



BC JOURNAL

OF INTERNATIONAL AFFAIRS

10th Anniversary Edition
Spring 2007

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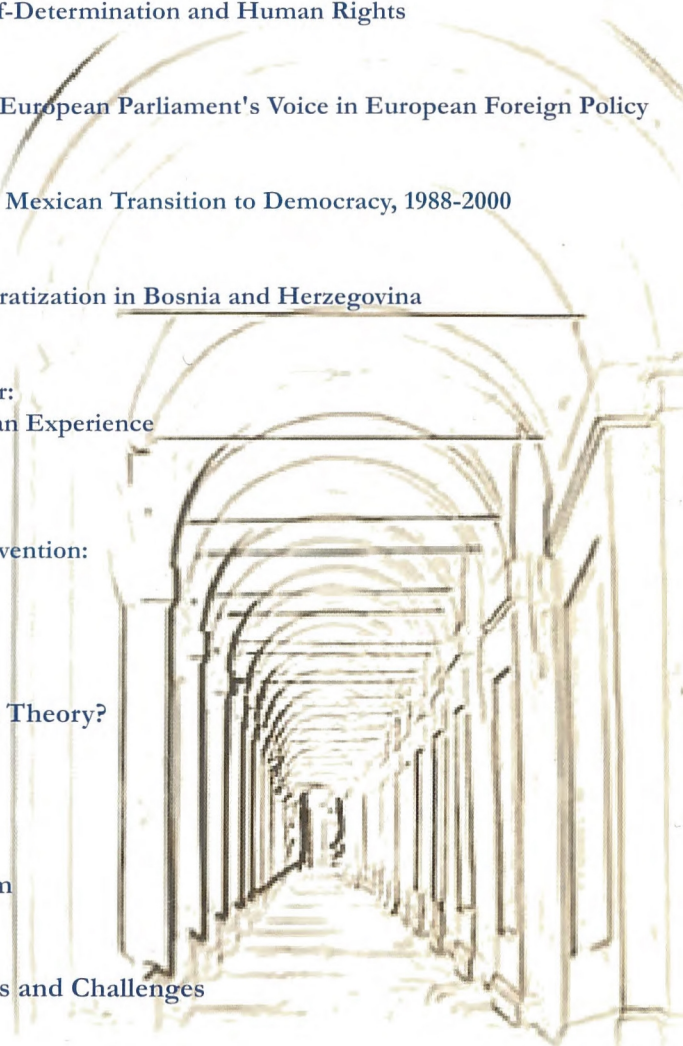
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The 10th Anniversary Edition of the *Bologna Center Journal of International Affairs* is dedicated to the memory of Professor Patrick McCarthy, who taught for many years at the Bologna Center and at the SAIS campus in Washington, DC.

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Dear Readers,

No longer confined to its Westphalian origins, the concept of sovereignty continues to become increasingly nebulous in our globalizing world. Today, corporations span the globe and exert greater influence than many developing countries, supranational bodies enjoy substantial clout and new actors are shouldering the responsibilities of power—or seizing it by force. Who dominates in this new international system? Is it the nation, a supranational entity or other non-state units? Does sovereignty require complete exercise of authority, or the maintenance of certain values? In an era of challenges to nation-state primacy, who is sovereign now?

The tenth-anniversary edition of the *Bologna Center Journal of International Affairs* brings together articles that ask these questions, posit some answers and further the debate on the role of sovereignty in a changing international system.

The collection begins with three articles that challenge traditional definitions and present a comprehensive theoretical analysis of the changing role of sovereignty today. Subsequent articles consider questions and applications of sovereignty in concrete, illustrative case studies. These articles consider such wide-ranging topics as the supranational power of the European Parliament, the influence of NAFTA on democratization and economic development, the debate over humanitarian intervention and imposed state-building, the impact of fourth-party intervention in civil disputes and the increasing international visibility of autonomous regions within sovereign states. This diversity of topics reflects the multifaceted character of sovereignty and contributes to the debate about what has changed, why change has occurred and why this change is important.

In addition to the articles pertaining to this year's theme, the *Journal* is also proud to include thought-provoking articles on the application of the democratization peace process in Columbia and Peru, energy nationalization in Brazil and the rise of Hizbullah and its place within Lebanon's political sphere.

Celebrating a decade in print, the *Bologna Center Journal* represents a vehicle for creativity and scholarship within the walls of the SAIS Bologna Center. The publication continues to be student-sponsored and produced, and it is with great pleasure that the *Journal* staff offers, again this year, a financial scholarship to an incoming student, thanks to the generosity of our classmates and teachers. It is our hope that this young tradition continues to mature in the decades to come.

Enjoy reading!

Sarah Underwood
Editor-in-Chief

THE MYTHS OF STATE SOVEREIGNTY

Yale H. Ferguson and Richard W. Mansbach

This paper recounts several of the myths associated with sovereignty, describing the function of these myths and the ways in which global politics has come to reflect a fundamentally changed reality. States are simultaneously confronted by integrating and fragmenting processes that produce new authority patterns. This changed reality has decoupled territorial and psychological space and fostered a global competition for identities and loyalties among different polity types.

More than three decades ago, the authors observed that the myths surrounding the sovereign state were impeding our understanding of the world around us. We argued that there existed “a major gap in the literature on world politics” that should be clear to any reader of a daily newspaper, with its stories of Vietnamese guerrillas and Arab *fedayeen*, OPEC, the Bretton Woods institutions, transnational oil companies and the like. That gap was “the growing importance of nonstate groups and organizations that are not recognized as sovereign governments.” It simply was no longer possible, we concluded, to ignore groups “ranging from terrorist bands to great corporate empires”¹ that made a mockery of much of what was being written about international relations (IR). The tidy world of IR theory, a world of territorial states—“centralized, territorialized, permanent, and coercive,” in Michael Mann’s words²—each enjoying exclusive control of a defined territory, yoked together in a global system with a virtually impermeable wall separating domestic hierarchy from interstate anarchy, and featuring unrelieved conflict and competition, was a world apart from the messy reality of innumerable political entities, most of which were non-sovereign, but enjoyed authority over large groups of people.³ The putative exclusivity of these “cages” had the practical advantage of facilitating comparison without the complication of overlapping political space common in Europe’s Middle Ages. The “international”

YALE H. FERGUSON and RICHARD W. MANSBACH are Professors of Political Science at Rutgers University (Newark) and Iowa State University respectively. They have co-authored a variety books and articles dealing with the future of the state and the transformative forces in global politics, including *The Web of World Politics: Nonstate Actors in the Global System* (1976), *The Elusive Quest: Theory and International Politics* (1988), *The State, Conceptual Chaos, and the Future of International Relations* (1989), *Politics: Authority, Identities, and Change* (1996), *The Elusive Quest Continues* (2003) and *Remapping Global Politics* (2004).

vocabulary of the discipline and accompanying conceptual baggage made it difficult to construct an alternative map of political reality.

In what follows, we elaborate the enduring and powerful myths that surround state sovereignty and the legitimacy these provide to the distant heirs of Europe's territorial leviathans. Such myths, which provide a foundation for the realist and neo-realist visions of IR, prevent theorists from focusing on the dynamics of change. To overcome this static bias, we identify two related processes of change—fission and fusion—that have historically altered the ways in which people associate with one another in political communities and the ways in which authority is distributed and exercised. Thus, today's political universe features a vast variety of authoritative political actors that we call "polities" that interact in an increasingly complex political world and stubbornly defy the demand for theoretical parsimony. To illustrate this, we focus on one recent consequence of accelerated change, the diminishing importance of territory and redefinition of political space. In a word, psychological and territorial definitions of political space, largely compatible in the Eurocentric world established after 1648, have grown apart.

The result of such change and the central thrust of the paper is that although states and state sovereignty will endure, they will do so in truncated form. Far from being unipolar, global politics today features widely dispersed authority, built on multiple identities and loyalties, not so much among territorial states as among states; transnational corporations; ethnic, tribal, and religious communities; and a rich host of other imagined communities. Existing political maps of the world, then, reflect obsolete theory, seriously distort the realities of contemporary global politics and promise bad policies by practitioners. Thus, the American decision to invade Iraq suffered from a serious misunderstanding of the implication of non-state identities in that tragic country.

THE MYTHOLOGY OF STATE SOVEREIGNTY

Today, there is growing recognition that, although states persist, a world map divided into exclusive sovereign boxes is only slightly more useful than the maps of America available to Columbus. "We are seeing," declares Saskia Sassen, "the relocation of various components of sovereignty onto supranational, nongovernmental, or private institutions."⁴ The states that remain are far removed from their precursors both in form and function; they are "less sovereign," less autonomous, and less able to awe, protect or inspire citizens. Nevertheless, the myths surrounding sovereignty are powerful.

The fact that the arguments that we put forward decades ago—that territorial states were the products of a particular time and place rather than universal phenomena, that states never dominated global politics to the extent that theorists contended and that states enjoy progressively less authority than in earlier epochs—still remain controversial attests to the power of myths and to the vested interests of both rulers of states and state-centric scholars. Myths accord legitimacy, and mythmaking, above all, provokes struggles over how history is written—what ethnographer Jonathan Boyarin calls "the question of who controls the archives"⁵—and over which memories of the past will dominate views of the world. Competing myths evoke different memories and therefore trigger competition for control of political meaning.

Determining meaning affords political authority and translates into the power to legitimize and de-legitimize. History itself has limited objective content apart from the meaning given it by those who record and analyze it. Mythmaking in politics and history utilizes ancient symbols or the invention of new symbols to deepen and monopolize identities

and loyalties. As Boyarin observes, “identity and memory are virtually the same concept.”⁶ Rulers recognize the legitimating power of foundation myths that imply that they are part of a continuous historical stream, not least if mythical origins include some type of divine sanction. For instance, the Emperor Augustus commissioned the poet Virgil to write an epic that would show Roman descent from the Trojans and contest Rome’s debt to the Greeks.

Owing to the central importance of collective memory in constituting and anchoring myths, states routinely sponsor ritualistic acts of remembering. Such rituals reinforce and refresh collective myth and memory. Acts of remembering, such as national pageants, recollections of ancient wrongs, tribal ceremonies, ethnic parades or rituals, religious convocations and even monuments are central to contests over history’s meaning. Historical memories and myths sustain and reinvigorate old identities and loyalties. Religion, literature, dialect, poetry, painting, music and ritual are only a few of the ways in which such identities are nourished. Whether memorializing an idealized Battle of the Boyne by Irish Protestants or the Battle of Kosovo by Serb nationalists, almost any historical event, even a fictionalized one, can be resurrected to mount a challenge to or to establish a claim to authority. What originates as a constructed idea may over time be seen as a universal fact that cannot be challenged. Such is the case with state sovereignty.

In IR, the Eurocentric myth of the omnipotence of the sovereign state was perpetuated by the continuing domination of the discipline by realism and neo-realism. Instead of paying attention to shortcomings within IR theory, the so-called traditionalists and scientists in the discipline were still *mano a mano*, blissfully unaware that, methodology notwithstanding, all remained realists at heart, sharing the assumption that “nation-states...are the most important actors for understanding international relations.”⁷ Historians, too, tended to organize scholarship around the Westphalian state,⁸ especially in the nineteenth-century heyday of nationalism, when they were busily constructing the historical narratives and myths of their homelands. IR theorists continued to insist that nothing important had changed since Thucydides. Their ossified assumptions grew out of an ossified conviction that, in Robert Gilpin’s words, “the fundamental nature of international relations has not changed over the millennia” and that IR remains “a recurring struggle for wealth and power among independent actors in a state of anarchy.”⁹ Far from losing their dominance in global politics, realists argued that states are adapting. “The reach of the state,” argues Stephen Krasner, “has increased in some areas but contracted in others.”¹⁰ The European Union, he admits, does not fit his argument, but it is a unique case and definitely not a model for other regions of the world.¹¹

Among the myths that surround our understanding of sovereignty, one is that states established a monopoly on violence in and control over their territory. Max Weber contributed this fiction, ignoring the fact that the legitimacy of violence arises from the ends it is deemed to serve rather than its institutional source. Today, few states are able to exercise coercion effectively. But did Westphalian polities ever actually exercise such extensive control over the means of coercion? Although by the eighteenth century trans-border violence within Europe was largely controlled by states, their reach beyond Europe was tenuous. In fact, state control of violence outside Europe was a process not completed until the following century. As recently as “little more than a century ago,” argues Janice E. Thomson, “the state did not monopolize the exercise of coercion beyond its borders.” The process of centralizing the means of coercion was slow and was accompanied by the strengthening of state institutions in the nineteenth century. States were “reluctant to exert

authority and control over nonstate violence.”¹² States ultimately did so only when they found that it was necessary in order to overcome problems “involving fundamental issues of authority” that arose throughout the course of Europe’s outward colonial expansion.¹³

Today various non-sovereign actors, such as Hizbullah in Lebanon and the Tamil Tigers in Sri Lanka, challenge particular states and enjoy greater legitimacy among numerous followers than does the state. As such failed states as Sierra Leone and Yugoslavia proliferate, anarchy in the sense of chaos seems a more fitting description of intrastate than interstate relations, recalling the world of religious turmoil in Europe before Westphalia, when the question of what was inside and outside the state remained unanswerable. In failed states, the idea of sovereignty is turned on its head: instead of providing citizens with security from foreign aggression by guarding the country’s borders, the army is a major source of insecurity for citizens, who desperately seek safety by fleeing their own country. Private mercenaries are often employed to substitute for a national military or to protect a government from its own army, or, as with civilian military contractors in Iraq, to supplement the use of public violence.

A second myth is that states created impermeable boundaries. In fact, this was never an accurate description, and, owing to technology ranging from intercontinental ballistic missiles to the Web, is today a cartoon version of reality. Drugs, migrants, terrorists, electronic currency and e-mail are the stuff of globalization, producing worldwide interconnectedness in which people, things and ideas flow freely across sovereign frontiers in defiance of geography. Globalization describes a world featuring multiple systems of interaction, transaction and communication that link societies in complex ways. These have transformed sovereign frontiers into very modest impediments to social, economic and political exchange. Thus, James N. Rosenau in his extraordinary post-international trilogy describes a “multi-centric” world of proliferating “sovereignty-free actors,” technological revolutions that make territorial boundaries obsolete and foster economic exchange, collective dilemmas, weakening of centralized state authority, “subgroupism” and politically efficacious individuals.¹⁴

A third myth propagated by neo-realists, especially Kenneth Waltz, is that under anarchy “states remain like units”¹⁵ because all must seek to maximize security by self-help. Waltz argues that, although “[s]tates vary widely in size, wealth, power, and form,” they “perform... tasks, most of which are common to all of them.”¹⁶ Like other neo-realists, Waltz infers the idea of anarchy from a system of sovereign states lacking supranational authority and reasons from this that interstate conflict is inevitable. This myth disguises the fact that real states have little in common with one another except legal sovereignty. Today’s two hundred or so states include one superpower and a host of micro-sovereignities, including the tiny islands of the Caribbean and South Pacific that may disappear beneath the waves as global warming accelerates.

This third myth fosters the regrettable tendency to anthropomorphize states, when the real actors are either government bureaucracies or social subgroups. Indeed, the distinction between public and private is a false premise derived from sovereignty’s dichotomy of states and others. In general, IR theory underestimates the crucial role played by private actors. Historically, the resources (albeit unconsolidated) of individuals, firms and other private groups, such as churches, have outstripped anything available to kings or governments, even of many contemporary states. With the modern deregulation of capital markets, the resources controlled by large firms and banks, and of certain super-rich individuals, outstrip dramatically the resources of most states.

Underestimating the private is accompanied by overestimating the public. Thus, sovereignty is often equated with authority or competence and capacity, rather than considered as an idea for legitimating state authority.¹⁷ Sovereignty is, in fact, a juridical status, while actual authority, autonomy and capacity are always variable attributes. Sovereignty asserts that outsiders should not intervene in a state's internal affairs and that citizens should respect its legitimacy and obey its laws, but there is no guarantee that they will. In recent decades, sovereign independence has offered only modest protection against military predation and boundary changes,¹⁸ as well as access to international organizations.¹⁹ In some cases, the principle of non-intervention amounts to what Robert Jackson calls "negative sovereignty," that is, protection for brutal and corrupt regimes.²⁰

Beyond the myths and ambiguities surrounding sovereignty, there is a growing recognition that a number of contemporary states have been enfeebled or have ceased completely to meet citizens' demands. In these instances, the gap between sovereignty and authority has become an abyss, and the idea of sovereignty is ignored, irrelevant or turned on its head.

From the outset, sovereignty has been more aspirational and ascriptive than descriptive, especially when such political theorists as Bodin wished to extend the authority of France's Valois rulers, shrunk by years of religious strife.²¹ For purposes of legitimizing rule, it replaced the role of religion in political life after the Thirty Years' War. "The idea of sovereignty," as Krasner argues, "was used to legitimate the right of the sovereign to collect taxes, and thereby strengthen the position of the state, and to deny such rights to the church, and thereby weaken the position of the papacy."²² Sovereignty was institutionalized only when the "should" of aspiration was replaced by widespread recognition that the concentration and centralization of dynastic authority were necessary to manage violence and strengthen state capacity. This consensus permitted the state to impose and enforce a hierarchy of identities and loyalties on subjects, thereby limiting the authority of such potentially rival polities as church, local community and even family.²³ Only then did states have a claim to be genuinely moral communities, and only as moral communities could states demand a monopoly of the legitimate use of force. Nevertheless, sovereignty remains ascriptive. It is, as constructivist Nicholas Onuf declares, "not a condition"; rather, it is

an ideal that is never reached, in a world where each step toward the ideal takes effort and costs resources, possibly in increasing increments, to prevent even smaller amounts of unwanted behavior... [T]he ideal of a self-encapsulated set of rules, ordered by principle, abstractly rendered and exhaustively explicated is, again, the more difficult to achieve as it is approached. Practically speaking, officers of legal orders must be satisfied with something less than sovereignty.²⁴

This is essentially Krasner's position, in arguing that sovereignty is "organized hypocrisy,"²⁵ never more than a claim to and justification of authority, a way in which a set of rulers could gain admission to an exclusive club.²⁶

States bestow sovereignty, and therefore the legitimacy that derives from that status, on one another, while withholding it from entities they dislike or from groups located within or beyond their sovereign boundaries, such as the Kurds. Thus, for many contemporary states, sovereignty is rather like the fancy titles of dispossessed royalty: it

guarantees admission to the club but will not help pay the dues. For some politicians, sovereignty merely denotes a national treasury ready for plundering.

