE OF PEACE: ETHICS AND SECURITY IN THE WORLD OF THE WARLORD STATES 45 (1991).

143. SEBASTIAN BARTSCH, MINDERHEITENSCHUTZ IN DER INTERNATIONALEN POLITIK: VOLKERBUND UND KSZE/OSZE IN NEUER PERSPEKTIVE 81-85 (1995).

144. INIS L. CLAUDE, JR., NATIONAL MINORITIES: AN INTERNATIONAL PROBLEM 20-28 (1955).

145. N. Lerner, *The Evolution of Minority Rights in International Law*, in PEOPLES AND MINORITIES IN INTERNATIONAL LAW 83 (Catherine Brolman et al. eds., 1993).

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

populations.¹⁵⁶ In some cases, such as Bulgaria, minority rights were written into the country's basic constitutional documents.¹⁵⁷ National laws related to minorities could not be changed without the approval of the major powers in the League of Nations Council.¹⁵⁸

The major European powers legitimated their intervention in terms of traditional European diplomacy. The major powers had the right, French President Georges Clemenceau, argued, to condition their recognition on the acceptance by new states of recognized principles of governance, such as the acceptance of minority rights.¹⁵⁹ Woodrow Wilson, championed a second rationale for the international protection of minority rights. Wilson's vision of the new world order in 1918 was collective security: peace-loving states would join together to resist attacks by any aggressor.¹⁶⁰ Only democratic states would make such commitments.¹⁶¹ The first guarantee of democracy was self-determination. Self-determination alone, however, could not resolve political tensions because, in much of central Europe, ethnic minorities were inextricably mingled with majority populations. The Versailles settlements left large minority populations in many countries.¹⁶² If minorities were ill-treated, they could not only cause disorder within their countries of residence, they could also threaten international peace and undermine collective security. The treaties sought to resolve this issue by providing minorities with security within existing states.¹⁶³ Wilson stated at the Paris Peace Conference that:

Nothing, I venture to say, is more likely, to disturb the peace of the world than the treatment which might in certain circumstances be meted out to minorities. And therefore, if the great powers are to guarantee the peace of the world in any sense, is it unjust that they should be satisfied that the proper and necessary guarantees have been given?¹⁶⁴

The League regime for the protection of minorities in the Balkans and elsewhere was, like initiatives taken at Paris in 1856 and Berlin in 1878, a dismal failure. With the exception of a small number of countries, including Hungary which was confronted with a situation of large Hungarian minorities in other countries but few minorities in Hungary itself, and Czechoslovakia whose rulers felt that minority rights might help to reconcile the large German speaking minority in the Sudetenland to Czech rule, the governments of Central Europe were unenthusiastic at best about

156. MACARTNEY, *supra* note 124, at 502-06 (reprinting the Polish Minorities Treaty, art. VIII).

157. CLAUDE, *supra* note 144, at 16.

158. LEINER, *supra* note 145, at 85; CLAUDE, *supra* note 144, at 16; JONES, *supra* note 142, at 45; Richard Bilder, *Can Minorities Treaties Work?*, in *THE PROTECTION OF MINORITIES AND HUMAN RIGHTS* 64 (Yoram Dinstein & Mala Tabory eds., 1992); J.A. LAPONCE, *THE PROTECTION OF MINORITIES* 40 (1960).

159. MACARTNEY, *supra* note 124, at 239.

160. *Id.* at 180.

161. *Id.*

162. PEARSON, *supra* note 136, at 148.

163. MACARTNEY, *supra* note 124, at 275, 278, 297.

164. Alan Sharp, *Britain and the Protection of Minorities at the Paris Peace Conference, 1919*, in *MINORITIES IN HISTORY* 175 (A.C. Hepburn ed., 1979).

minority protection. They argued that these initiatives constituted an unfair intervention in their internal affairs. They pointed out that the Americans had not accepted minority protections for Asians or blacks living in the United States, nor had Britain accepted protections for Irish and Welsh living in the United Kingdom.¹⁶⁵ The League process was cumbersome. The major powers were not willing to commit resources. Poland renounced its minority rights arrangements in the mid 1930s. And nothing could be a more disheartening reminder of the futility of interwar efforts than the Holocaust.¹⁶⁶

After World War II, concern, in general, with minority rights issues languished and was replaced by a focus on human rights.¹⁶⁷ But with the end of the Cold War and the renewal of ethnic conflict in parts of Africa and the Balkans, minority rights again drew the attention of the international community. Again in the Balkans, the major powers attempted to assure stability by coercing local actors to accept protections for minorities. When Yugoslavia disintegrated, the European Union made the acceptance of minority rights a condition of recognition for Macedonia, Croatia, and Slovenia.¹⁶⁸ As part of the 1995 Dayton Accord, new organizations, a Human Rights Commission and a Human Rights Ombudsman, were created for Bosnia.¹⁶⁹ All of these initiatives violated Westphalian sovereignty. They also raised questions for international legal sovereignty because these arrangements were not ones that the target states would have chosen on their own.