Far from being a universal fact of political history, sovereign states, like all political communities, are contingent and evolve.²⁷ Myriad polities have emerged, declined and effectively vanished throughout history, and the theme of continual change among political communities has been a perennial one in political philosophy. Territorial states were the products of a particular historical context in which they successfully competed with rival polities to attract the loyalties of subjects. Their triumph was hardly inevitable. Like Samuel Huntington's "civilizations," sovereign states "are dynamic; they rise and fall; they merge and divide; and as any student of history knows, they also disappear and are buried in the sands of time."²⁸

INTEGRATION AND FRAGMENTATION

As in the past, global patterns of authority are today undergoing significant change, because the sovereign state is being pulled in two apparently antithetical directions—from above into larger communities and from below into smaller entities. Historically, political space is always in flux, producing new ways of authoritatively allocating values. The engines of political change are processes involving the elaboration and integration of larger networks of interaction and interdependence, along with the periodic fragmentation of political communities into vulnerable and tiny units of self-identification. Understanding these processes is essential to making sense of shifts in the nature of global politics. As Benjamin Barber cogently expresses it, the "planet is falling precipitately apart and coming reluctantly together at the very same moment."²⁹

Changing authority patterns are institutional counterparts of shifting identities and loyalties. Instead of a static interstate world of competing sovereignties, we confront "a seamless web, encompassing numerous layered, overlapping, and interacting political authorities."³⁰ This world of overlapping political authorities and communities necessarily focuses attention on the crucial importance of multiple identities and the loyalties derived from those identities. Recognizing the crucial role of multiple identities and loyalties produces a very different understanding of global politics than does the image of a world of clashing sovereignties. Global politics then appears to consist of the interaction of numerous political associations of different types, "competing with one another for the loyalties and resources of individuals and sub-groups with multiple identities." As a result, "individuals are enmeshed in a complex web of relationships, inextricably intertwined with a large number of politically active entities."³¹

The belief that the only legitimate and powerful actors were those that enjoyed sovereignty (conveniently provided by the recognition of other sovereigns) and the triumph of state-centric dogma in political science and history reflect Europe's centuries-old control over historical meaning. The complement to this is the related forgetting of rival forms of identity, both in the context of the contest among political forms in Europe after the Middle Ages and in Europe's conquest over rival forms in non-European regions in the process of colonial expansion. Europe's territorial states required the myth of sovereignty because "there can be no identity without memory (albeit selective), no collective purpose without myth."³²

In every historical epoch, some individual polities or polity types grow; other polities contract, overlap, nest or disappear. In some cases integration simply produces larger versions of existing political forms, as in the merger of the thirteen colonies to form

the United States. In other cases, fission and fusion produce qualitatively different political forms, as did the Ch'in unification of China's city polities, the union of northern European cities to form the Hanseatic League or the agreement of Europe's sovereign states to form the European Union.

The path that political evolution takes—whether toward integration and the centralization of authority and larger polities or the dispersion of authority and the proliferation of small polities—depends on contextual factors. The sovereign state was the product of the integration and fragmentation of earlier polities, nourished from the outset by various ideals in the Roman and medieval traditions and older loyalties to church, lord, guild and even city. The state prospered, both as an idea and as a fact, to the extent that it incorporated other identities, some of which have continued to challenge the existing order. Events from Sarajevo to Brussels remind us that the integration and fragmentation of polities have not ceased even in Europe, the cradle of the sovereign state.

Integration and fragmentation are only apparently contradictory processes. In reality, they are linked. The local and the weak have limited capacity, while the global and the strong have limited sentimental appeal. On the one hand, large polities create problems of control that may dissipate with fragmentation, which, in turn, reduces capacity and efficiency and makes greater size more attractive. Thereafter, the impulses to fragmentation react to the forces for integration that threaten to undermine local autonomy and traditional norms and cultures. Cultural contestation becomes political contestation, and the two reinforce each other.³³ It is this connection that Rosenau grasps when he argues that “[b]oth the Danish government’s aspiration to European unity and [its] public’s original rejection of the idea...are part and parcel of the same underlying global processes.”³⁴ As the source of governance becomes less sharply defined and more remote from its consequences, there is a backlash in which individuals seek refuge in smaller and more proximate polities, trying (and usually failing) to isolate themselves from impersonal forces they do not understand. Refuge is sought and identity recast and reaffirmed in local government, religion, ethnicity, profession and even urban street gangs that are analogous to tribes whose members reveal their identity through dress and lifestyle.³⁵ Such polities may slake the thirst for intimacy, tradition and localism, in the midst of the globalization, of individuals who have a fragmented sense of self in which past, present and future remain disunited.³⁶ Smallness and rediscovery of ethnicity and religion provide psychological shelter for individuals and groups bewildered by the pace of change or fearful of cultural homogenization. Here we encounter Thomas Friedman’s idea of the individual need for an “olive tree” or for “everything that roots us, anchors us, identifies us and locates us in this world.”³⁷

The process comes full circle after a large polity eventually fractures and its successors prove too small to meet the demands of constituents. Then, pressures build toward larger spheres of authority. Thus, Friedman contrasts the “olive tree” with the “Lexus,” a robotics-generated car that to him symbolizes the generic advanced technology of a globalized world. For Barber, the process is “the numbing and neutering uniformities of industrial modernization and the colonizing culture of McWorld.”³⁸

Owing to fragmentation and integration, global politics is, at once, new and old, and history has not and will not end. Today history is being resurrected and reconstructed, albeit in a new and rapidly changing context. History is having its revenge on the sovereign state, and there are also shocks from a future that is as yet only envisioned. As non-sovereign polities successfully anchor the loyalties of adherents, existing states may be subsumed

into larger political communities, be subdivided into smaller ones, witness a contraction in the scope of their authority or even expand their functions. Economic interdependence pushes states into larger regional or global regimes and institutions, which reduce the authority and capacity of governments to control their own economic destinies. Where frontiers were imposed by colonial authorities, complex ethnic and tribal cleavages erode loyalties to governments and push more states toward collapse.

PSYCHOLOGICAL VERSUS TERRITORIAL SPACE

As long as identities and loyalties remained anchored to territory, political theorists found sovereignty a useful logical device. In the absence of a higher juridical authority, interstate relations were necessarily different than and independent of relations among individuals and groups within states. The notion of the word international, as it emerged in the late eighteenth century, also reflected Europe's debt to Rome and Roman law and the reality of the decline of feudalism in Europe, while the doctrine of sovereignty served as a legitimating ideology for the claims of dynasts more generally.³⁹ Thereafter, sovereignty, as it matured in its European setting, acquired a status independent of its original purpose and became responsible for the two-dimensional maps that scholars and practitioners relied on to make sense of global politics.⁴⁰

The wedding of state and nation following the French Revolution anchored the state by providing it with a powerful hegemonic identity. However, the divorce of the two ideas, beginning with the growing popularity of national self-determination after World War I and accelerating with decolonization and later the end of the Cold War, spawned or resurrected powerful rival identities, ranging from religion and ethnicity to gender and profession, that are not anchored or only weakly anchored in territory and, therefore, sovereignty.

Today, as we have argued elsewhere, "territory no more exhausts the possible ways of delineating political space than the state exhausts the ways we organize ourselves for political ends."⁴¹ Increasingly, identities demarcate psychological rather than territorial space—that is, the way in which identities and loyalties are distributed. As a result, we can re-conceptualize political space in terms of psychological distance, or "the degree of dissimilarity between cognitive frameworks or ways of looking at, assigning meaning to, and coping with the world."⁴² Where psychological distance is great, the likelihood of misperception and misunderstanding and, therefore, conflict, is high, and the prospect for forming and sustaining a moral community is low.

Since identities and loyalties are ever more weakly tied to exclusive sovereign territories, they can overlap and intersect. As territory and identity separate, geographic and psychological distance have become decoupled, and globalization creates a new global elite that is connected by e-mail, fax and cell phone and is linked by language, education, custom and taste, much as were eighteenth-century European aristocrats. This transnational elite lives in world cities, in sight of rapidly growing populations of urban poor fleeing rural poverty, yet separated from them by a vast psychological abyss. Such cities, as Saskia Sassen argues, are "partly denationalized" platforms for global capital.⁴³ Pockets of modernity and tradition co-exist, reflecting different historical stages of social, economic and political development. These differences are exacerbated by dramatically different demographic patterns that are producing young and old societies, and these patterns are in turn responsible for massive migrations of people within countries and between continents.

Such mixing further erodes the unifying power of citizenship and the potency of sovereign symbols.

CONCLUSION

We must be careful not to over-generalize. The erosion of state institutions and frontiers is most extensive in post-colonial areas, whereas the capacity of states to carry out multiple roles and collaborate to build successful regional and transnational institutions remains greatest among the richer and older states. More important, the ideal of sovereignty was a prerequisite for constituting the Westphalian polity and became a legitimating ideology of the interstate system and, therefore, of international relations. Although that ideology reflected, in Boyarin's words, "close genealogical links between the 'Cartesian coordinates' of space and time and the discrete, sovereign state, both associated with European society since the Renaissance,"⁴⁴ the ideal has been reaffirmed repeatedly and retains immense mythic and symbolic power. States will not willingly sacrifice this source of authority, especially powerful states such as China, France, Russia and the United States. Sovereignty, as R. B. J. Walker contends, continues to have a role to play in global politics because of the absence of an effective substitute:

Whatever avenues are now being opened up in the exploration of contemporary political identities, whether in the name of nations, humanities, classes, races, cultures, genders or movements, they remain largely constrained by ontological and discursive options expressed most elegantly, and to the modern imagination most persuasively, by claims about the formal sovereignty of states. The Cartesian coordinates may be cracked, identities may be leaking, and the rituals of inclusion and exclusion sanctified by the dense textures of sovereign virtue may have become more transparent. But if not state sovereignty...what then?⁴⁵

Yet the myths of sovereignty, as noted earlier, never accurately reflected global reality. "*Often it is not even that the world has changed,*" we argued two decades ago, "*as much as it is that theorists have noticed something that had always been there or have rediscovered something that is not new at all.*"⁴⁶ Five steps, we concluded at that time, were necessary to overcome the blinders imposed by the sovereignty myths and assure theoretical progress: (1) overcome historical selectivity; (2) de-emphasize strict empiricism; (3) liberate theory from state-centric realism; (4) erase the arbitrary boundary between the international and domestic arenas; and (5) move freely among levels of analysis.⁴⁷ These steps, still not taken, remain as significant today as when we first enunciated them.

In sum, the current interstate model of global politics hopelessly distorts global politics. Today, all states share authority with other polities; all confront transnational and subnational authority challenges; and in extreme cases state institutions have collapsed. The sheer pace of change bewilders governments, which intensifies factionalism and bureaucratic competition and frequently leads to gridlock and inertia. Our post-international world features boundaries among authorities and networks of authorities that overlap with and transcend the fixed sovereign boundaries of states. This world, with its underlying globalization trends, is also one of highly specialized spheres of authority that are often only loosely anchored in territorial space; that is, states are out of place. It is a world in

which authority is fragmented among numerous polities with little hierarchy that, in turn, allocate values locally and, in some cases, transnationally and globally.

NOTES

¹ Richard W. Mansbach, Yale H. Ferguson and Donald E. Lampert, *The Web of World Politics: Nonstate Actors in the Global System* (Englewood Cliffs, NJ: Prentice-Hall, 1976), ix.

² Michael Mann, *The Sources of Social Power*, vol. I, *A History of Power from the Beginning to A.D. 1760* (Cambridge: Cambridge University Press, 1986), 49.

³ For an antithetical perspective, see Robert H. Jackson and Alan James, "The Character of Independent Statehood," in Jackson and James, eds., *States in a Changing World: A Contemporary Analysis* (Oxford: Clarendon Press, 1993), 11.

⁴ Saskia Sassen, *Globalization and Its Discontents* (New York: New Press, 1998), 92.

⁵ Jonathan Boyarin, "Space, Time, and the Politics of Memory," in Boyarin, ed., *Remapping Memory: The Politics of Time Space* (Minneapolis, MN: University of Minnesota Press, 1994), 15.

⁶ *Ibid.*, 23.

⁷ John A. Vasquez, *The Power of Power Politics: From Classical Realism to Neotraditionalism* (Cambridge: Cambridge University Press, 1989), 37.

⁸ For a typical definition of this version of the state based on recognized territory, see Gianfranco Poggi, *The Development of the Modern State: A Sociological Introduction* (Palo Alto, CA: Stanford University Press, 1978), 1.

⁹ Robert Gilpin, *War and Change in World Politics* (Cambridge: Cambridge University Press, 1981), 7. For "independent actors," read: sovereign states.

¹⁰ Stephen D. Krasner, "Sovereignty," *Foreign Policy* 122 (2001): 24.

¹¹ *Ibid.*, 26 and 28-29.

¹² Janice E. Thomson, *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe* (Princeton, NJ: Princeton University Press, 1994), 143.

¹³ *Ibid.*, 67-68.

¹⁴ See James N. Rosenau, *Turbulence in World Politics: A Theory of Change and Continuity* (Princeton, NJ: Princeton University Press, 1990), *Along the Domestic-Foreign Frontier: Exploring Governance in a Turbulent World* (Cambridge: Cambridge University Press, 1997) and *Distant Proximities: Dynamics Beyond Globalization* (Princeton, NJ: Princeton University Press, 2003).

¹⁵ Kenneth N. Waltz, *Theory of International Politics* (Reading, MA: Addison-Wesley, 1979), 93.

¹⁶ *Ibid.*, 96.

¹⁷ F. H. Hinsley, *Sovereignty*, 2nd ed. (Cambridge: Cambridge University Press, 1986), 1.

¹⁸ See Robert H. Jackson and Mark W. Zacher, "The Territorial Covenant: International Society and the Stabilization of Boundaries," Institute of International Relations, University of British Columbia, Working Paper no. 15 (July 1997).

¹⁹ In some respects, this is the most consequential entitlement associated with sovereignty. Thus, the non-sovereign American state of California, with over 31 million inhabitants and a budget deficit in 2003 that was greater than the deficits of all other US states combined

(excluding that of New York), is not entitled to aid from the International Monetary Fund or the World Bank.

²⁰ See Robert H. Jackson, *Quasi-States: Sovereignty, International Relations and the Third World* (Cambridge: Cambridge University Press, 1990), 27. Jackson goes on to argue that even if there is an abyss between reality and aspiration, sovereignty does provide states with a degree of legitimacy denied other actors.

²¹ See J. L. Brierly, *The Law of Nations*, 5th ed. (New York: Oxford University Press, 1963), 8.

²² Stephen D. Krasner, "Westphalia and All That," in Judith Goldstein and Robert O. Keohane, eds., *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change* (Ithaca, NY: Cornell University Press, 1993), 238.

²³ Joseph Strayer, *On the Medieval Origins of the Modern State* (Princeton, NJ: Princeton University Press, 1970), 9.

²⁴ Nicholas J. Onuf, *World of Our Making: Rules and Rule in Social Theory and International Relations* (Columbia, SC: University of South Carolina Press, 1989), 142.

²⁵ Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, NJ: Princeton University Press, 1999).

²⁶ See Oyvind Osterud, "The Narrow Gate: Entry to the Club of Sovereign States," *Review of International Studies* 23, no. 2 (1997): 167-84.

²⁷ The contingent nature of the sovereign state is evident in such works as Hendrik Spruyt, *The Sovereign State and Its Competitors: An Analysis of Systems Change* (Princeton, NJ: Princeton University Press, 1994); and Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton, NJ: Princeton University Press, 2006).

²⁸ Samuel P. Huntington, *The Clash of Civilizations: Remaking of World Order* (New York: Simon & Schuster, 1996), 44.

²⁹ Benjamin Barber, *Jihad vs. McWorld* (New York: Times Books, 1995), 53.

³⁰ Yale H. Ferguson and Richard W. Mansbach, *Politics: Authority, Identities, and Change* (Columbia, SC: University of South Carolina Press, 1996), 33-34.

³¹ *Ibid.*, 43.

³² Anthony D. Smith, *The Ethnic Origins of Nations* (New York: Basil Blackwell, 1986), 2.

³³ See Rosenau, *Along the Domestic-Foreign Frontier*, 99-143.

³⁴ *Ibid.*, 115.

³⁵ Michel Maffesoli calls such groups "tribus." Please see Michael Maffesoli, *The Time of the Tribes: The Decline of Individualism in Mass Society* (London: Sage, 1996), 140.

³⁶ David Harvey, *The Condition of Postmodernity* (Oxford: Blackwell, 1990), 53.

³⁷ Thomas L. Friedman, *The Lexus and the Olive Tree* (New York: Farrar, Strauss and Giroux, 1999), 27.

³⁸ Barber, 12.

³⁹ John Gerard Ruggie, "Continuity and Transformation in the World Polity: Toward a Neorealist Synthesis," *World Politics* 35, no. 2 (1983): 276.

⁴⁰ For a discussion of the interaction of ideas and institutions, see Judith Goldstein, *Ideas, Interests, and American Trade Policy* (Ithaca, NY: Cornell University Press, 1993), 1-22.

⁴¹ *Remapping Global Politics*, 73.

⁴² *Ibid.*, 69.

⁴³ Sassen, 81.

⁴⁴ Boyarin, 4.

⁴⁵ R. B. J. Walker, *Inside/Outside: International Relations as Political Theory* (Cambridge: Cambridge University Press, 1993), 161-62.

⁴⁶ Ferguson and Mansbach, *The Elusive Quest*, 221. Emphasis in original.

⁴⁷ *Ibid.*, 367-75.

RECONSTRUCTING SOVEREIGNTY: THE IMPACT OF NORMS, PRACTICES AND RHETORIC

Kathleen Claussen and Timothy Nichol

The ongoing reconstruction of sovereignty as an institution with functional and ontological significance indicates that it is both founded on the basis of and maintains an important role in shaping international norms. Through practice and rhetoric, state and non-state actors have developed a complex system of terminology that reflects the evolution of sovereignty and its normative framework. This article examines the contributions of state representatives, international institutions and international relations scholars to the re-conceptualization of the fundamental institution of the world order.

INTRODUCTION

*"Sovereignty means many things, some essential, some insignificant, some agreed, some controversial, some that are not warranted and should not be accepted."*¹

Louis Henkin

Henkin's words illustrate the central dilemma in any attempt to analyze sovereignty: by nature of the widespread and indiscriminate use of the word, sovereignty refers to many concepts and ideas, each highly contested. Reinvigorated debates about humanitarian intervention, globalization and regional integration have led to qualitative changes in its meaning. International relations literature treats the multidimensional discourse on sovereignty as though it were self-generative and self-promoting. In reality, politicians and scholars interpret and employ the term based on both competing preconceptions of its meaning and competing objectives for its application.

Practitioners and theorists have contributed heavily to the creation of nuanced understandings of sovereignty. In the 1990s, the claim that sovereignty had lost its salience as the *Grundnorm* of international relations was widespread in the literature.² Scholars proposed a variety of reasons for the end of sovereignty: for instance, that the grounds for sovereignty's erosion were laid in the humanitarian interventions of the period; that the

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post-modern emphasis on de-centeredness had influenced conceptions of sovereignty; that weak structures of state authority had undermined sovereignty by inviting external forces to correct or replace them; that the rise of alternative forms of governance had begun to threaten the very concept of “international” in international relations; and that the demise of the nation-state threatened to diminish sovereignty as an organizational concept.³

In this article, we survey the contestation of the institution of sovereignty and its perpetual reconstruction, which together indicate that sovereignty, in its many forms, is still en vogue. By investigating the proliferation of modified forms of sovereignty, this article builds upon works of other scholars that trace the ways in which sovereignty is debated and applied in world politics.⁴ We limit our discussion to three re-conceptualizations that attempt to capture particular trends in the discourse on sovereignty by calling attention to sovereignty’s divisibility, conditionality and collectivity. More specifically, we look at what these qualifying adjectives bring to the sovereignty debate, how they change the institution and how they help us to understand contemporary political developments. In so doing, we examine the interaction of norms, practices and rhetoric. We focus first on the value-laden nature of sovereignty in the public sphere and then discuss normative change at the institutional level.

Recognizing the complexity of the norms and practices that shape perspectives on sovereignty, we adopt a definition of sovereignty as an institution. As such, the meaning of “institution” must be clarified. This article defines “institution” through a constructivist lens in terms of practices, coupled with norms that both govern and are revised through those practices. With this approach, we examine the many interactions between actors involved in the dual process of norm contestation and the maintenance of norm validity. Kratochwil and Ruggie argue that actors reproduce normative structures and change them in their practice as underlying conditions change.⁵ This insight exceeds the realm of analysis conducted under more traditional approaches toward sovereignty and points to an important dimension frequently left unexplored.⁶

We select a sociological definition of “institution” as a relatively stable collection of practices and rules defining appropriate behavior.⁷ This is an important dimension for understanding sovereignty considering that other institutions in world politics are affected by sovereignty. It should be noted that the type of institution to which we refer is not that of a particular structural arrangement, but rather a general pattern of behavior with correlative structures and principles. As such, sovereignty and its associated norms constitute the means by which states and, increasingly, other actors pursue goals, share meanings, communicate with each other, criticize assertions and justify actions.⁸ In this way, it can be considered the “Grund-institution” of the world’s legal system.

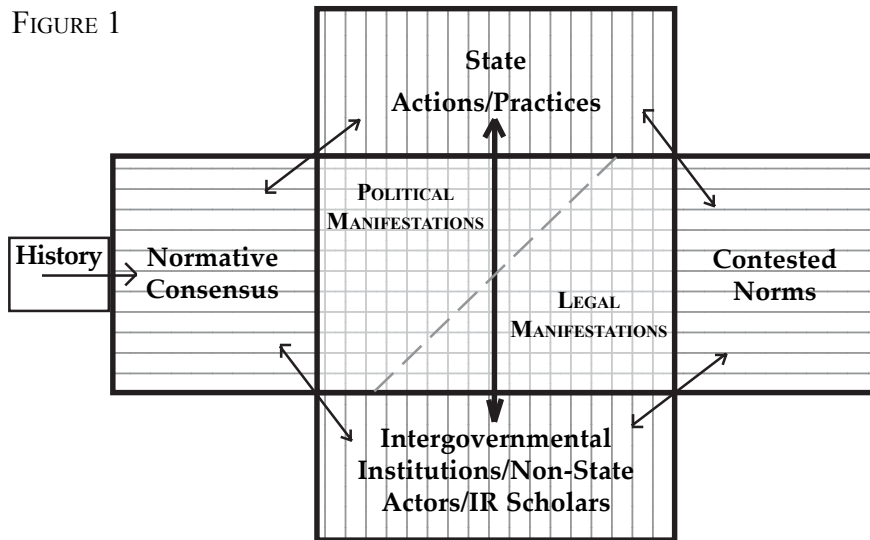
AN INSTITUTION OF INTERACTING NORMS AND PRACTICES

Viewing sovereignty as an institutional arrangement for organizing international politics helps scholars to conceive of ways in which sovereignty is comprised of distinct and interrelated features. Undoubtedly, sovereignty has a norm-generative effect, but it is likewise shaped by changing norms.⁹ Norms isolate single standards of behavior and can obscure the distinct and interrelated elements of social practices. An institution, by contrast, emphasizes the way in which behavioral rules are structured together.¹⁰ Such a conceptualization facilitates the study of how sovereignty has transformed over time, and draws attention to the way in which the addition and contestation of norms in international

relations discourse create new patterns of politics and, potentially, a new model of sovereignty.

The institution of sovereignty is embedded in a broader matrix of socio-political and legal practices. These practices generate categories of meaning through which we conceive and explain applications of sovereignty.¹¹ The relationship between the concrete developments and paradigmatic change, which constitutes and directs sovereignty, can be represented by a two-dimensional model (Figure 1) that attempts to capture the conditions in which sovereignty norms are generated, legitimated, exemplified, contested, modified and discarded.

FIGURE 1



The horizontal plane represents the normative dimension of sovereignty and can be divided into two groups of norms. First, sovereignty is premised on a collection of underlying assumptions that have gained wide acceptance in the course of history. These are referred to in the diagram as the “normative consensus,”¹² which is the reasonably stable set of norms that underpins the institution. These norms make the institution unique and give it its ontological significance. They include: the shared value of international order among states; the shared importance of a system of membership in a society of states; acceptance of the co-existence of the political freedom of states; and, finally, respect for diversity of political systems. Thus, the normative consensus comprises the strongest constitutive elements of sovereignty. The norms of this set are less susceptible to change and contestation as a result of their widespread acknowledgment within international relations. The validity of these principles is continually reinforced through the consent of and use by members of the international community.

Other sovereignty norms, placed on the opposite end of the normative plane, reflect and build upon the preceding set of foundational norms. This second set of norms is referred to as “contested norms”; we find ample evidence both in support of and against them.¹³ Some of the most prominent contested norms today are: non-intervention (territorial integrity); equality among states; self-determination; and mutual recognition that creates the boundaries between nominally independent states.¹⁴ The strength and relevance of

these norms are constantly debated; they enjoy less consensus in political and scholarly discourse, though their importance should not be underestimated. The contested nature of these norms allows for the evolution and reconstruction of the institution of sovereignty.

Sovereignty norms are debated, modified and validated or discarded on the vertical plane. This plane represents the actions, practices and rhetoric of states as well as non-governmental organizations, intergovernmental actors and international relations scholars. Both legal and political manifestations of sovereignty norms are located on this plane. It is important to note, however, that the distinction between legal and political expressions is often blurred by delicate ambiguities in international relations, as will be illustrated below.

Multiple feedback processes challenge and redefine the meaning of sovereignty, as identified by the overlapping arrows in Figure 1. Norms on the horizontal plane are generated and validated through manifestations on the vertical plane. In the same manner, the normative dimension has an influence on the political and legal expressions. This relationship between planes denotes the dual quality of norms.¹⁵ Norms both structure and construct, such that the properties of the institution are “the medium *and* the outcome of practices that constitute” it.¹⁶ Thus, the validity of sovereignty is dependent on both the normative consensus and the contestation of the norms within political and legal spheres.

The complexity of the norms and structures that play a role in the process of institutional reconstruction illustrates that sovereignty is not just one thing—not simply the property or status of individual states, an abstract concept of supreme power, an organizational principle, a normative premise, a system, a responsibility, a right, a practice or a political outcome, as scholars of international relations have argued.¹⁷ Rather, it can represent any of these ideas depending on the context, author or rhetoric used. The definition of sovereignty is inextricably bound to its use.

There are two realms in which sovereignty is contested. The first can be identified in public discourse, such that the term itself acquires a nuanced subtext of values and connotations. The second refers to the evolving institution in academic and political discussions, as represented in the previous diagram.

THE CONTESTED NATURE OF THE TERM IN THE PUBLIC SPHERE

Sovereignty has acquired tremendous symbolic weight through the contestation of its norms and its entrenchment as the fundamental institution of the international system. By nature of its function in law as the constitutive element of statehood, the term has come to symbolize a political ideal as well. To sub-state entities engaged in a struggle for autonomy, sovereignty signifies international recognition, stability, structure and equality on the global playing field.¹⁸ Such consequential references further enhance the attractiveness of the term in public discourse and endorse its symbolic content. As a result, sovereignty achieves a high level of legitimacy and popular acceptance.

On this basis, state leaders have employed the term “sovereignty” as a means of adding legitimacy to both their own actions and the actions of the states they represent. These political manipulations, predicated on an understanding that “sovereignty” retains an authoritative quality, have pervaded the public consciousness through the media.

Recently, UK and US officials referenced improvements in Iraqi rule of law as demonstrations of Iraqi sovereignty. During a White House press briefing in August 2006, Press Secretary Tony Snow commented that: “[t]o have a democracy that allows people to have sovereignty over their lives is something that we think is so powerful, and that the

yearning for freedom is so natural, that that is going to send a powerful signal throughout the region. People are going to want more of it.”¹⁹ This association of “sovereignty” with “democracy” indicates the significance attached to the term. Like “democracy,” “sovereignty” is used indiscriminately and is correlated with larger social and political goals. Similarly, UK Home Secretary John Reid, speaking in a televised interview with the British Broadcasting Corporation in November 2006, called the guilty verdict in Saddam Hussein’s trial the “ultimate expression of their [the Iraqi people’s] own sovereignty.”²⁰

In both cases, Snow and Reid address the establishment of the rule of law in Iraq, though they also likely intend to emphasize the non-interference of other states in the trial process. They use “sovereignty” and its symbolic value as a political device to achieve their own ends and the ends of the states they represent. These brief examples are characteristic of a recent trend to make use of the symbolism of “sovereignty,” associating the term with preconceptions about identity and political community. Such statements demonstrate the continuing importance of sovereignty within international relations and the perception that it is associated with great consequence.

Just as state representatives make use of sovereignty to add legitimacy to their own actions relative to their constituents, they further play a part in re-conceptualizing sovereignty through their actions and words in diplomatic settings. Likewise, international organizations find themselves at the intersection of competing conceptions of sovereignty. Regional organizations, by their very construction, embody implicit revisions to a singular and absolutist approach to sovereignty, as will be discussed further below. The United Nations has wrestled with the multitude of interpretations of sovereignty in such wide-ranging contexts as that of indigenous nations, related to self-determination, and in border dispute resolution, related to non-intervention.²¹

Opposing interpretations of the UN Charter referring to sovereignty norms emerge from groups with demands for international recognition and statehood.²² The appearance of the words “sovereign equality” in Article 2 of the Charter indicates the primacy which the United Nations places on sovereignty; however, the institutionalization of human rights and peace-building bodies and the discussion of related principles in recent years altered the agenda of the organization, causing it to modify previously enshrined sovereignty norms.²³ The delicacy with which the UN treats matters of sovereignty indicates the changing normative and political landscapes the UN faces and makes evident the greater scope for sovereignty’s contestation.

In the academic realm, scholars invent new terminology to capture nuances in the institution. Taken as a whole, these contributions represent sovereignty’s dual quality as an ontological and a functional construct. Reconstructions of the institution endeavor to account for normative and structural changes in international relations today.

INSTITUTIONAL QUALIFIERS

We will not attempt to conduct an exhaustive survey of emerging variations on sovereignty. It is important, however, to note the divergent directions in which scholars and practitioners are pulling the institution through their additions of qualifying adjectives. The qualifiers themselves can be assigned to three distinct groups: those that reflect a trend toward supranational collective authority, those that divide sovereignty into its constituent parts and those that impose conditionalities for the maintenance of sovereign status.

Collectivity

Terms such as “pooled” or “collective” sovereignty make up the group of qualifiers referred to here as the “collectivity” qualifiers. They refer to instances in which states entrust certain national and transnational affairs to a collective entity. Scholars have developed this idea of sovereignty so as to capture structural developments already underway, often at the regional level.²⁴ In the case of the European Union, for example, European states pool their sovereignty in the interest of developing stable and fruitful cooperation.²⁵ The qualifying adjectives describe the delegation of state authority required by supranational and intergovernmental integration.

These terms have gained legitimacy through their widespread use in multilateral settings. They account for change in the structural manifestations of sovereignty on the world stage in an era of greater international cooperation, though by and large they do not alter the normative consensus of the sovereignty institution. Rather, “collectivity” implies a grouping together of sovereign authorities. As a result, the use of these terms to depict such developments is largely accepted. The substance of activity that they intend to convey, however, continues to engender important debate. Nonetheless, unlike the two other groups of sovereignty qualifiers, the “collectivity” terms experience minimal contestation.

Divisibility

A second set of terms, referred to as “divisibility qualifiers,” depicts sovereignty as divisible. They convey a conception of sovereignty that dismantles the institution into many components; the components can be accumulated and together comprise “full sovereignty.”²⁶ Keohane describes what he calls “gradations” or “degrees” of sovereignty,²⁷ which separate the institution into its constituent parts and allocate varying forms of authority to state and non-state actors. This approach further implies that administrative functions can be shared by a state or sub-state authority as well as by international organizations.

The divisibility interpretation emphasizes the disaggregation of authority as an acceptable and necessary model to reflect properly the changing geopolitical environment. Lapidot writes: “[s]overeignty in its classic connotation of total and indivisible state power has been eroded by modern technical and economic developments and by certain rules of modern constitutional and international law.”²⁸ Examples of adjectives in this group include, but are not limited to: disaggregated sovereignty,²⁹ late sovereignty,³⁰ earned sovereignty,³¹ imperial sovereignty,³² pluralistic sovereignty,³³ constrained sovereignty,³⁴ phased sovereignty,³⁵ limited sovereignty³⁶ and partial sovereignty.³⁷ We select two examples to illustrate this trend and analyze how the divisibility qualifiers contribute to a re-conceptualization of sovereignty, reflective of normative and structural change to the institution.

In an effort to represent developments in international law and politics, Slaughter introduces the term “disaggregated sovereignty.”³⁸ This variation on the conventional perspective of sovereignty as a singular locus is intended to illustrate the delegation of state authority to its component political bodies. The distribution of powers has led to the creation of various networks that have acquired unprecedented levels of authority. The introduction of “disaggregated sovereignty” into the institutional discourse denotes a post hoc depiction of structural change. Scholars emphasize this model as a permanent transformation in the international order. Thus, the term offers an alternative conceptualization for the construction of sovereignty, which has normative implications meriting further research.

A second example, “earned sovereignty,” illustrates how divisibility qualifiers are used not only at the macro level to describe broad, overarching trends, but also at the micro level, where they are heavily contested, in reference to particular cases of conflict resolution. Earned sovereignty entails the “conditional and progressive devolution of sovereign powers...from a state to a sub-state entity under international supervision.”³⁹ Similar qualifying adjectives of the divisibility group also give rise to the creation of such quasi-state structures as the UN Mission in Kosovo and other transitional administrations. These sub-state communities are placed in an indeterminate position, as they are neither part of a recognized state nor fully sovereign.

Earned sovereignty thus captures the process during which a political entity acquires a temporary status en route toward a conventional conception of sovereignty. According to this interpretation, sovereignty is no longer the unitary right of the state; rather, it is comprised of a collection of separate competencies and authoritative functions. As a sub-state entity acquires the capacity to self-administer, it progresses toward achieving sovereign status.

The growing acceptance of this group of qualifiers suggests that they are useful in recognizing the structural experimentation taking place in international relations; however, as a result of the context in which these terms are applied and the importance of norms that they attempt to modify, divisibility qualifiers frequently provoke fierce controversy.⁴⁰ The emergence of these re-conceptions of sovereignty is the result of changing political and legal conditions that make use of innovative mechanisms for the distribution of authority. Subsequently, the application of these terms calls into question the strength of such related norms as sovereign equality and a right to self-determination.⁴¹

Contingency

The third group of qualifiers comprises such terms as “contingent” and “conditional” sovereignty. Though the establishment of sovereignty has always been contingent on certain internationally agreed-upon criteria for recognition, these qualifiers support the idea that a state must meet a set of further provisions in order to maintain its membership in the international community. According to the contingency interpretation, sovereignty is dependent on a state’s ability to prove its commitment to a set of conditions established by an outside authority.⁴²

This group contributes to the evolution of sovereignty by rejecting certain norms of the institution. According to Keohane’s understanding of divisible sovereignty outlined above, full sovereignty confers a right to act independently and with comprehensive domestic authority.⁴³ In contrast, contingent sovereignty negates this right and effectively promotes a policy of intervention based on a set of predetermined criteria. Thus, these terms discard the principle of non-intervention, one of the contested, though widely upheld, sovereignty norms.

The concept of contingent sovereignty grows out of the need to explain violations of the norms of non-intervention and territorial integrity, and the accompanying assertions from policymakers that such violations are appropriate. This set of qualifying terms supports a norm of intervention justified on the grounds of humanitarian concern or security considerations.

Contingency based on humanitarian considerations grows out of a conflict between the norm of non-intervention and moral cosmopolitan principles. Advocates of contingent sovereignty on these grounds argue that gross human rights violations justify intervention

and thereby trump sovereignty norms. This qualification of sovereignty has had an effect on state and non-state actors, as well as on international organizations. In fact, the recent support given to contingent sovereignty by the United Nations has significantly heightened the visibility of the term and its acceptance as a legitimate revision of sovereignty.⁴⁴ This shift has caused the UN to revisit and revise sovereignty norms in its actions in crisis situations.⁴⁵ The complexity of this debate is comprehensively examined in the literature.⁴⁶

Security-related justifications for contingent sovereignty have received heightened attention since 11 September 2001. These justifications attempt to reconcile collective action concerns, such as global threats of terrorism or weapons of mass destruction, with the traditional conception of sovereignty. A brief look at recent US foreign policy in this area assists in understanding the normative changes generated from security-related contingency.

According to the stated position of the Bush administration, such norms of sovereignty as non-intervention do not apply in cases of states harboring terrorists or seeking to acquire weapons of mass destruction.⁴⁷ Rather, proponents of the so-called Bush doctrine suggest that international norms should be adapted so that such states are obliged to verify that they are not engaged in such activity. According to the US National Defense Strategy of March 2005, failure to supply such evidence warrants intervention.⁴⁸

This position is highly contested as a legitimate interpretation of the institution of sovereignty. Used in this way and in the context of humanitarian considerations, the conditionality qualifiers change the institution by asserting that a hierarchy of norms exists. Accordingly, higher norms of state responsibility supersede traditional sovereignty norms. In sum, these variations on sovereignty seek to reconstruct the institution in light of a normative shift from non-intervention to (limited) intervention.

Critical Juncture Derived from the Qualifiers

The wide use of the terms analyzed in this section can have contradictory implications for the institution of sovereignty. Qualifiers will undoubtedly continue to be employed by scholars, international organizations and politicians as necessary to explain and to influence the changing international system. On the other hand, the addition of qualifiers and their repercussions together have the potential for revising sovereignty beyond recognition, rendering futile the pursuit of normative stability within the institution.

As shown above, states, international organizations and scholars each influence with varying motives the meaning of sovereignty in various settings. Modifications to sovereignty norms endorsed by the United Nations and other international organizations are less contested than those unilaterally advocated by states, as exemplified by the changes put forward by the Bush administration. By contrast, such qualifying adjectives as “collective,” “disaggregated” or “earned” do not attempt fundamentally to alter sovereignty norms; rather, they act as labels for changes to sovereignty as observed on the international stage. In other words, scholars and others who apply these terms classify the transformations taking place on the vertical plane of the sovereignty diagram. Their use of qualifiers draws attention to reconstructions already underway and contextualizes such reconstructions on the normative dimension.

As we have seen, these divergent implications represent a critical juncture in the debate on sovereignty. This critical juncture is made manifest in the sweeping contestation of the term, which evolves through the reconstruction of the normative and non-normative aspects of the institution. It remains to be seen whether the qualifier phenomenon is

representative of a lasting trend that conceives of sovereignty with reference to world developments or whether these qualifiers will be discarded in favor of maintaining an absolutist concept of the institution.

CONCLUSION

As it is continually reconstituted and reconstructed, sovereignty is what actors make of it and thus is subject to change. State actors make use of their prominence in the international system proactively to reshape sovereignty norms as they engage in international relations. International organizations confront the alterations to the institution and exert significant influence on its evolution in diverse ways. Scholars further affect sovereignty through the linkages they make between the normative and non-normative dimensions of sovereignty.