Minority rights were explicitly included in the conditions for European Community recognition of the republics that emerged from the former Yugoslavia. In December 1991, the foreign ministers of the European Community made acceptance of the Carrington Plan, formally the Treaty Provisions for the Convention (with the former republics of Yugoslavia), the prerequisite for recognition.¹⁷⁰ The republics were to protect the rights of national and ethnic minorities elaborated in international conventions adopted by the United Nations and the Conference on Security and Cooperations in Europe (CSCE), including the proposed United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, and the Convention for the Protection of Minorities of the European Commission.¹⁷¹ Members of minority groups were to be given the right to participate in the "government of the Republics con-

165. CLAUDE, *supra* note 144, at 17, 32-34.

166. PEARSON, *supra* note 136, at 162-64, 188-89; Yisrael Gutman, *Polish Anti-Semitism Between the Wars: An Overview*, in *THE JEWS OF POLAND BETWEEN TWO WORLD WARS* 103-05 (Yisrael Gutman et al. ed., 1989); BARTSCH, *supra* note 143, at 75-76.

167. JAY A. SIGLER, *MINORITY RIGHTS: A COMPARATIVE ANALYSIS* 67, 77 (1983).

168. SUSAN L. WOODWARD, *BALKAN TRAGEDY: CHAOS AND DISSOLUTION AFTER THE COLD WAR 190-91* (1995).

169. Human Rights, Annex 6 to the General Framework for Peace in Bosnia and Herzegovina, Dec. 14, 1995, 35 I.L.M. 13 (1996) [hereinafter *Bosnia Agreement*].

170. European Community, Treaty Provisions for the Convention, (Carrington Report) 4 Nov. 1991 [hereinafter *Carrington Report*].

171. *Id.* chap. 2.

cerning their affairs.”¹⁷² In local areas where members of a minority formed a majority of the population, they were to be given special status, including a national emblem, an educational system “which respects the values and needs of that group,”¹⁷³ a legislative body, a regional police force, and a judiciary which reflects the composition of the population.¹⁷⁴ Such special areas were to be permanently demilitarized unless they were on an international border. The rights established in the convention were to be assured through national legislation.¹⁷⁵ The republics were to agree to a permanent international body that would monitor these special areas. Disputes were to be taken to a newly established Court of Human Rights which would consist of one member nominated by each of the Yugoslavian republics, and an equal number plus one of nationals from European states who would be nominated by the Member States of the European Community.¹⁷⁶

In January of 1992, after the Community had recognized Croatia, Macedonia, and Slovenia, the EC Arbitration Commission (Badinter Commission) ruled that Slovenia and Macedonia had met the conditions specified in the Carrington Report.¹⁷⁷ Croatia, after being pressured by the EC, also promised that it would fulfill the conditions. In May of 1992, Croatia passed the Constitutional Law of Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities in the Republic of Croatia.¹⁷⁸ Many of the provisions of the law repeat word for word the text of the Carrington Report. For example, special status districts were designated where minorities were to be educated in their own language, using a curriculum adequate to “present their history, culture and science if such a wish is expressed.”¹⁷⁹ Representatives from minorities totaling more than eight percent of the population of the whole country were entitled to proportional representation in the Croatian Parliament, government, and supreme judicial bodies.¹⁸⁰ Those with less than eight percent were entitled to elect five representatives to the House of Representatives of the Croatian Parliament.¹⁸¹ Issues regarding minority and human rights were to be decided by the Court of Human Rights which would be established by all of the states created out of the territory of the former Yugoslavia.¹⁸² In the interim, a provisional Court of Human Rights was established with the President and two members to be nominated by the EC from citizens of its Member States, and the other two members

172. *Id.* chap. 2.4.

173. *Id.* chap. 2.5.c.

174. *Id.* chap. 2.

175. Crawford, *supra* note 22, at 497.

176. Carrington Report, *supra* note 170, chap. 4.

177. WOODWARD, *supra* note 168, at 190-91.

178. *Id.* at 190-92.

179. Republic of Croatia, Constitutional Law of Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities in the Republic of Croatia, Article 49.

180. *Id.* art. 18.

181. *Id.*

182. *Id.* art. 60.

selected by Croatia.¹⁸³ As developments in Bosnia, Croatia, and Serbia demonstrated in the early 1990s, these provisions for the protection of minorities in the new states of the former Yugoslavia were not a complete success.