The heightened attention to sovereignty and its normative foundation, resulting from the many transformations of the institution, has led to its broadened application. Sovereignty's contested nature has proven the doomsayers wrong by demonstrating the resilience of the term. At the same time, such contestation has introduced a set of variations on sovereignty into the public and academic discourses. The attractiveness of the symbolism embedded within the institution entices scholars and politicians alike to apply it to a wide sphere of contexts. Through their practices and associated rhetoric, these actors contribute to changes in sovereignty's normative underpinning.

The introduction of modified versions of sovereignty, distinguished as the collectivity, divisibility and contingency groups of qualifiers, has attempted to address both the changing normative consensus of the institution as well as the shifts in the structure of international relations. The collectivity group attempts to account for structural change in the international system, in which states voluntarily entrust aspects of their legal and political affairs to a larger supranational community, without directly altering the normative framework of sovereignty. The divisibility qualifiers disaggregate sovereignty into elements that can be distributed among actors and earned by sub-state entities. This reconceptualization addresses changes in both the structure of the international system and in the normative consensus of sovereignty. Finally, contingent sovereignty questions the validity of fundamental norms associated with sovereignty in light of global threats. Proponents of each group, none of which is mutually exclusive, argue that these qualifiers provide a more accurate representation of political and legal developments on the world stage.

Over the last fifteen years, the importance of the institution of sovereignty has become more firmly acknowledged within the discipline. The introduction of qualifiers represents a critical juncture in which sovereignty undergoes both normative and structural reconsideration. Thus, its functionality is rising rather than declining. Whether this trend is beneficial or perilous for the future of world politics and international law has yet to be determined.

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NOTES

¹ Louis Henkin, cited in Winston P. Nagan and Craig Hammer, "The Changing Character of Sovereignty in International Law and International Relations," *Columbia Journal of Transnational Law* 43, no. 1 (2005): 142.

² Noting especially: Joseph Camilleri and Jim Falk, *The End of Sovereignty?: The Politics of a Shrinking and Fragmented World* (Aldershot: Edward Elgar, 1992); James Rosenau, *Turbulence in World Politics: A Theory of Change and Continuity* (Princeton, NJ: Princeton University Press, 1990); Thomas Christiansen, *European Integration between Political Science and International Relations Theory: The End of Sovereignty* (Florence: EUI Working Paper Series, 1994); Francis Fukuyama, *State-Building: Governance and World Order in the 21st Century* (Ithaca, NY: Cornell University Press, 2004); C. H. Schreier, "The Waning of the Sovereign State: Toward a New Paradigm for International Law?," *European Journal of International Law* 4, no. 4 (1993): 447-71.

³ See *supra* note 2.

⁴ Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995).

⁵ Friedrich Kratochwil and John G. Ruggie, "International Organisation: A State of the Art on an Art of the State," *International Organization* 40, no. 4 (1986): 753-75.

⁶ Some important exceptions include, among other constructivist analyses, Thomas J. Biersteker, "State, Sovereignty and Territoriality," in Walter Carlsnaes, Thomas Risse and Beth Simmons, eds., *Handbook of International Relations* (London: Sage, 2002), 163; Thomas J. Biersteker and Cynthia Weber, eds., *State Sovereignty as Social Construct* (Cambridge: Cambridge University Press, 1996); Georg Sørensen, "Sovereignty: Change and Continuity in a Fundamental Institution," *Political Studies* XLVII (1999): 590-604.

⁷ James G. March and Johan P. Olsen, "The Institutional Dynamics of International Political Orders," *International Organization* 52, no. 4 (1998): 943-69. For an excellent discussion of institutions in international relations, see Robert Keohane, *International Institutions and State Power* (Boulder, CO: Westview Press, 1989), 162-65. Others who have referred to sovereignty as an institution include: J. G. Ruggie, "Continuity and Transformation in the World Polity: Toward a Neorealist Synthesis," in Robert Keohane, ed., *Neorealism and Its Critics* (New York: Columbia University Press, 1986), 131-57; Stephen Krasner, *Sovereignty: An Institutional Perspective* (Stanford, CA: Center for Advanced Study in the Behavioral Sciences, 1987).

⁸ F. Kratochwil, "Souveränität Und Moderne. Eine Begriffliche Analyse Des Semantischen Feldes," in Markus Jachtenfuchs and Michele Knodt, eds., *Regieren in Internationalen Institutionen* (Opladen: Leske and Budrich, 2002): 29-51.

⁹ Sørensen affirms that sovereignty is a "remarkably flexible institution which has adapted to the transformations of statehood." See Georg Sørensen, *Changes in Statehood: The Transformation of International Relations* (London: Palgrave, 2001), 145.

¹⁰ Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 54, no. 4 (1998): 891.

¹¹ Jim George, *Discourses of Global Politics: A Critical (Re)Introduction to International Relations* (Boulder, CO: Lynne Rienner, 1994), 29-30.

¹² The normative consensus parallels the work of others who have discussed fundamental norms or normative structure in world politics. See Antje Wiener, "Contested Compliance: Interventions on the Normative Structure of World Politics," *European Journal of International Relations* 10, no. 2 (2004): 189-234; Antje Wiener, "Contested Meanings of Norms: A Research Framework," *Comparative European Politics* forthcoming special issue (2007); Christian Reus-Smit, "The Constitutional Structure of International Society and the Nature of Fundamental

Institutions," *International Organization* 51, no. 4 (1997): 555-89.

¹³ For an excellent discussion of the process of adoption of these norms and the means by which they move on the diagram from the right-hand side of the horizontal plane to the left, see Finnemore and Sikkink.

¹⁴ Many of these principles are outlined in the UN General Assembly's Declaration on the Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (1970). It should be noted that the norm of self-determination has lost much of its salience and normative weight, though it is still articulated in certain well-known contexts.

¹⁵ Wiener, 2004, 191; Antje Wiener, "Constructivism: The Limits of Bridging Gaps," *Journal of International Relations and Development* 6, no. 2 (2003): 268.

¹⁶ Anthony Giddens, cited in Antje Wiener, *The Invisible Constitution: Making Normative Meaning Accountable*, unpublished manuscript (Belfast, 2006). Emphasis added.

¹⁷ See inter alia Christian Reus-Smit, "Human Rights and the Social Construction of Sovereignty," *Review of International Studies* 27, no. 4 (2001): 519-38; Nagan and Hammer; Hans J. Morgenthau, *Politics Among Nations* (New York: Alfred A. Knopf, 1967); Kenneth Waltz, *Theory of International Politics* (New York: Random House, 1979); Alan James, *Sovereign Statehood: The Basis of International Society* (London: Allen and Unwin, 1986); Robert Jackson, "Sovereignty in World Politics: A Glance at the Conceptual and Historical Landscape," *Political Studies* XLVII (1999): 431-56; H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961); Cynthia Weber, *Simulating Sovereignty* (Cambridge: Cambridge University Press, 1994); Biersteker and Weber, respectively. J. D. B. Miller has famously asserted: "Just as we know a camel or a chair when we see one, so we know a sovereign state. It is a political entity which is treated as a sovereign state by other sovereign states." See: J. D. B. Miller, *The World of States: Connected Essays* (New York: St. Martin's Press, 1981), 16.

¹⁸ Numerous cases, such as those of Kurdistan, Quebec, Scotland, South Ossetia, Taiwan and Tibet, lend themselves to particularly contentious debates on sovereignty.

¹⁹ Tony Snow, White House Press Briefing, 16 August 2006, Office of the President of the United States.

²⁰ "Reid Welcomes Saddam Verdict," London: BBC News, 5 November 2006.

²¹ See references to "self-determination" in Article 1 of the UN Charter and territorial integrity in Article 2. Countless multilateral conventions and resolutions of the General Assembly or Security Council uphold particular sovereignty norms, though not necessarily at the expense of other correlative norms. See, for instance: the Draft UN Declaration on the Rights of Indigenous Peoples (UN Doc. E/CN.4/1995/2) and Resolution 1803 on Permanent Sovereignty over Natural Resources, 17 UN GAOR Supp. (no. 17), 15, UN Doc. A/5217 (1962). Note the careful language used in UN Security Council Resolution 1244, for example, in justifying the creation of a UN Mission in Kosovo while upholding the territorial integrity of the Federal Republic of Yugoslavia (S/Res/1244, 10 June 1999).

²² See *supra* note 18.

²³ See further discussion with respect to "contingency qualifiers" in the next section, as well. Taylor documents the changing UN agenda indicative of this trend in the post-Cold War era. See Paul Taylor, "The United Nations in the 1990s: Proactive Cosmopolitanism and the Issue of Sovereignty," *Political Studies* XLVII (1999): 538-65.

²⁴ These should not be confused with "shared sovereignty" (see Stephen Krasner, "Sharing Sovereignty: New Institutions for Collapsed and Failing States," *International Security* 29, no. 2 (2004): 85-120), which refers to the inclusion of international actors in domestic

institutions of new and emergent states. Shared sovereignty does not fit well into any of the three categories of qualifiers as it neither divides sovereignty among institutions, nor does it capture a cooperative initiative among many sovereign actors, nor does it threaten the normative framework of sovereignty. It is, perhaps, the ultimate misnomer in that it does not refer to an element of the institution of sovereignty that is shared, but, rather, depicts the integration of external experts in a newly emergent state's governance structure.

²⁵ Robert Keohane, "Ironies of Sovereignty: The European Union and the United States," *Journal of Common Market Studies* 40, no. 4 (2002): 748-49.

²⁶ Stuart Elden, "Contingent Sovereignty, Territorial Integrity and the Sanctity of Borders," *SAIS Review* 26, no. 1 (2006): 11-24.

²⁷ Robert Keohane, "Political authority after intervention: gradations in sovereignty," in J. L. Holzgrefe, ed., *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge: Cambridge University Press, 2003), 277.

²⁸ Ruth Lapidoth, "Sovereignty in Transition," *Journal of International Affairs* 45, no. 2 (1992): 345.

²⁹ See, for instance, Anne-Marie Slaughter, "Security, Solidarity and Sovereignty: The Grand Themes of UN Reform," *American Journal of International Law* 99, no. 3 (2005): 619-31.

³⁰ Neil Walker, "Late Sovereignty in the European Union," in Neil Walker, ed., *Sovereignty in Transition* (Oxford: Hart Publishing, 2003), 3-32.

³¹ Michael Scharf, "Earned Sovereignty: Juridical Underpinnings," *Denver Journal of International Law and Policy* 31, no. 3 (2004): 373-87.

³² Jean Cohen, "Whose Sovereignty? Empire Versus International Law," *Ethics and International Affairs* 18, no. 3 (2004): 1-24.

³³ Harold J. Laski, *The Foundations of Sovereignty and Other Essays* (New York: Harcourt, Brace and Co., 1921).

³⁴ Paul R. Williams, "Earned Sovereignty: The Road to Resolving the Conflict Over Kosovo's Final Status," *Denver Journal of International Law and Policy* 31, no. 3 (2004): 387-430.

³⁵ Paul R. Williams, Michael Scharf and James R. Hooper, "Resolving Sovereignty-Based Conflicts: The Emerging Approach of Earned Sovereignty," *Denver Journal of International Law and Policy* 31, no. 3 (2004): 349-55.

³⁶ Elden.

³⁷ Ibid.

³⁸ Slaughter.

³⁹ Paul R. Williams and Francesca Jannotti Pecci, "Earned Sovereignty: Bridging the Gap between Sovereignty and Self-Determination," *Stanford Journal of International Law* 40, no. 1 (2004): 4.

⁴⁰ Gerard Kreijen, *State Failure, Sovereignty, and Effectiveness* (Leiden: Martinus Nijhoff Publishers, 2004), 26.

⁴¹ Krasner proposes "shared sovereignty" as a long-term, even permanent option for prospective state entities. In fact, this structural design does not demonstrate an alternative to sovereignty, but rather a mechanism for effective governance within an internationally recognized state. See supra note 20.

⁴² The external entity varies depending on the case; examples include intergovernmental organizations, other states or another designated regulative corporation.

⁴³ Keohane, 2003, 276.

⁴⁴ The United Nations confronted this dilemma in its 2004 Report: "A More Secure World: Our Shared Responsibility." The Secretary-General's High-Level Panel on Threats, Challenges and Change shed light on the UN's ongoing dilemma with these competing norms. The report offers a complex blueprint for change, requiring a revision of sovereignty as enshrined in the Charter. The report endorses the conclusion of the International Commission on Intervention and State Sovereignty that all states have a "responsibility to protect" their own citizens and to meet their international obligations at threat of sanction. For a more detailed explication of this shift, see Slaughter.

⁴⁵ See *supra* note 18.

⁴⁶ For an overview of this debate, see Holzgrefe.

⁴⁷ For a comprehensive look at these policy statements, see Elden.

⁴⁸ *Ibid.*

(Dis-)LOCATING SOVEREIGNTY? STATES, SELF-DETERMINATION AND HUMAN RIGHTS

Vincent Depaigne

The purpose of this paper is twofold. First, I will show how the issue of sovereignty has been transformed by the self-determination principle. Second, I will look at how self-determination is both a reinforcing and weakening factor for state sovereignty. Eighteenth-century foundations of self-determination, in particular the social contract theory of Jean-Jacques Rousseau and the American and French Revolutions, have transformed traditional state-based conceptions of sovereignty inherited from the Treaty of Westphalia. I will show how the dilemmas and contradictions identified at the time have received only partial and inconsistent answers in the present international system.

INTRODUCTION

Sovereignty in its most straightforward meaning is supreme authority. Such a succinct definition raises the question of the source of sovereignty. In the classical view of international law, sovereignty is vested in the state: the “formation of a new state is ... a matter of fact and not of law.”¹ This view of international law does not say much about sovereignty: it provides a foundation for state sovereignty, but is dependent on a state’s will to bind its sovereignty.² Just as “social contract” theories have sought to determine the origin of sovereignty, international law scholars have sought whether the source of international law rests solely with states or has autonomous sources.

Self-determination has transformed international law and its view on the origin of sovereignty. Today, it is a powerful factor of legitimacy in the international order to justify claims of sovereignty. In the words of Tomuschat, “[s]tates are no more sacrosanct.

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Their existence is not exempt from challenge, even on a legal plane.”³ Self-determination introduces a particular instability to the concept of statehood, reinforcing and undermining it at the same time.⁴ Even if, as we will see, the legal application of self-determination remains limited in scope, its very existence makes it a powerful political tool in the hands of groups that see themselves as constitutive of political units. International law has taken—rightly or wrongly—a conservative view of the application of self-determination, giving greater privilege to state-based international stability over a wider interpretation of self-determination, fearing this would result in open-ended claims to statehood.⁵ Adopting a view from international law, this paper will show that the international and national levels, as well as the internal and external aspects of sovereignty, are closely linked and converge toward a single view of sovereignty as an expression of the will of the people, based on self-determination.

The first part of the present paper describes the ideal model of sovereignty developed by Jean-Jacques Rousseau and shows how his social contract theory has influenced the present understanding of self-determination under international law. The second part addresses the impact of the French and American Revolutions on today’s conception of sovereignty and self-determination. The third part shows how self-determination is both reinforcing and undermining state sovereignty. The fourth part looks at the issue of group rights as a way to reconcile the tensions between self-determination and state sovereignty.

AN IDEAL MODEL OF SOVEREIGNTY: ROUSSEAU

Rousseau’s *Du Contrat Social*, published in 1762, provides an ideal model of sovereignty, not a practical or directly applicable solution. One misunderstanding with today’s literal reading of the idea of the social pact is that the reference to natural law, dominant in Rousseau’s time, has been replaced by a positivistic view of law. The “social pact” as seen by Rousseau is not a construct, but rather a discovery of what already exists, making explicit what is immanent to a given society. For Rousseau, “natural law” and “political law” are distinct concepts: the social pact derives from natural law, while the political institutions are meant to implement the pact, not alter it.⁶

For Rousseau, the sovereign is defined as the absolute power to make the law, which cannot be alienated or represented, and as the one who is above it, which cannot be alienated or represented.⁷ The sovereign is the sum of its constituents, and the will of the sovereign and of its individual members is by necessity congruent: this congruence is made possible only by the distinction between private and public spheres, the *volonté particulière* (particular will) and the *volonté générale* (general will).⁸ The notion of “general will” is central to the whole construct: it is where the will of the individual and of the group coincide.⁹ That is why for Rousseau sovereignty, like general will, is indivisible. The general will can emanate only from the whole group; it cannot come from a part of it. As a result, there should be no “partial societies” within the state. However, Rousseau realises as well that the presence of partial segments within the state may not always be avoided. In this case, these should be multiplied and have equal status.¹⁰

The “general will” is that of the “people.”¹¹ In the following discussion on self-determination, we shall see that this notion is central and that the unity of the people which prohibits sub-groups to separate from it remains central to how self-determination is exercised today. Another element that is part of sovereignty in Rousseau’s view is the notion of equality: this is the main balancing factor to contain excesses by the sovereign.

The nature of the social pact is such that its reciprocal nature ensures that others' interests and one's own interest can be aligned. Equality in duties and rights is the essence of this pact. The sovereign cannot burden one of its subjects more than any other, as it would then lose its general nature and become the expression of a "particular" will.¹²

When it comes to legislating, Rousseau moves closer to Montesquieu. He underlines the need to take into account the particular character of each people. Rousseau's anthropology is therefore one which is concerned with the "natural" diversity of the various peoples.¹³ It is a misreading of Rousseau to equate "general will" and self-government: "general will" is not represented by a particular form of government, but also reflects longstanding traditions and customs. Rousseau talks of customs as an "unknown," "secret" law, which is also the most important law.¹⁴ His distrust of representation reflects a view that perfect democracy is out of reach and, as a result, government's legitimacy is only provisional.¹⁵ Discerning the "general will" is neither submitting to particular expressions nor imposing a single and homogenous kind of political organisation. Rousseau makes a clear distinction between the sovereign (which is the expression of the social pact) and government (which is acting under the mandate given by this pact without any possibility of changing it).¹⁶

Rousseau is aware of the practical limits of his ideal system when faced with the reality of diverse cultural and historical traditions, but his whole system posits the alignment between the individual, the people and the state. As we will see, Rousseau's theory has influenced the conception of the sovereign nation-state under international law. One can trace his influence especially in the concept of self-determination of peoples, which will progressively grow in importance in international law from the French Revolution to the emergence of a right to self-determination in international law after World War I.

SOVEREIGNTY OF THE PEOPLE IN PRACTICE: THE FRENCH AND AMERICAN REVOLUTIONS *The French Revolution: Sovereignty as a Human Right*

The French Revolution was influenced by Rousseau's ideas, which provided a theoretical framework for a new political regime that struggled to legitimize its power in opposition to that of the king. The new political order was based on a new conception of sovereignty: it was no longer believed to be in the hands of God. This new approach vested sovereignty with the people and its representatives.¹⁷ Gauchet shows how the Declaration of the Rights of Man and the Citizen of 1789 reflected an attempt by the parliament to become a source of legitimacy that could compete with the king's own legitimacy.¹⁸ The universalism of the Declaration can be explained by the need to ground the new political order in transcendent, natural law, so as to oppose the transcendent religious source of legitimacy of the king.¹⁹

Based on the newly adopted human rights declaration, the theory of general will offered this alternative paradigm. The link between human rights and general will is made in Article 6 of the 1789 Declaration ("the Law is the expression of the general will"), while the link between human rights and sovereignty results from Article 3 ("the source of all sovereignty lies essentially in the Nation").²⁰ The sovereign is no longer the king, but the nation. Sovereignty is tied to human rights. The sovereign derives its legitimacy from the freedom and well-being of its constituent parts, the individuals. This relation is reciprocal. Human rights legitimize the sovereignty of the nation, and in turn this sovereignty legitimizes human rights.

The sovereign nation is thus a "society of individuals."²¹ Sovereignty is not seen as limiting the freedom of the individual but, on the contrary, in the "Rousseauist" way, as

enhancing this freedom.²² A major difference between the 1789 Declaration and the previous American and British Bills of Rights is that the issue is not about containing political power, but about making it the very source of freedom. Sovereignty is not seen as a potential threat to individual rights, but as an enhancer of them.²³ Where Rousseau saw the source of sovereignty in a community of equals, the French Revolution built a “human rights community.”

This revolutionary program raises a number of dilemmas that remain central to the present-day discussion on democracy and self-determination. The revolution did not solve the issue of how to maintain the harmony among individuals and collective levels. The idea that the sovereign deliberation of the people will always respect and result in the protection of human rights appears axiomatic and grounded in natural law, but it is not explained.

The scope of human rights is also problematic. Are the rights those of the citizen or of all humans? In other words, how are the “universal” rights of all men connected to their implementation in the context of a given “particular” nation?²⁴ A related issue is how to ensure that the nation is at all times “congruent” with the state, given the fragility of human rights as a logical and practical foundation for the political order. Keitner points to a number of paradoxes facing the “voluntarist” nation. What is the origin of the social pact, and what is its anteriority? How is a constitutional order which reflects truly the “general will” defined? How are insiders and outsiders in a nation based on universal ideas separated? How are these principles at international level implemented?²⁵

The United States Declaration of Independence: A Blueprint for Self-Determination?

The United States Declaration of Independence of 1776 outlines a conception of self-determination that has influenced contemporary views on self-determination in many respects. The first paragraph mentions “the separate and equal station to which the Laws of Nature and of Nature’s God entitle” any “people.” The Declaration also states that such separation cannot be without reasons and that “Governments long established should not be changed for light and transient causes.”²⁶

According to the Declaration, “to secure the rights [mentioned in the Declaration], Governments are instituted among Men, deriving their just powers from the consent of the governed.” As a result, “whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.” Secession is thus not an unconditional right, but arises only when a government is not ensuring people’s rights: “when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government.” The Declaration then lists the abuses of the rights of US citizens by the British government, as a justification for US independence.

In many respects, the Declaration of Independence represents the “external” side of the “Rousseauist” social contract. Government should be based on the consent of the people. Changing the social pact should not happen for light reasons, but the ultimate source of sovereignty is the consent of the governed. “Internal” and “external” self-determination are thus linked. The French Revolution also developed similar views on self-determination at the international level.²⁷

The French and American Revolutions have influenced the conceptions of state

sovereignty and self-determination at the international level.²⁸ A new conception of sovereignty, based on “the rights of nations to choose the form of their government,”²⁹ was opposed to the traditional, monarchical source of sovereignty. The French Revolution introduced the idea that peoples or nations and states should be congruent.³⁰ This idea was applied not only to a particular people, but to humanity as a whole. An echo of this can be found in the Universal Declaration of Human Rights, which states that “the will of the people shall be the basis of the authority of government.”³¹ The American Revolution influenced the “Wilsonian” vision of the international order laid down in the aftermath of World War I. US President Wilson’s views can be seen as an extension, at the international level, of the emphasis on the consent of the governed, which forms the core of the Declaration of Independence.³²

These ideas have transformed the traditional international system, introducing a competing source of legitimacy for state sovereignty. Since the eighteenth century, these new ideas have created profound contradictions that are still at the heart of the contradictions of today’s world order.

SELF-DETERMINATION: THE DEMISE OF STATE SOVEREIGNTY?

The Crisis of the Westphalian Model

The classical model of state sovereignty in international law finds its historical origin in the Westphalia Treaty of 1648 following the Thirty Years’ War. Westphalia marks the end of the European hierarchical order inspired by the idea of a “Christian commonwealth,” which was dominated by the Pope and the emperor. Likewise it marks the rise of a model based on state sovereignty enshrined in mutually agreed-upon and treaty-based obligations. However, it should be noted that Westphalia did not create a world of unrestrained sovereignty, as is often said. A number of guarantees for religious minorities were inserted, which reflected the religious dimension of the Thirty Years’ War and which opposed Protestant and Catholic powers of the day. The use of force, while not ruled out, is subject to a number of conditions, in particular dispute settlement provisions.³³ The structural instability of a system solely based on states’ will and balance of power without superior law was noted by thinkers who sought to ground international law in a source of law independent of that grounded solely in state sovereignty. In 1795, Kant presented his idea of a “federation of nations,” which—referring to Rousseau—he compares to the social contract among individuals. The state of nature among states as among individuals (state of savages) is marked by violence; the only possible response to end a perpetual state of conflict is to establish a federation that will ensure security and rights for every nation on the basis of equality (as individuals enjoy under the social pact).³⁴ For Kant, “war... cannot determine a right” and “a treaty of peace can put an end to some particular war, it cannot end the state of war.”³⁵ Kant believed in the principle of non-interference (“no nation shall forcibly interfere with the constitution and government of another”³⁶), and the republican form of government is the most conducive to peace as it based on the “consent of the citizenry.”³⁷

The crisis of the classical Westphalian model began with the onset of World War I, when the international system was no longer able to offer stable mechanisms to adjudicate competing assertions of sovereignty. Even if the break with the Westphalian period should not be overstated, a new vision of international law emerged with the creation in 1919 of the League of Nations and the progressive recognition of the principle of self-determination under international law. This marked the end of the unrestrained dominance of state

sovereignty over international law. New international rules appeared necessary to prevent war. The League of Nations was a first but unsuccessful attempt, followed by the United Nations in 1945. The 1945 United Nations Charter asserts two related principles: “friendly relations” and self-determination. According to the United Nations Charter (article 1.4), one of the purposes of the United Nations is “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.” The use of force is banned by article 2.4. As a result, mere control of territory is not enough to assert sovereignty. Self-determination is, therefore, closely connected with the prohibition of use of force. To be qualified as legitimate under international law, a sovereign power—at least where there is a change in sovereignty, territorial disputes or situations of oppression—will have to find new justifications for its foundation.

Self-Determination as a New Foundation for Sovereignty

The traditional criterion for state recognition under international law, which requires effective control over a defined territory,³⁸ is challenged by the notion that self-determination can represent an autonomous, alternative criterion to define sovereignty.³⁹ The main difficulty is that territorial control and self-determination are conflicting and contradictory sources of state legitimacy at the international level. Practicing the Wilsonian rhetoric on self-determination in Europe after World War I proved challenging. In 1918, Wilson defined general principles, but he also had to address the settlement of particular territorial disputes in Europe following World War I.⁴⁰ As a result, the post-war settlement consisted of a set of particular arrangements with some references to general principles, but it did not lead to the establishment of a new coherent framework to implement self-determination.⁴¹

Self-determination, then, came when sovereignty was uncertain, disputed or “in abeyance.”⁴² The need to settle self-determination claims necessitated the introduction of international adjudication mechanisms.⁴³ Self-determination thus acts as a “meta-norm,” a subsidiary norm, which comes into play when usual international norms are not operative: for Berman, “issues of self determination arise in unusual temporal or spatial gaps in the legal system.”⁴⁴ Even though self-determination appears at first sight as a marginal legal concept, its exceptional character can be considered itself as a sign of its potential importance, as a principle anterior to the state, when “international law [is] competent to discuss the birth of states.”⁴⁵

Self-determination is here linked to “the right of the people to constitute their own political system (*pouvoir constituant*).”⁴⁶ Self-determination has to do with the foundation of the state, with the “social pact.” In this sense, it happens only once, whenever a state is created or at critical historical moments, such as when states dislocate. As was said in the American Declaration of Independence, such a right should be exercised only in the most extreme or exceptional circumstances.

Another view of self-determination is the “equality theory,” according to which self-determination is a right of dominated peoples. It arises in situations of oppression, occupation or colonization, which deny the dominated equality to the dominant.⁴⁷ These ideas find their origin in the French and American Revolutions and have been central to the development of the right to self-determination during the decolonization period of the 1960s. In the 1971 case of *Namibia*, Judge Ammoun determined that self-determination be based on human equality.⁴⁸ In the 1921 case of *Aaland Island* (Commission of *Rapporteurs*), it was suggested that under extreme oppression, self-determination claims can arise.⁴⁹ This view of self-determination can create a “mirror effect.” More than one

group in a single territory may be entitled to self-determination. In the 1920 case of *Aaland Island*, the International Commission of Jurists rejected Finland's claim that it could assert its own sovereignty, but this right was also denied to other national groups within its territory.⁵⁰ At the time of decolonization in the 1960s, self-determination was defined as applying to colonial populations, on the basis of the international consensus built at the United Nations.⁵¹

However, decolonization was also based on the principle of intangibility of borders inherited from colonial powers (*uti possidetis*), which was meant to guard against the instability created if self-determination claims were unchecked. The *uti possidetis* principle was reiterated by the International Court of Justice in the 1986 case concerning the frontier dispute between Burkina Faso and the Republic of Mali.⁵² Decolonization shows how self-determination did not unravel state sovereignty but, on the contrary, served as a new justification for state authority, as is shown by the insistence of newly born states to preserve their sovereignty and avoid external interference in the name of self-determination.⁵³

State integrity remains the cornerstone of the international system. Self-determination cannot determine alone the allocation of sovereign power, but is rather an exceptional lifting of the normal exercise of state sovereignty. The drafters of the American Declaration of Independence foresaw the destabilizing potential of self-determination exercised without any checks. This view was confirmed in the *Aaland Island* case. The International Commission of Jurists said that there was no general right to separatism under international law, as it would infringe on rights of the states and endanger international stability.⁵⁴ Self-determination is not unconditional but can only be exercised under exceptional circumstances when state power does not operate normally.

The concept of self-determination has been put in practice to resolve particular issues of international concern (such as Eastern Europe after 1919 or decolonization in the 1960s). It has not—and most probably cannot—lead to the establishment of a consistent set of international standards. As a result, self-determination has not become a legal concept directly applicable at all times and in all places. It is still in many respects *lex obscura*.⁵⁵ For Crawford, outside the realm of colonial situations, self-determination remains “non-self-executing.” It is a “critical standard,” but it does not “determine particular institutions or outcomes.”⁵⁶

With all its limitations, self-determination is nonetheless established as a universal norm. As a result, it is potentially universally applicable. It is this latent effect that makes it an important underlying force in the international system. The influence of self-determination as political principle is stronger than its direct legal applicability may suggest. Once it has been introduced as a concept applicable under international law in one part of the world, it can hardly be disregarded in other parts of the world.

SELF-DETERMINATION OR THE DILEMMAS OF GROUP RIGHTS

A Definition of the “People”; How to Define the “Self”?⁵⁷

In order to define the scope of self-determination it is necessary to determine what is meant by “the people.” This definition is dependent on particular historical contexts. Self-determination, however, has been progressively extended to become a universal principle applying to all people.⁵⁸ A first definition of “peoples” targets groups that are either colonized or oppressed. There is general consensus on the right to self-determination of colonized peoples and also to those under foreign occupation.⁵⁹

The statist view provides an alternative definition. While nothing suggests that “people” means “state,” the statist view identifies people according to their territorial loyalty.⁶⁰ This view, which focuses on *internal* self-determination, is based on the first articles of the twin Human Rights Covenants (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966 both contain in their first article an identical formulation of the right to self-determination) and on the 1970 United Nations General Assembly Declaration on friendly relations and cooperation among states.⁶¹ While United Nations declarations all insist on territorial integrity, the 1970 Declaration adds a “saving clause” that provides that territorial integrity applies to states “possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color.”⁶²

Finally, people may be defined by their ethnicity even though international law does not generally accept such a definition.⁶³ This ethnic view relates to groups and minority rights rather than to self-determination. While Article 1 of the International Covenant on Civil and Political Rights deals with self-determination, Article 27 of the Covenant treats the issue of minority rights. But this raises, in turn, the issue of *when* a minority becomes a “people.” It also raises the issue of the definition of an ethnic group, which tends to oppose the notions of “subjective” (expressed will of the group) and “objective” (ethnic, religious and other factors).⁶⁴ Both terms need not be exclusive, as self-determination often results from their combination. *Demos*, or the democratic will, is opposed to *ethnos*, or cultural roots, when both can be seen as interactive polarities, or as *ethnos* often forms the basis of *demos*.⁶⁵

Self-determination does not occur in a vacuum. Rousseau mentioned the centrality of local culture and customs to the expression of the general will. Groups asking for self-determination usually ground their claims in history. Existing states and borders usually serve as reference points to exercise self-determination.⁶⁶ As Jennings observed, “people cannot decide until someone decides who the people are.”⁶⁷ It would be wrong to assimilate the statist view with an expression of the *demos* and the ethnic view with the *ethnos*. “General will” is usually seen as the basis for a civic community, but it expresses itself also along national lines that reflect a particular culture or ethnicity. A purely statist approach is artificial and can arbitrarily allocate territory to peoples who do not wish to live together: “it is for the people to determine the destiny of the territory and not the territory the destiny of the people.”⁶⁸

These three broad views are not necessarily mutually exclusive and draw from the notions elaborated in the context of the French and American Revolutions: self-determination arises at the international level only in limited cases of oppression or domination, external in case of colonialism or foreign occupation, internal in case the government discriminates according to race or religion.⁶⁹ The statist view allows for the ethnic view to come into play in extreme cases of oppression on ethnic grounds, linking external and internal self-determination.⁷⁰

Internal Self-Determination and Minority Group Rights

The distinction between *internal* and *external* self-determination has been developed by a number of scholars, national judges and international bodies.⁷¹ Self-determination involves the recognition of the “rights of *persons* belonging to ethnic groups ... to play their part in the government of the country of which they are *citizens*,” but not “a general right of peoples unilaterally to declare secession from a state.”⁷²

Relying on the 1970 United Nations Declaration on friendly relations and the views of the Human Rights Committee (in charge of implementing the Covenant on Civil and Political Rights), Thornberry sees self-determination as tied to overall respect for human rights of any given population.⁷³ Thornberry sees “self-determination and minority rights [as] two sides of the same coin.”⁷⁴ This is consistent with the United Nations Declarations, which provide three broad options to implement self-determination: secession, free association and integration. UN General Assembly Resolution 1541 (XV) defines free association with an independent state, integration into an independent state or independence as the three legitimate options of full self-government.⁷⁵ Minority rights thus represent a compromise between separation and integration.⁷⁶

Self-determination can thus be connected to the wider human rights framework; the United Nations Vienna Declaration of 1993, in fact, makes this connection.⁷⁷ First, self-determination is meant to protect the rights of groups against oppression. Second, self-determination is considered a condition for the protection of individual rights. Third, it is a universal requirement: the Human Rights Committee calls on *all* states to implement this right. McCorquodale proposes to see self-determination as a human right, which has to be balanced with other rights or interests, such as international peace and stability.⁷⁸ Franck goes further by showing the emergence of a “general right to democratic governance.”⁷⁹

Internal self-determination becomes a way to combine two essential principles: self-determination and territorial integrity.⁸⁰ It can also be a way—by responding to grievances from groups within a given state—to ensure that demands for corrective justice do not arise, or receive some sort of response. This link between corrective justice and self-determination is elaborated upon by Brilmayer.

CONCLUSION

For all its lack of clarity, self-determination is now established as a universal norm. It both legitimizes and undermines state sovereignty. Despite (and probably because of) its imprecision and malleability, this concept allows a permanent questioning of state sovereignty, just as democracy allows a permanent questioning of government policies. As a result, although the state remains the cornerstone in the allocation of power, it needs to take into account demands from below (non-state groups) and from above (international institutions).

The possibility to derive a consistent set of international rules from the self-determination principle is questionable, given the dynamics of self-determination, which tend to encourage divisions within political entities. The inconsistencies of the current international framework are obvious and include the following: lack of access for minorities (dichotomy between self-determination and minority rights), lack of universal application, predominance of state sovereignty and absence of implementing mechanisms.⁸¹

The discussion between proponents and opponents of a wide definition of self-determination is certainly misplaced insofar as it opposes sovereignty and self-determination. As Murswieck states, “The principle of sovereignty alone cannot be used as an argument against the right of self determination... the question is: *which principle is in which way limited by the other?*”⁸² In the same way, democracy and nationalism should not be seen as opposed polarities. Self-determination should be seen rather as a way to reconcile both.⁸³ In other words, legitimate expressions of particular identities should be recognized, as long as they are based on a democratic will and take into account others’

rights (in particular that of existing states and institutional arrangements). Just as unrestricted individual freedom leads to anarchy, unrestrained application of self-determination could lead to chaos.⁸⁴

French and American Revolutions have established a link between individual human rights and self-determination that is still relevant today. On the one hand, self-determination is the logical result of the recognition of individual civil and political rights through democratic deliberation (consent) and free choice. On the other hand, human rights define the articulation between internal and external aspects of self-determination: secession becomes legitimate in cases of oppression. As we have seen, there are some indications that self-determination is evolving in the direction of a right of self-government for minority groups and to a democratic form of government.

Self-determination serves to create the conditions, however fragile, to establish the state. According to Gellner, "it is nationalism which engenders nations, and not the other way round."⁸⁵ But this does not solve the issue of who the "peoples" entitled to self-determination are, the problem of the artificial borders of many states and the issue of what can constitute a civic social pact in increasingly diverse states.⁸⁶

NOTES

¹ James Crawford, "The Criteria for Statehood in International Law," *British Year Book of International Law* 48 (1978): 111–43.

² David Raic, *Statehood and the Law of Self-Determination* (The Hague: Kluwer Law International, 2002), 25–28; Crawford, 1978, 108.

³ Christian Tomuschat, *Modern Law of Self-Determination* (Dordrecht: Martinus Nijhoff Publishers, 1993), 9.

⁴ Martti Koskeniemi, "National Self-Determination Today: Problems of Legal Theory and Practice," *International and Comparative Law Quarterly* 43, no. 2 (1994): 248.

⁵ Tomuschat, 11.

⁶ Jean-Jacques Rousseau, *Du Contrat Social* (Paris: Flammarion, 1762), 19–20. Edition consulted: published 2001, with an introduction by Bruno Bernardi.

⁷ *Ibid.*, 58 and 65.

⁸ *Ibid.*, 59.

⁹ *Ibid.*, 57.

¹⁰ *Ibid.*, 66 and 69.

¹¹ *Ibid.*, 66.

¹² *Ibid.*, 73.

¹³ *Ibid.*, 92–94 and 117–22.

¹⁴ *Ibid.*, 94.

¹⁵ *Ibid.*, 134–35.

¹⁶ *Ibid.*, 136–39.

¹⁷ Marcel Gauchet, *La Révolution des Droits de l'Homme* (Paris: Gallimard, 1989), 16–19.

¹⁸ *Ibid.*, 44–5.

¹⁹ *Ibid.*, 58–59 and 108–10.

²⁰ Official translation of the Declaration of the Rights of Man and the Citizen of 1789, available at http://www.elysee.fr/elysee/elysee.fr/anglais/the_institutions/founding_texts/the_declaration_of_the_human_rights/the_declaration_of_the_human_rights.20240.html, accessed 16 April 2007.

²¹ Gauchet, 48.

²² Ibid., 72–73 and 78–79.

²³ Ibid., 84–85.

²⁴ Ibid., 138–41 and Rousseau, 146–47.