This issue was revisited at Dayton in December of 1995 where, to secure an end to the fighting in Bosnia, the United States brought the leaders of the warring factions to a military base in Ohio and kept them there, in relative isolation not only from the rest of the world but from each other, until an agreement was hammered out. Annex 6 of the Dayton Accords related to human rights and committed the signatories—the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska—to honor the provisions of fifteen international and European human rights accords.¹⁸⁴ It provided for the creation of an Ombudsman for human rights who would have diplomatic immunity, would not be a citizen of any parts of the former Yugoslavia, and would initially be appointed to a five year term by the Organization for Cooperation and Security in Europe (OCSE).¹⁸⁵ It also provided for a fourteen-member Chamber of Human Rights, four of whose members would be appointed by Bosnia and Herzegovina, two by the Republic of Srpska, and the other eight, none of whom would be citizens of the states that had been part of Yugoslavia, by the Committee of Ministers of the Council of Europe.¹⁸⁶ Individuals could bring complaints to the Chamber, whose decisions, taken by a majority vote, would be binding on the signatories.¹⁸⁷ Non-governmental organizations and international organizations were to be invited to Bosnia to monitor the implementation of the terms of the Annex.¹⁸⁸ After five years the Chamber and the office of the Ombudsman would pass to the control of Bosnia and Herzegovina if all of the parties agreed.¹⁸⁹

There is little evidence that these most recent initiatives to deal with minority issues in the Balkans will be any more successful than earlier initiatives. The arrangements made at Paris in 1856 and Berlin in 1878 did not lead to stable multi-ethnic societies. Nor did the minority rights regime established after the first world war. The Dayton accords seem destined to suffer the same fate.

Conclusion

The term sovereignty has been used in several different ways, notably domestic sovereignty, Westphalian sovereignty, and international legal sovereignty. The different kinds of sovereignty are not mutually reinforcing. International legal sovereignty has often been the necessary condition for

183. *Id.* art. 60; CRAWFORD, *supra* note 22, at 497.

184. Bosnia Agreement, *supra* note 169, Annex 6.

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

compromising Westphalian sovereignty—states have entered into many international agreements that compromise their domestic autonomy. The loss of domestic sovereignty, domestic control, rarely leads to a loss of international recognition. The existence of effective domestic authority does not guarantee that a state will be accorded international legal sovereignty. Moreover, because the international system is anarchical, there is no authority structure that can prevent one state from forcibly intervening in the internal affairs of another, in violation of both Westphalian and international legal sovereignty.

The assumption that the international system is composed of independent, autonomous, recognized, effective states is a wonderfully simplifying assumption for both legal reasoning and social science analysis. In many instances, this assumption has provided a deeper understanding of interactions in the international environment. But for many other problems, especially issues related to minority and human rights, it has blinded observers to the multiple ways in which sovereignty has actually been manifest. There have been states with domestic sovereignty but not international legal sovereignty, with international legal sovereignty but not Westphalian sovereignty, and with Westphalian sovereignty but not domestic sovereignty.

States that have possessed all of the attributes of sovereignty have not been commonplace. Perhaps the United States is the only example of a state that has been sovereign in all senses, except during the period of the Civil War. No state that has existed in the Balkans, from Greek independence in 1832 to the present, could be characterized as having all of the attributes of sovereignty, with the possible exception of Yugoslavia and Albania for parts of the post-World War II period. No member state of the European Union is a Westphalian sovereign, nor was any satellite state of the Soviet Union during the Cold War, nor is any signatory of a stand-by agreement with an international financial institution.

Some violations of concepts of sovereignty have been stable; others have not. The only compromises of Westphalian sovereignty that have proven to be stable are ones that have been achieved through voluntary contracts among states. Coercion has not worked. The European Convention on Human Rights and the International Monetary Fund have been effective organizational arrangements because the states that have participated in them regard themselves as being better off with these agreements than without. These arrangements are self-enforcing equilibria. Members might not regard them as ideal, but they realize that if they renege, they would be in a worse position.

Violations of domestic autonomy that are coercive are less likely to be stable. The Soviet Union was able to guarantee communist regimes in Central and Eastern Europe for more than forty years, but, in the end, Marxism-Leninism collapsed when Gorbachev decided that the use of force would undermine his own efforts at internal reform. The United States has not been able to create liberal democratic regimes in the Caribbean and Central America and, in the case of Cuba, was unable to exclude a major Euro-

pean power from what had been its accepted sphere of influence. During the 19th century and after the first world war, the major powers of Europe wanted to guarantee minority rights in the Balkans for security and humanitarian reasons, but their efforts failed because compliance was never voluntary. The target states had accepted minority rights protections only because they were anxious to secure international recognition. Once recognition had been accorded, it was difficult to withdraw. The major powers were not willing to deploy other forms of leverage, such as the use of military force or economic sanctions, that might have secured adherence to both international and domestic legal commitments. Tens of thousands of troops guaranteed a cessation of fighting in the Balkans in the mid-1990s, but these most recent efforts to establish peace and stability can only succeed with the support of indigenous interests that believe adherence to minority rights is in their own best interest.

The international system is a particularly fragile institutional environment. There is no source of final authority. There are dramatic asymmetries in the power of different actors. Different states have different values. This has not prevented statesmen from finding stable solutions to critical issues. The most important feature of stable and effective solutions has been voluntary acceptance by the actors involved. Stability requires conformity with power and interests, not with conventional notions of what constitutes a sovereign state. Semi-sovereignty is not a problem; in many ways it has been the norm and sometimes it is the solution to what would otherwise be intractable dilemmas.