²⁵ Chimene I. Keitner, “National Self-Determination in Historical Perspective: The Legacy of the French Revolution for Today’s Debates,” *International Studies Review* 2, no. 3 (2000): 3–26. See also Van Dyke in Will Kymlicka, *The Rights of Minority Cultures* (Oxford: Oxford University Press, 1995), 33–37.

²⁶ United States Declaration of Independence, United States National Archives, available at http://www.archives.gov/national-archives-experience/charters/declaration_transcript.html, accessed 16 April 2007.

²⁷ Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1995), 11–13.

²⁸ A number of authors have underlined this genealogy, in particular Cassese; Thomas D. Musgrave, *Self-Determination and National Minorities* (Oxford: Oxford University Press, 2000), 2–14; Joshua Castellino, *International Law and Self-Determination* (The Hague: Martinus Nijhoff, 2000), 7–13; and Raic, 172–75.

²⁹ Citation from Talleyrand, foreign minister to Napoleon; see Allott in Tomuschat, 192.

³⁰ Both “people” and “nation” are used here as synonymous, with the nuance that “nation” has a more political overtone. Miller said a nation is “a community of people with an aspiration to be politically self-determining” (Keitner, 4). Gellner’s definition of nationalism as a “political principle which holds that the political and national unit should be congruent” (Gellner, 1) is an approximate definition of the people’s right to self-determination.

³¹ See Article 21.3 of the Universal Declaration of Human Rights, adopted 10 December 1948, UNGA Res 217 A (III).

³² James E. Falkowski, “Secessionary Self-Determination: A Jeffersonian Perspective,” *Boston University International Law Journal* 9 (1978): 220; Hurst Hannum, “Rethinking Self Determination,” *Virginia Journal of International Law* 34 (1994): 7.

³³ Leo Gross, “The Peace of Westphalia, 1648–1948,” *American Journal of International Law* 42 (1948): 21–23; Keitner, 6. See text of the Treaty of Westphalia, Avalon Project, Yale Law School, available at <http://www.yale.edu/lawweb/avalon/westphal.htm>, accessed 17 April 2007. See Articles CXXIII and CXXIV of the Treaty of Westphalia.

³⁴ Immanuel Kant, *Perpetual Peace and Other Essays*, translated and with an introduction by Ted Humphrey (Indianapolis, IN: Hackett, 1983), 34–35 and 117.

³⁵ Ibid., 116–17.

³⁶ Ibid., 109.

³⁷ Ibid., 113.

³⁸ Crawford, 1978, 111–43.

³⁹ Nathaniel Berman, “Sovereignty in Abeyance: Self-Determination and International Law,” *Wisconsin International Law Journal* 7 (1988): 52–53.

⁴⁰ See "Fourteen Points" speech delivered by President Wilson before the US Congress in January 1918, available at <http://usinfo.state.gov/usa/infousa/facts/democrac/51.htm>, accessed 17 April 2007.

⁴¹ Nathaniel Berman, "'But the Alternative is Despair': European Nationalism and the Modernist Renewal of International Law," *Harvard Law Review* 106 (1993): 1859–61.

⁴² Berman, 1988 and Martti Koskenniemi, "National Self-Determination Today: Problems of Legal Theory and Practice," *International and Comparative Law Quarterly* 43, no. 2 (1994): 254.

⁴³ Berman, 1993, 1864–65.

⁴⁴ Berman, 1988, 58.

⁴⁵ *Ibid.*, 75.

⁴⁶ Rosas in Tomuschat, 249, emphasis in the original; see also Markku Suksi, "Keeping the Lid on the Secession Kettle—A Review of Legal Interpretations Concerning Claims of Self-Determination by Minority Populations," *International Journal on Minority and Group Rights* 12 (2005): 201–02.

⁴⁷ Berman, 1988, 64.

⁴⁸ *Ibid.*, 88.

⁴⁹ Hannum, 10–11.

⁵⁰ Berman, 1993, 1867.

⁵¹ Based on, in particular, United Nations General Assembly resolutions adopted on 14 December 1960: Declaration on the Granting of Independence to Colonial Countries and Peoples (GA Res. 1514 (XV), 15 GAOR (1960) Supplement no. 16 (A/4684), 66–67) and the resolution defining the options for self-government (GA Res. 1541 (XV), 15 GAOR (1960) Supplement no. 16 (A/4684), 29–30). See also Musgrave, 149–51; Hannum, 31; Karen Knop, *Diversity and Self-Determination in International Law* (Cambridge: Cambridge University Press, 2002), 51–54.

⁵² Judgment: ICJ Reports (1986): 565, paragraphs 20, 25 and 567.

⁵³ For a detailed discussion on these issues, see Berman, 1993.

⁵⁴ Berman, 1993, 1863 and 1870.

⁵⁵ Crawford, in Philip Alston, *People's Rights* (Oxford: Oxford University Press, 2001), 38.

⁵⁶ *Ibid.*, 66.

⁵⁷ This expression is based on Hannum, 35.

⁵⁸ Guyora Binder, "The Case for Self-Determination," *Stanford Journal of International Law* 29 (1993): 224; emphasis in original. Binder opposes "universalist and nationalist components of self-determination." Article 1 of the International Covenant on Civil and Political Rights; Cassese, 59–62; Robert McCorquodale, "Self Determination: A Human Rights Approach," *International and Comparative Law Quarterly* 43 (1994): 860–63; Crawford, 2001, 27.

⁵⁹ Cassese, 49; see Ofuatey-Kodjoe in Knop, 65.

⁶⁰ Hannum, 19; Musgrave, 148–49; Cassese, 59–60; Crawford, 2001, 64.

⁶¹ GA Res. 2625 (XXV), 25 GAOR (1970) Supplement no. 28 (A/8028), 12–14.

⁶² *Ibid.*; see also Cassese, 109–20, and Musgrave, 151–54.

⁶³ Musgrave, 154–67; see also reference to the Quebec secession case in Knop, 53.

⁶⁴ Hannum, 35, and Berman, 1988, 92.

⁶⁵ Knop, 55–57.

⁶⁶ See *uti possidetis* principle mentioned above.

⁶⁷ Castellino, 392.

⁶⁸ Judge Dillard in Western Sahara case (International Court of Justice, 1975), cited in Cassese, 189.

⁶⁹ Crawford, 2001, 63–66; see also Crawford, 1978, 162–46 with regard to the case of Rhodesia.

⁷⁰ Cassese, 120, and McCorquodale, 860–3.

⁷¹ See Cassese; Quebec secession case cited in James J. Summers, “The Right of Self-Determination and Nationalism in International Law,” *International Journal on Minority and Group Rights* 12 (2005): 325–54; and Committee on the Elimination of Racial Discrimination (CERD), General Recommendation no. 21: Right to self-determination (23/08/1996) A/51/18, Annex VIII A, 125–26.

⁷² *Ibid.*; my emphasis.

⁷³ Human Rights Committee, General Comment 12: The right to self-determination of peoples (Article 1), 13/03/84, 39 GAOR (1984), Supplement no. 40 (A/39/40); Patrick Thornberry, “Self-Determination, Minorities, Human Rights: A Review of International Instruments,” *International and Comparative Law Quarterly* 38 (1989): 867–81; Tomuschat, 112–13 and McCorquodale.

⁷⁴ Thornberry, 867.

⁷⁵ GA Res. 1541 (XV) 15 GAOR (1960) Supplement no. 16 (A/4684), 29–30. See also the 1970 “Friendly Relations” resolution (GA Res. 2625 (XXV), 25 GAOR (1970) Supplement no. 28 (A/8028), 12–14).

⁷⁶ Berman, 1993, 1865; see Aaland Islands case report of the International Commission of Jurists.

⁷⁷ United Nations World Conference on Human Rights, Vienna Declaration and Programme of Action, A/CONF.157/23 (12 July 1993); Human Rights Committee, General Comment 12: The right to self-determination of peoples (Article 1); McCorquodale, 860; Knop, 80–82.

⁷⁸ McCorquodale, 875–83.

⁷⁹ Thomas M. Franck, “The Emerging Right to Democratic Governance,” *American Journal of International Law* 86, no. 1 (1992): 46–91; Cassese, 302–12 and 346–48.

⁸⁰ Frederic L. Kirgis Jr., “The Degrees of Self-Determination in the United Nations Era,” *American Journal of International Law* 88 (1994): 304–10.

⁸¹ Cassese, 327–65.

⁸² Tomuschat, 25 and 35; emphasis in original.

⁸³ *Ibid.*, 105–06.

⁸⁴ See Eleanor Roosevelt, cited in Cassese, 318.

⁸⁵ Ernest Gellner, *Nations and Nationalism*, 2nd ed. (Oxford: Blackwell, 2006), 54.

⁸⁶ Crawford, 2001, 26.

ITS BARK IS ITS BITE: THE TDIP AND THE EUROPEAN PARLIAMENT'S VOICE IN EUROPEAN FOREIGN POLICY

Alton V. Buland

The European Union (EU) continues to redefine sovereignty as it makes strides toward a unified foreign policy. However, its member states wield foreign affairs power guardedly, concentrating it in the EU institutions they control, such as the Council of Ministers, and keeping it from the ones they do not, such as the directly-elected European Parliament. Within these constraints, the European Parliament must influence EU external relations through creative means, including its public investigation into CIA activities in Europe, thus testing transatlantic relations and offering an international institution twist on the classic foreign policy battle of the legislature versus the executive.

INTRODUCTION

Nearing the time of the 2004 US presidential election, Cem Özdemir of Germany and Claude Turmes of Luxembourg, two Green Party Members of the European Parliament (MEP), visited Washington, DC. While Washington-based Commission diplomats often handled the visits of senior Council of Ministers or Commission officials personally, the delegation of the European Commission in Washington (the EU's "embassy") tasked an intern with coordinating the MEP visit—arranging working dinners, think-tank roundtables and meetings at the State Department.¹ It appeared to the intern, and perhaps also to the MEPs, that the European Parliament ranked very low in the EU institutional hierarchy when it came to foreign policy-making in Brussels.

Two years later, MEP Cem Özdemir returned to Washington as a vice chairman of the European Parliament's "Temporary Committee on the Alleged Use of European Countries by the CIA for the Transport and Illegal Detention of Prisoners" (TDIP).² This time his visit made headlines across the world, as his delegation hosted press conferences and met with senior Congressional, State Department, and (former) Central Intelligence Agency (CIA) officials as part of its investigation into extraordinary renditions and secret prisons in Europe. The European Parliament found itself dominating these controversial

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issues of tremendous importance to the transatlantic relationship.³ MEP Özdemir's second trip was likely not handled by an intern.

The contrast between the two visits highlights how the European Parliament has used the TDIP to increase its role in European foreign policy. Although member states traditionally have been hesitant to hand over foreign policy-making powers to the European Union, the past years have seen the development of new external relations competencies and capabilities for the European project. Most notably, the Common Foreign and Security Policy (CFSP) and European Security and Defense Policy (ESDP) represent an attempt to forge a unified foreign policy. Protectively guarding their own sovereignty, member states have kept these efforts intergovernmental in nature, favoring the Council of Ministers, the main decision making body of the European Union (formed by the various ministers of the member states and representing their national interests). The European Parliament—the weaker legislative body of 785 directly elected MEPs designed to represent the 496 million citizens of Europe—traditionally has been shut out of the foreign policy-making process, although it retains consultative rights and budgetary powers with regard to the CFSP and other institutions. This paper will explore the means used by the European Parliament to find a voice in foreign policy, despite being hobbled by member states, focusing on the TDIP as the European Parliament's assertion of its role in the external relations of the European Union.

The first section of the paper will give a brief overview of the development of a common European foreign policy, exploring the sovereign rights that member states are ceding to the European Union. The second section will detail and evaluate the few responsibilities and powers the various treaties have given Parliament in the realm of foreign affairs, as well as the roles Parliament has carved out for itself. The third section will introduce the CIA renditions and detention scandal and explore the European Parliament's investigation of it. The discussion concludes with an examination of the implications of greater involvement of the European Parliament in European foreign policy.

THE FOREIGN POLICY OF AN INTERNATIONAL INSTITUTION

Foreign relations help define sovereignty, so it is only with great reluctance that member states share any functions with the European Union. However, in order to act credibly on the world stage, the European Union requires appropriate foreign policy powers and capabilities, which member states have slowly granted through various treaties of the past decades. A unified European foreign policy has its roots in the failed Plevin Plan of 1950, which would have created an integrated European army. In the years after French rejection of the Plevin Plan in 1954, US-led NATO dominated the European security sphere, while the then-European Community (EC) focused on economic integration and cultivating "soft" power. In the 1970s, the EC revisited the notion of unified foreign affairs among member states and created the European Political Community (EPC).⁴ Although a step forward, the EPC did not go far toward establishing a unified European foreign policy.

Five years later, the Maastricht Treaty of the European Union (TEU, 1992) went even further, establishing the CFSP, now the second pillar of the legal structure of the European Union. Lacking central institutions, this "post-modern foreign policy," like the EPC, is formally intergovernmental, requiring consensus and involving member states' foreign ministries in each phase of the policy-making and implementation process.⁵ The TEU put the design and implementation of the CFSP in the hands of the European Council (the meeting of EU nations' heads of state or government) and the Council of Ministers

(national ministers). Member states dominated the CFSP because they dominated the institutions that controlled it. The Amsterdam Treaty of 1997 strengthened the CFSP by making the Secretary-General of the Council the High Representative for the CFSP of the European Union, providing European foreign policy with a friendly face.⁶ The treaty finally handed Kissinger not one number to call for Europe, as he famously requested, but certainly one to put at the top of his speed dial for the continent. The “key instruments” of the CFSP are “common positions” on issues, which member states must then adhere to as they design national policies and “joint actions,” or operations undertaken by the member states in the name of the CFSP.⁷

Member states, guarding their sovereignty and foreign interests, tried to relegate the CFSP to the EU institutions they controlled, limiting the functions the European Commission, the European Court of Justice, and the European Parliament would have. However, the European national governments did make certain concessions that ceded their individual control of foreign relations, including allowing qualified majority voting (member states’ votes in the Council are allocated in part according to population) in some cases instead of requiring unanimity.⁸ Also, the CFSP is merely *primus inter pares*, or first among equals, of the EU’s foreign policies. Almost every facet of EU policy, from immigration to agriculture policy, affects third-party states. Thus, the Commission wields great influence through its primacy in trade, economic and development policy, and it boasts the EU’s greatest technical expertise.⁹ It also represents the European Union to third-party nations through its External Relations Directorate General (Relex) and the 120-plus overseas delegations it runs.

THE EUROPEAN PARLIAMENT AND EXTERNAL RELATIONS

While the Commission wields some influence in the CFSP, the member states view the European Parliament as a hindering and inefficient force in foreign policy, similar to how national parliaments are often perceived. Therefore the formative EU treaties give it few powers in the realm of international relations, instead, in one scholar’s words, limiting it to two tasks: “the scrutiny of the EU executive and approval of the general budget.”¹⁰ Nevertheless, the Parliament exercises influence through more varied means than just those two tasks, including through consultancy with the Council, appointment and censure powers over the Commission, informal interactions with the Commission, and the publicity it musters with its own debates and reports, including the TDIP.

Long one of the weakest institutions within the European project, the European Parliament was granted more authority by Maastricht and subsequent treaties and is slowly evolving into a co-legislative body alongside the Council of Ministers. Although the Council still overshadows the Parliament in foreign affairs, in recent years the Parliament has been more assertive in ensuring that the Council “duly” considers its views.¹¹ Like its national legislature counterparts, the European Parliament does brandish something akin to the power of treaty ratification through “assent procedure,” where it accepts or rejects a treaty or agreement after a single reading.¹² The Parliament does not have the right to amend these decisions; its power simply lies in the threat of rejection. Nonetheless, neither the TEU, the Treaty of the European Community nor any of the other treaties requires the Council to heed the Parliament’s position or advice once given. In the end, the Council remains, to borrow from the head of the American executive branch, “the decider.”

The European Parliament exercises more substantial influence on foreign affairs through the power of the purse. Article 28 of the TEU places the administrative expenditures

of the CFSP under the budget of the communities, which require approval by the Parliament. However, the speed of world events outstrips the pace of budget negotiations, and the European Parliament's control over European foreign policy through its financial authority remains narrow.

The Parliament also holds some sway over the European Commission. The Parliament, which holds right of approval over the appointment of Commission President and confirms the 25 candidates to the College of Commissioners collectively, can also censure the entire College or provoke its resignation.¹³ The rejection or censure of an entire Commission may seem too blunt a weapon, but the threat of its use can have a deterrent effect on the member states' choice of individual Commissioners, such as with Commission President Barroso's withdrawal of his original 2004 proposed Commission and the subsequent replacement of the Italian candidate, Rocco Buttiglione. Nonetheless, the threat of censure or rejection has little bearing on the day-to-day foreign policy decisions of the Commission. The Parliament also holds informal consultative influence over the Commission. MEPs and staff meet regularly with their Commission counterparts, and the Commissioner for External Relations and Commission President are regular speakers before Parliament.¹⁴ The Parliament's various powers of approval partially inspired its informal inclusion in foreign affairs matters by the Commission, but the Commission, the most bureaucratic and least responsive of the EU institutions, also has an interest in the opinions and positions of the European Union's most democratic and only directly-elected branch.¹⁵

The final means by which the European Parliament can influence EU international affairs has no constitutional basis for direct effect on foreign policy, but it remains a tried and true strategy for legislators the world over: the "bully pulpit"—shaping the power of public opinion through debates, committees and reports. In addition to the reports the committees of Parliament generate upon request, the Parliament may draw-up own-initiative reports.¹⁶ Temporary committees are charged with the investigation of "alleged contraventions or maladministration" of Community law by either an EU or member-state institution or body. The temporary committees of inquiry, although structured much like their counterparts in a national legislature, do not hold powers of subpoena, cannot compel people or institutions to testify and have a lifespan limited to 12 months.¹⁷ At the end of its tenure, the temporary committee submits for adoption to the entire Parliament its report and recommendations. Then, if approved, the Parliament "may forward to the institutions or bodies of the European Communities or to the member states any recommendations which it adopts," none of which are binding on the Commission, Council or any member state. Those bodies shall afterward merely "draw therefrom the conclusions which they deem appropriate."¹⁸ Unlike committees of inquiry in national legislatures, EU law constrains most European Parliament temporary committees to generating a lot of parliamentary flash with little direct-policy-affecting heat. However, not all temporary committees are so benign, as the case of the TDIP shall illustrate.

THE TDIP

Human rights organizations have alleged that since 2001, more than 100 people have been illegally abducted and detained by Western intelligence agencies and often sent to countries whose laws allow for great liberty with interrogation and detention techniques. That number includes Khaled el-Masri, a Lebanese-born German citizen allegedly abducted by Macedonian agents and held and beaten in Afghanistan for half a year before being proved

innocent. It also includes Abu Omar, a radical Egyptian Islamic cleric captured by the CIA in Milan, Italy and sent to Egypt, where his wife claims he is being detained and tortured. In November 2005, the *Washington Post* followed these accusations with reports that the CIA was not simply arresting and rendering prisoners to human rights-flexible nations in the Middle East (a process known as “extraordinary rendition”), but was even running secret prisons inside Europe itself.¹⁹ The press and alleged former detainees claimed that European foreign intelligence services cooperated with the CIA in these operations, often performing the abductions themselves. Even if EU nations were not complicit in the abductions, they allowed US military-operated aircraft transporting terrorist suspects overflights through EU airspace or stopovers at EU airfields.

The European Parliament launched the TDIP temporary committee of inquiry on 18 January 2005 to investigate these charges, prompted by the *Washington Post* articles, and investigations by NGOs such as Human Rights Watch and the Council of Europe (an older, smaller, human rights-focused cousin to the European Union). The “cross-party” committee was headed by Carlos Coelho, a conservative from Portugal, vice-chaired by Cem Özdemir, a German Green, and Sarah Ludford, a British Liberal Democrat. Italian Socialist Claudio Fava served as rapporteur. Fava described the “institutional purpose” of the TDIP as the “ascertain[ing of] whether any secret CIA detention centers were established in European territory, and whether any governments, of member or candidate states cooperated in the practice of ‘extraordinary renditions.’” Such cooperation would be in violation of a myriad of laws, including the Universal Declaration of Human Rights (guaranteed also by the European Court of Human Rights—Council of Europe) and Article 1 of the Charter of Fundamental Rights of the European Union. He also noted a “political objective... to reassert the pivotal role of human rights and give priority to their protection, also in the fight against international terrorism.”²⁰ The human rights and legal issues at hand straddle the various EU legal pillars and include foreign policy implications, involving transatlantic relations, foreign intelligence services and third-party countries such as Egypt and Afghanistan and non-EU European states. Indeed, Article 11 of the TEU proclaimed the goal of the CFSP to protect “democracy and the rule of law, respect for human rights and fundamental freedoms.”²¹

Once formed, the TDIP faced the daunting tasks of corroborating the stories of released prisoners, proving the existence of secret prisons, and demonstrating not only that overflights did take place, but also confirming their illegal human cargo. Over the next 12 months, the TDIP interviewed dozens of journalists, alleged victims, experts, representatives of NGOs conducting their own investigations, member state government officials and EU officials, although not as many as they would have liked. In June 2006, the TDIP released its interim report; the final report followed in January 2007. In its conclusions, the TDIP “denounce[d] the lack of cooperation of many member states, and of the Council of the European Union.” It “stresse[d] [that their behavior] has fallen far below the standard that Parliament is entitled to expect.”²² Parliament flexed this sense of entitlement in the pages of its report. Annex III of the document summarizes the participation of member states and notes whether or not invited officials or governments met with the TDIP. Annex IV is simply a published list of officials who declined to testify and their given reasons—and comprises seven snarky pages of the 77-page document. High Representative Javier Solana, of the EU institutions, met with the TDIP on 2 May 2006, but declined to meet for a second time, due to objections to portions of the TDIP’s interim report he found “unjust and erroneous.”²³ Finnish Foreign Minister Erkki Tuomioja,

President of the Council of the European Union for the latter half of 2006, declined to meet with the TDIP, while Gjies de Vrijies, the EU Counter Terrorism Coordinator, did.²⁴

The report also faults the Council for sending incomplete summaries of sensitive documents to the TDIP, omitting important parts of conversations that might have implicated the Council or member state governments. Parliamentary officials allege that the Council Presidency handed over to the TDIP only five pages of a 30-page document on a May 2006 meeting involving Solana, the EU Presidency, and the US State Department. Confidential copies of the document later procured through other means insinuate that the Austrian Council Presidency “supported by the Council Secretariat [Solana] ... [suggested] to [to the Americans] develop[ing] a framework for renditions,” implying that the Council and Secretariat had knowledge of the practices.²⁵ The report continues chastising the Council, condemning “the failure by the Council and its Presidency to comply with their obligations to keep Parliament fully informed of the main aspects and basic choices of the CFSP and of work carried out in the field of police and judicial cooperation in criminal matters pursuant to Articles 21 and 39 of the Treaty on European Union.”²⁶

Why was the Council so uncooperative with this investigation? The TDIP has its own theory, arguing that the “shortcomings of the Council implicate all [m]ember [st]ate governments since they have collective responsibility as members of the Council.”²⁷ This paper is not an examination of the validity of the TDIP’s accusations and the rendition reports. The Council represents the interests of the member states, and if any of them were complicit with the CIA’s European programs, they would seek to block participation in any investigation into those actions. But even if no member state had violated human rights law, all still had good reason not to cooperate with the TDIP. Between 2004 and 2006, the member states and the Council faced greater global concerns than the disappearance of a few terrorism suspects—the foremost of which was patching up a transatlantic relationship damaged in the lead-up to the Iraq war. The TDIP’s work clouded a trip of reconciliation that President George W. Bush made to Brussels in February 2007, during which he notably addressed the institutions of the European Union (although he did not speak in front of the Parliament). The member states, and thus the Council, were sensitive to the diplomatic repercussions of the investigation. Also, the Council had the luxury of deferring to the member states, which still ultimately held the real foreign policy authority on the continent. Solana played dumb in response to one line of MEP questioning, arguing, “I don’t have the competence ... to ask the countries how they handled these questions, and they don’t have the obligation to answer me.”²⁸

In contrast to the Council, the European Parliament commended the European Commission for its cooperation in the investigation. Commission Vice-President and Home and Justice Affairs head Franco Frattini stood in front of the TDIP on two separate occasions. Reacting to the Council of Europe report, he called upon “[m]ember [s]tates of the Council of Europe to cooperate fully with the Council of Europe’s investigations as promptly and comprehensively as possible.” On 19 December 2006, Frattini proffered suggestions on how better to implement national controls on civil aviation to prevent further illegal overflights. Concerning intelligence oversight, he batted down proposals for an EU-wide intelligence service “code of conduct” as unenforceable, but joined the Parliament in its optimism that the European Union could further dialogue toward better practices.²⁹ Frattini has also been frank about the stakes of the investigation, noting that “if the allegations were true, that would amount to a violation of Article 6 of the EU Treaty,” which could lead to sanctions against member states.

Upon the TDIP's request, Frattini also set the EU Network of Independent Experts on Fundamental Rights, who answer to the Commission, to work on a study of the "Human Rights Responsibilities of the EU member states in the Context of the CIA Activities in Europe." Perhaps because of the independent nature of this network, Frattini expended little political capital in honoring the Parliament's wish to have them examine the rendition issue. Nonetheless, the panel's conclusions were unmistakably harsh, favoring the Parliament's position more than the member states' or Council's with such recommendations as allowing the Council of Europe's Committee for the Prevention of Torture access to foreign (US) military installations.³⁰ In Frattini, the TDIP had a Commission ally.

Why was the Commission's relationship with the TDIP so laudable? One institutional answer might be that the Commission does not answer directly to the member states, and therefore is insulated from their concerns. Another is that the main official who participated was Frattini, who heads the Home and Justice Affairs Department, while the officials in charge of Relex, who must always think diplomatically and consider the international ramifications of the European Union's actions, played little role in the TDIP investigation. However, this seems a poor reason, since Frattini as Vice Commissioner represents the Council's interests broadly, and even his EU interior minister duties are heavily intertwined with foreign affairs. Instead, EU scholar Nathaniel Lalone suggests that the Commission, self-conscious about its lack of constituency, holds a special sensitivity to the need for public support for its actions. Lalone argues that recent history has shown it will heed and involve the European Parliament on a particular issue if it believes that its views represent the people.³¹

This is exactly the influence the TDIP hoped to achieve. Council and member state participation proved abysmal, and although the temporary committee lambasted those institutions in its report, committee members had always been realistic about their own powers. During the committee's visit to Washington, Özdemir admitted they had no subpoena power and were instead working toward "findings without teeth." However, he argued that the TDIP drew its influence from public opinion through "the soapbox." Vice Chairwoman Sarah Ludford cited TDIP's progress thus far in encouraging "whistleblowers ... to come forward," citing an Italian *carabiniere* who had just admitted to participating in one rendition. Özdemir agreed, contending that it was "crucial to get critical mass... in democracy you need the pressure of ordinary citizens."³² In a later interview, when asked how the European Union could make the US government close its "illegal" prisons, he argued that the power and importance of European public opinion to Americans had been made "very clear" to him on his trip, suggesting his ultimate audience was not only European governments but also American officials. Özdemir and his committee, with a noisemaking strategy, were out to change policy.

The Parliament has done a commendable job of claiming ownership of a highly controversial and visible issue and keeping it in the public's eye, all the while increasing its own visibility and therefore influence among other institutions and governments. CIA renditions, among other contentious American intelligence practices, were an issue in the recent US midterm congressional elections. Many American news articles cited the Parliament's investigation, and after their electoral victory, Senate Democrats promised their own investigation in 2007 and held a closed hearing in February with another hearing planned for April on CIA extraordinary rendition and detention practices.

Since the formation of the TDIP committee, European governments have stepped up their own investigations, and German courts recently issued arrest warrants for several

CIA operatives in the el-Masri case.³³ The European Parliament is likely not directly responsible for these events, but one should not underestimate the influence the TDIP held in the court of public opinion, having become the authority on this subject. The TDIP investigation inspired Commission cooperation and created a political climate that fostered investigations in the member states and affected the politics of Washington. Through the democratic “soapbox” of the TDIP, whose report the Parliament adopted in February, but whose recommendations still carry absolutely no legal weight, the European Parliament has made foreign relations waves.

CONCLUSION: THE IMPLICATIONS OF A MORE DEMOCRATIC FOREIGN POLICY

Among the ramifications of this parliamentary foray into foreign affairs is the bestowing of a democratic legitimacy onto an area of EU policy that is especially lacking. The attention given by the Commission, the least democratically-accountable of the European institutions, to the TDIP suggests some Eurocrats agree. However, some argue the democratically-elected European Parliament is not necessarily representative of the population of Europe. In addition to abysmal voter turnout in many districts (such as 17 percent in Slovakia in 2004), legislative scholars Esther Herranz and Anna Barbé suggest that the European Parliament “falls short of being a true parliament” because MEPs often represent their national interests, rather than representing the people of Europe through the pan-European party groupings.³⁴ However, this argument is akin to suggesting that the US Congress is illegitimate because Democrats and Republicans representatives from Texas vote together on some issues. Also, the scholars note that MEPs achieve higher “intra-group cohesion” on foreign policy issues than any other.³⁵ Voter turnout will rise as the European Union and Parliament acquire more influence and people further understand and respect the power of the institutions and thus want a stake in them.

Even if including the Parliament in foreign policy would reduce the democratic deficit, would that necessarily be a positive development? Many scholars contend that the European Parliament has little diplomatic common sense. Certainly few would trust the foreign policy instincts of the MEPs of the new far-right-wing Identity, Tradition and Sovereignty party. Jørgensen notes that the “EP has demonstrated its lack of skill in foreign affairs, frequently promulgating moral principles or absolutes which are divorced from political reality.”³⁶ The TDIP case seems to confirm this tendency toward an idealistic, human rights-centric European Parliament foreign policy agenda. The fragmented nature of Parliament means that common positions can only be reached on the most universal of issues, a short list which includes human rights (to which media attention is also instinctively drawn).³⁷ While the European Parliament has made few friends for Europe in the Bush administration since adopting the TDIP report, it did not completely exacerbate strains in transatlantic relations, since the MEPs found allies in the Democrat-controlled Congress. In this case, the TDIP helped beget Congressional investigations into CIA activities in Europe. Establishing further contacts between the European Parliament and foreign legislatures would build on the influence the Parliament has garnered through the TDIP and set up the possibility of influencing foreign relations through future Parliamentary committees and activities, all the while circumventing the Commission and Council.³⁸

The fact remains that neither the European Commission nor the Council of the European Union is Europe’s main foreign policy actor. Even with the advances in the CFSP and ESDP, the 27 member state governments retain foreign policy-making power. As evidenced through the case of the TDIP, the Parliament has found its niche as Europe’s

foreign policy conscience. Although statecraft requires *Realpolitik*, the European Union is a political experiment, a new archetype of state organization, and one without yet the total responsibilities of a state. As such, it should and can subscribe to higher moral standards and goals. The European Parliament has found a voice to remind the European Union, Europe and the world at large of these principles. As the European Union is endowed with greater power on the world stage, the Parliament must be reformed and enhanced alongside it to lend it further democratic legitimacy. The Constitutional Treaty recognized that fact and would have strengthened further many of the powers that the Parliament enjoys from past treaties. What remains to be seen is if, when the European Union and then European Parliament acquire further responsibilities for external relations, the Parliament stays true to its high principles or decides it can no longer afford them. By focusing on human rights, the Parliament now increases its visibility both among its constituents and abroad. If a day comes when the Parliament no longer requires such issues to get the attention of others, will those moral matters still command the Parliament's own agenda?

NOTES

¹ For the purposes of this paper, the "Council" will refer to the Council of Ministers, also known as the Council of the European Union or Council of the European Union, which is the most powerful decision-making body of the European Union, composed of national ministers and representing the interests of the member states directly. This body is distinct from the European Council (the meeting of EU heads of state) and the Council of Europe (a non-EU human rights monitoring institution). "Parliament" refers to the European Parliament and "Commission" refers to the European Commission.

² "EU Gets Little Help in U.S. on CIA Renditions Inquiry," *International Herald Tribune*, 11 May 2006.

³ "MEPs in Washington DC to Investigate CIA Allegations," available at http://www.europarl.europa.eu/news/expert/infopress_page/017-8015-129-05-19-902-20060510IPR08014-09-05-2006-2006-false/default_en.htm, accessed 8 February 2007.

⁴ Knud Erik Jørgensen, "Making the CFSP Work," in John Peterson and Michael Shackleton, eds., *The Institutions of the European Union* (Oxford: Oxford University Press, 2002), 216–17; "The Common Foreign and Security Policy: Introduction," available at <http://europa.eu/scadplus/leg/en/lvb/r00001.htm>, accessed 7 February 2007.

⁵ Michael Smith, "CFSP and ESDP: From Idea to Institution to Policy?" in Martin Holland, ed., *Common Foreign and Security Policy: The First Ten Years*, 2nd ed. (London: Continuum, 2004), 5; Jørgensen, 217.

⁶ Jørgensen, 218.

⁷ "The Common Foreign and Security Policy: Introduction."

⁸ *Ibid.*

⁹ Jørgensen, 220 and 225.

¹⁰ Grace Annan, "The European Parliament in EU Foreign Policy: A Plea for More Authority," available at <http://fpc.org.uk/fsblob/504.pdf>, accessed 7 February 2007.

¹¹ Udo Diedrichs, "The European Parliament in CFSP: More than a Marginal Player?," *International Spectator* 34, no. 2 (2004): 2. See specifically Article 21, Maastricht Treaty of the European Union; "European Parliament resolution on the annual report from the Council to the European Parliament on the main aspects and basic choices of CFSP,

including the financial implications for the general budget of the European Union—2002 (7038/2003 - C5-0423/2003 - 2003/2141(INI)),” available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P5-TA-2003-0460+0+DOC+XML+V0//EN>, accessed 8 February 2007.

¹² “Europa Glossary: Assent Procedure,” available at http://europa.eu/scadplus/glossary/assent_procedure_en.htm, accessed 9 February 2007.

¹³ Mark A. Pollack, Helen Wallace and William Wallace, *Policy-Making in the European Union*, 5th ed. (Oxford: Oxford University Press, 2005), 65; Diedrichs, 2–5.

¹⁴ Diedrichs, 3.

¹⁵ Nathaniel Lalone, “Accountability in the EU’s Common Foreign and Security Policy: Lessons from the Common Commercial Policy,” in Esther Barbé and Anna Herranz, eds., *The Role of Parliaments in European Foreign Policy: Debating on Accountability and Legitimacy* (Barcelona: Office of the European Parliament in Barcelona, 2005), 13.

¹⁶ “Rules of Procedure of the European Parliament—Legislative, Budgetary, and Other Procedures—Procedure in Committee,” available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20070101+RULE-045+DOC+XML+V0//EN&language=EN&navigationBar=YES>, accessed 9 February 2007.

¹⁷ “Rules of Procedure of the European Parliament—ANNEX VIII: Detailed Provisions Governing the Exercise of the European Parliament’s Right of Inquiry,” available at <http://www.europarl.europa.eu/sides/getLastRules.do?language=EN&reference=ANN-08>, accessed 9 February 2007. The treaties grant the temporary committees the power to “invite” another EU institution or member state government to “take part in its proceedings.” However, the member states in developing these treaties hobbled the temporary committees, preventing their access to testimony protected on the “grounds of secrecy or public or national security” by national or community law. Also, no EU institution can hand over documents that originated from a member state without first informing the member state involved.

¹⁸ Ibid.

¹⁹ Dana Priest, “CIA Hold Terror Suspects in Secret Prisons,” *Washington Post* (2 November 2005), A01.

²⁰ “Parliament Probes Alleged CIA Activities in Europe,” available at http://www.europarl.europa.eu/news/public/story_page/015-5903-065-03-10-902-20060308STO05902-2006-06-03-2006/default_en.htm, accessed 7 February 2007.

²¹ “The EU’s Human Rights and Democratization Policy,” available at http://ec.europa.eu/comm/external_relations/human_rights/intro/index.htm, accessed 9 February 2007.

²² TDIP, “Report on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners,” available at <http://www.europarl.europa.eu/compair/tempcom/tdip/pe382246.pdf>, accessed 8 February 2007.

²³ Ibid.

²⁴ Ibid. For his troubles, the final report “question[ed] the real substance of the post of EU Counter-terrorism Coordinator.”

²⁵ CIA, “CIA Investigation: Report Throws Spotlight on EU Institutions’ Cooperation with US on Renditions,” available at <http://www.greenviews.eu/pub?run=cms&CID=422>, accessed 8 February 2007.

²⁶ TDIP.

²⁷ TDIP.

²⁸ "Javier Solana: 'No Information' on CIA Renditions or Detention Centers," available at http://www.europarl.europa.eu/news/expert/infopress_page/017-7794-122-05-18-902-20060502IPR07751-02-05-2006-2006-false/default_en.htm, accessed 8 February 2007.

²⁹ "MEPs Discuss Legal Measures to Prevent Future CIA Extraordinary Renditions in Europe," available at http://www.europarl.europa.eu/news/expert/infopress_page/017-1614-352-12-51-902-20061218IPR01606-18-12-2006-2006-false/default_en.htm, accessed 8 February 2007.

³⁰ "EU Network of Independent Experts on Fundamental Rights: Human Rights Responsibilities of the EU member states in the Context of the CIA Activities in Europe," available at http://ec.europa.eu/justice_home/cfr_cdf/doc/avis/2006_3_en.pdf, accessed 8 February 2007.

³¹ Lalone, 13.

³² Cem Özdemir, "Investigating European Complicity in Secret CIA Detention Centers and Rendition Activities," address to the New America Foundation, Washington, DC (10 May 2006).

³³ "German Court Challenges CIA Over Abduction," *International Herald Tribune*, 31 January 2007.

³⁴ "Leaders Rue Euro Poll Disaster," available at <http://news.bbc.co.uk/2/hi/europe/3804803.stm>, accessed 9 February 2007.

³⁵ Barbé, 7–9.

³⁶ Jørgensen, 226.

³⁷ Flavia Zanon, "The European Parliament: An Autonomous Foreign Policy Identity?," in Barbé and Herranz, eds., 14.

³⁸ The impetus for fostering such a relationship would fall probably on the MEPs, considering the already overfilled schedules of US congressmen and the new restrictions on travel and junkets.

THE POLITICAL IMPACT OF NAFTA ON THE MEXICAN TRANSITION TO DEMOCRACY, 1988-2000

Mara Steffan

By focusing on NAFTA as an intervening variable in the Mexican transition to democracy, this paper explores the interplay and the sequencing of economic liberalization and political opening that occurred in Mexico between 1988 and 2000. More precisely, its goal is to evaluate whether neo-liberalism in Mexico has steered a process of democratic transition or, conversely, if the consolidated features of the political system have remained practically unchanged despite the speed of the impressive market reforms that Mexico has experienced. As the analysis will highlight, the Salinas administration (1988-1994) adapted the ruling coalition and state-society relations to the imperatives of neo-liberalism, thus making the free-trade agreement politically viable. The result was political paralysis rather than a positive political opening. By contrast, economic liberalism under Zedillo (1994-2000) triggered an ongoing process of political liberalization, mainly by reducing the power of the presidency and by partially removing the past authoritarian legacies of Mexico. However, this paper argues that Mexico still falls short of a full-fledged democracy. The path toward democratization, although well on its way, remains uncertain and complex given the current reality of the country.

Since the early 1980s, Latin American countries have been undergoing an unprecedented economic restructuring that has eroded the traditional model of import-substitution industrialization (ISI) and paved the way for crucial political changes in the region, leading to a dual transition. On the one hand, the imperatives of market reforms have replaced the state-centred pattern of economic development, while, on the other hand, democratic rules and political opening have become perfect substitutes for authoritarianism, thus emerging as the only game in town.

This dual transition toward economic liberalization and political democratization is a challenging subject of comparative political-economic enquiry, for the interaction between domestic context and international constraints affects the timing of these developments.

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According to the modernization theory of development, for instance, extensive market reforms under authoritarian rule may gradually promote a chain of deep social changes that are likely to increase the demand for democratic accountability and political representation. Economic liberalization would thus trigger democracy. Democratization before economic opening, on the other hand, may significantly delay or limit the pace of market reform, because democratic governments may lack the ability to implement necessary but unpopular economic reforms. Over time, the failure to cope with pressing economic problems may undermine their ability to govern. In this case, an authoritarian leadership would better meet the challenge of economic liberalization by repressing popular discontent, while preserving social order and strengthening the position of key social groups in order to ensure support for market reforms.

Assessing the sequencing of political opening and economic liberalization is a very compelling issue, given the history of Mexico. Since the mid-1980s, in the wake of the debt crisis that afflicted most Latin American economies, the country embarked on a tough program of structural economic stabilization, together with an impressive movement toward economic opening and the adoption of market-friendly policies, following the Washington Consensus. On 1 January 1994, the North American Free Trade Agreement (NAFTA) signed by Mexico, the United States and Canada marked the highest point of this process and the second wave of market reforms in Mexico.

The relationship between Mexico and NAFTA has fueled hotly contested debates over the true economic dimension of the agreement, and the evaluation of possible benefits or unfavorable consequences for the Mexican economy is still a topic of research. However, this paper aims to analyze the political aspects of the issue by discussing the impact of neo-liberalism on the Mexican political system. Given that Mexico launched its liberalization strategy in the mid-1980s, before NAFTA was even on the negotiating table, the analysis here focuses on NAFTA as an intervening variable that interacts with long-term defining features of Mexican politics. By comparing the political response of the Salinas (1988-1994) and the Zedillo (1994-2000) administrations, this study investigates how the ongoing process of economic liberalization has influenced both the governing coalition and the state-society relationship. Specifically, the purpose of this paper is to evaluate whether economic liberalization in Mexico has gone hand-in-hand with political opening, thus triggering a process of democratic transition, or if, conversely, the consolidated features of the political system have remained basically unchanged. While admitting that certain political changes may not be considered as the sole product of neo-liberal reforms, the Mexican case is rather an example of how economic determinants do affect political outcomes, given the incredible breadth and speed of market reforms in this country.

THE SALINAS PRESIDENCY: ECONOMIC RESTRUCTURING, PRESIDENTIALISM AND COALITION CHANGE

The 1988 election represented a political debacle for the Partido Revolucionario Institucional (PRI) and the new president, Carlos Salinas. The traditional ruling party in Mexico, the PRI, lost its two-thirds majority in the Chamber of Deputies, while Salinas received only slightly more than 50 percent of the votes.¹ As a consequence, Salinas had to implement a political strategy to restore both the power of the presidency and the popular support for his party, without provoking far-reaching changes to the system as a whole. Economic restructuring was still a priority; thus, Salinas also had to manipulate the political system

to accommodate the neo-liberal agenda and generate support in civil society for economic liberalization.

Salinas was able to manage Mexico's so-called tacit consensus on the deepening of economic liberalization by maintaining the central political structure sufficiently intact to guide the entire process from above.² Once in office, he realized that the country's one-party authoritarian system was not entirely adequate for this task. Some skillful adjustments had to be implemented in order to make market reforms politically viable.

Overall, the traditionally defining features of the Mexican political system—presidentialism, one-party dominance, corporatism and clientelism—continued to be the backbone of Salinas's new political stance. Yet if economic liberalization was to succeed, these characteristics would have to be redefined and modified. Upon taking office, Salinas faced the immediate challenge of creating and consolidating new bases of political and social support for market reforms and for his government.³

The Salinas administration responded to these changing political realities in three principal ways. First, Salinas sought to recalibrate the ruling coalition in support of the issue of a free-trade economy and his neo-liberal program. Second, along the same lines, he tailored the party system so as simultaneously to strengthen the PRI and weaken the opposition parties. Finally, Salinas sought to regain the public's confidence in the neo-liberal restructuring program by implementing new forms of clientelist ties with such specially-targeted social groups as the marginalized and the poor.

Changes in the Ruling Coalition: the "Neoliberal Duopoly" of State and Business

To begin with, the most significant political change took place in the ruling coalition. How was it possible that the political party that had fostered a model of import substitution economic development since the 1930s suddenly shifted to a market-oriented political economy of international integration in the 1980s? How was the process of trade reform that began during the 1980s and that culminated in the 1994 signing of a preferential trade agreement with the United States and Canada made possible politically?

In most countries, the adoption of neo-liberalism was associated with the rise of a particular political party. By contrast, in Mexico this shift took place inside the PRI itself. The popular discontent with the government's post-1982 austerity and economic restructuring policies produced unprecedented support for opposition parties in 1998 and caused the PRI's electoral setback. The popular sectors that traditionally constituted the PRI's base of mass support—unionized urban and industrial workers, public employees and portions of the urban middle class—were also those who suffered most from the privatization of state-owned enterprises and cuts in government subsidies that occurred during the de la Madrid administration.⁴

Therefore, Salinas could no longer count on organized workers and peasants to support the party and his economic reforms.⁵ Rather, he had to look to the private sector. A "fundamental overhaul of the PRI's political base" took place, since the PRI replaced its previous alliance with import-competing, state-dependent firms and shifted toward an explicit and largely exclusive alliance with big-business elites.⁶ By shifting the distribution of power within the coalition toward those economic elites that shared a commitment to market economy and, in addition, by incorporating strategic groups into the state apparatus, Salinas was able to create his ad hoc "neoliberal coalition," which would be crucial to Mexico's negotiation on NAFTA with the United States and Canada.⁷

The most important change in the coalition involved the admission of the private sector as a privileged member, although neo-liberalism and NAFTA were state-led initiatives. Yet the private sector became an important ally for Salinas, who relied strongly on his technocratic corps and representatives of the country's largest companies to foster deep economic opening and restructuring.⁸ Thus, under Salinas, the new state-business strategic alliance filled the vacuum left by the dismantling of the Mexican traditional corporatist economic structure, while leading the country toward entry into NAFTA.⁹

Although the Salinas administration made some efforts to fight "labor union gangsterism" and corruption,¹⁰ the position of Mexico's labor sector was relatively weakened and marginalized. In many industries and regions, authoritarian control of unionized workers continued, as did the corruption of union bosses. In addition, Salinas allowed independent labor movements to exist outside the official ruling coalition, although skeptical voices against the government's free-trade and NAFTA agenda went unheeded. Neither corporatist nor independent labor was able, or willing, to make any significant impact on the government's trade policy in 1991 and 1992.¹¹ The restructuring of the coalition reduced labor's political influence in the political realm.

Political Parties: the PRI's Undisputed Hegemony

While the new alignment of the ruling coalition was consolidating its partnership, Salinas realized that he also needed to tailor the political system in order to ensure support for his NAFTA agenda. Thus, the same shift in power and loyalties that took place within the coalition reached the major political parties.

Initially, a partial realignment of forces took place within parties of the center and the left. Following the 1988 election, Salinas and the PRI were charged with electoral fraud and corruption. The president had to seek both to preserve power and to increase the competitiveness and legitimacy of the party and electoral system.¹² First, the Salinas administration attempted to open up party decision-making procedures and to improve the quality of PRI candidates.¹³ Second, in 1991 the PRI reformers managed to reorganize the party's sectoral alignment by merging the labor and peasant sectors and thus adopting a "territorial structure for an envisioned party of citizens."¹⁴ Moreover, Salinas implemented significant electoral reforms in 1990, 1993 and 1994, all aiming at regulating inter-party competition, increasing opposition party representation in the Congress and holding fair elections that avoided fraud.¹⁵

Despite these structural adjustments, the PRI managed to maintain its unchallenged position vis-à-vis the main opposition parties, namely the Partido de Acción Nacional (PAN) and the Partido de la Revolución Democrática (PRD). Salinas forged a *de facto* alliance with the PAN, since he was able to espouse the economic free-trade philosophy of his main adversary on the right. As a result, some sectors of the business community, usually supporters of the PAN, actually gravitated toward the PRI. Moreover, this alliance allowed Salinas to split the opposition and create a congressional majority in support of key legislative initiatives, not least those related to the NAFTA issue.¹⁶ The PRI organization along territorial lines allowed the party to reduce the collective leverage of leftist movements inside the PRI itself, thus making them easier to control.¹⁷ Both these changes were instrumental in the redistribution of power within the coalition.

Electoral reforms fell short of establishing a competitive and democratic political environment. For example, they did not seem likely to eliminate the PRI's great advantage in campaign financing, nor to allow an independent audit of the national vote.¹⁸ Thus, the

PRI resorted to electoral reforms as a way of securing personal advantage for itself. The government's legitimacy continued to be undermined by low electoral system credibility¹⁹ among the general public and by a lack of consensus on electoral outcomes among parties.

Under Salinas, the PRI was thus able to maintain its prominent position within the system and to mobilize support for the government, which, after 1988, translated into support for the ongoing neo-liberal agenda. The PRI grew stronger while the other parties became incapable of altering the NAFTA campaign in any meaningful way. As Poitras and Robinson stress, the PRI acted as the personification of an "authoritarian rule making itself compatible with economic liberalization."²⁰

Gaining Popular Support from the Poor: the PRONASOL

Restructuring the PRI's coalition proved instrumental in extracting significant support from the private sector and concessions from labor. Yet the greatest task for Salinas was gaining electoral support from the distressed popular classes, those most hurt by the harsh austerity measures of the 1980s. Only by restoring the public's confidence could Salinas ensure the political viability of the NAFTA agenda.

The president's political move was to increase public spending as a way of gaining popular support. In other words, he implemented the Programa Nacional de Solidaridad (PRONASOL) and selectively channeled large state funds to infrastructure, schools and basic services. Also, Salinas attempted to maintain the party's traditional working- and middle-class support, selectively channeling state funds to the poor via its National Solidarity Program.²¹

As the literature on PRONASOL agrees, this was a "politically astute" presidential program,²² mainly because funds were spent with the objective of ensuring PRI electoral strength, and it actually worked in this regard. The government often channeled the funds to areas where voters supported the PRD in 1988, thus trying to undermine the opposition's electoral base.²³ Moreover, resources often went to those organizations that refrained from open opposition to the PRI or the government. Finally, PRONASOL provided funds for community, rather than national, development projects, thus preventing the formation of political alliances advancing demands at a national level.²⁴

In rural areas, PRONASOL proved a powerful electoral vehicle, "getting people out to vote for the PRI."²⁵ Most observers in fact agree that the program played an important role in the PRI's improved performance in the 1991 midterm election and became a key factor in the PRI's 1994 electoral success.²⁶ With reference to electoral issues, Cornelius shows how PRONASOL facilitated PRI's management of an increasingly complex society. These highly visible social programs,²⁷ together with economic improvement, permitted the PRI to substitute "performance legitimacy" for "political legitimacy."

PRONASOL was by far Salinas's most successful attempt to transform state-society relations in Mexico. Given the widespread support for the program among popular masses, PRONASOL increased the PRI's visibility and weakened, or co-opted, its political opposition. Salinas fostered the development of a new "clientelistic incorporation"²⁸ of social actors into the political discourse, while seriously weakening key political institutions and increasing presidentialism. Within the ruling coalition, the program managed to avoid overt opposition from labor- and peasant-sector populist leaders, for PRONASOL was likely considered a reasonable compensation scheme to counterbalance negative effects triggered by economic liberalization. Generally, as Wise argues, "for the mass of losers...PRONASOL became the PRI's main palliative."²⁹

Economic Liberalization and Adaptive Authoritarianism

The two-level analysis of the changes in the ruling coalition composition and in state-society relations provided above suggests how Salinas was able to deal with economic reforms without changing the defining features of Mexican authoritarianism. As Poitras and Robinson suggest, authoritarian rule in Mexico proved to be “adaptive in the face of liberal economic imperatives.”³⁰ All political adjustments worked to lower the perceived political and economic costs of neoliberalism, which, in turn, helps explain why the domestic debate over NAFTA in Mexico was “basically a nonstarter.”³¹

Salinas sought Mexican political acquiescence to NAFTA by implementing a defensive model of institutional exclusion, asymmetric information and linkage between liberalization and macroeconomic stabilization that made neo-liberalism politically viable.³² First, the institutional transformation and the narrow and exclusionary state-business alliance helped to cement the NAFTA agenda. Discussion on the potential effect of neo-liberalism was voluntarily limited in Mexico, a silence that constituted the second pillar of Salinas’s strategy.³³ As Mexico’s signing of NAFTA was approaching, potential losers started complaining about the dangerous impact of free trade, particularly on workers and small industries.³⁴ But the louder the weaker sectors of labor and business complained, the more the government publicized its plans to provide credit and other economic compensative benefits, while convincing “liberalization’s losers” that their losses were temporary.³⁵ The third pillar of Salinas’s defensive model was, in fact, his ability to oversell NAFTA by convincing the public of the necessity of the reforms, though these were severe. Microeconomic concerns about sectoral welfare losses were sacrificed in the name of the macroeconomic stability of the economy as a whole.³⁶

Neo-liberal reforms under Salinas were accompanied by formal shifts and changes in the country’s political system. This analysis seems to suggest that the speed and the extent of economic liberalization exceeded the scope of political opening. Along the same line of Panizza’s reasoning, in Latin America the “old politics” of corporatism, clientelism and populism perpetuated in a context of the “new economics” of free trade.³⁷ Salinas’s Mexico was not an exception to the general rule, since neo-liberalism did not involve a fundamental change in doing politics. The reorganization of the ruling coalition around the NAFTA issue and an hegemonic presidency replaced corporatist and populist policies with neo-populist and neo-corporatist ones. Moreover, with the redefinition of the state-society relationship, new patterns of clientelism developed.³⁸ Mexico was locked in a sort of “political paralysis,”³⁹ since market reforms under Salinas were instrumental to the survival of “old politics.”

In conclusion, using a comparison with the Soviet Union, by the early 1990s most authors claimed that Mexico was undergoing “Perestroika without Glasnost”—that is, economic liberalization first, political liberalization later.⁴⁰

THE ZEDILLO PRESIDENCY: WHAT KIND OF POLITICAL CHANGE?

Notwithstanding Salinas’s efforts to tailor the political system to neo-liberalism, the clientelist and corporatist arrangements of the administration proved insufficient to deal with Mexico’s problems. As demonstrated in the previous analysis, the political origins of Mexico’s economic opening were actually undemocratic, and Salinas was never able to institutionalize a broad coalition in order to tackle economic and social difficulties.⁴¹

1994 was defined as “Mexico’s *annus horribilis*.”⁴² On 1 January 1994, the date NAFTA came into effect, the Zapatista guerrilla uprising broke out in Chiapas; the

assassinations of the PRI's presidential candidate and the PRI's secretary, together with kidnappings and rural violence across the country, followed in March and September; last, but not least, the government mismanaged the economic crisis, which led to the massive devaluation of the peso, which led in turn to the collapse of most banks. By the end of the year, the ruling coalition had lost its ability to iron out social conflicts and to gain complete acquiescence for its economic policy. Important sectors of the Mexican public lost faith in neo-liberalism and, not surprisingly, political opposition mounted and the PRI's political prominence deteriorated.⁴³ In addition, the government's failure to develop a coherent policy to rescue the banking system had extraordinary implications in the political realm.

In the 1997 midterm election, the PRI lost control of the Congress for the first time in seventy years largely because of the economic crisis and the poor attempt to rescue the banks.⁴⁴ This electoral setback marked the final demise of the country's unique political system.

While during the Salinas presidency the NAFTA issue favored the maintenance of the political status quo, Mexican politics in the post-NAFTA era seemed to have coped with neo-liberal transformation, thus triggering a process of political opening and democratic transition. The loss of the PRI majority changed the political dynamics by diminishing presidential power and redefining the role of political actors while allowing for new participants to enter the political scene. However, even though this important adjustment of political power coincided with a change in the nature of the Mexican presidency, as well as in the structure of the political system as a whole, its effects were not felt within the ruling party.

Zedillo's Political Reforms: a Democratic, but Uncertain, Political Opening

In his inaugural address, Zedillo stated that his agenda would concentrate mainly on political issues, not economic ones: if Salinas had promoted *Perestroika*, the new president would advance *Glasnost*.⁴⁵ But Zedillo was soon forced to shift his attention toward the economy and to restore stability as well as the accountability of the PRI's economic policies. Mexico's economic situation and the danger to the country's international credibility could no longer be ignored. Far from being able to implement an active economic reform agenda, the administration had to cope not only with the collapse of the exchange rate and accompanying capital flight and loss of foreign reserves, but also with the consequences of a privatization of the financial system that was both poorly conceived and poorly implemented.

Economic reforms brought about change in the political environment, even though politicians were not fully aware of the political implications of the economic structural adjustments demanded by the international lending institutions.⁴⁶ Zedillo did foster an ongoing process of political opening in Mexico, but this push toward political liberalism did not come about intentionally. Rather, it was the result of economic imperatives and of the political prescriptions entailed by free trade and economic liberalization.

NAFTA played a major role in this process. The very fact that the government accepted restrictions on its behavior and allowed Mexico to be subject to the continuous scrutiny of the international community meant that the country could now enjoy new political freedoms. Fearing international repercussions, the Mexican government could no longer afford to repress a political movement, as Salinas did in early 1994 with the Zapatistas, nor keep political participation an exclusive and exclusionary game, run unfair and predictable elections or offer loyalty and accountability in exchange for benefits.

In fact, Zedillo deeply transformed the structure of the political system and redefined the presidency and the role of political actors. Among the most significant political developments in post-NAFTA politics has been the decline of presidential authority. The president renounced the extra-constitutional powers and prerogatives that had long given his office enormous power. Indeed, Zedillo abandoned the PRI's practice of hand-picking the presidential successor (*dedazo*), thus forcing all other institutions and political actors into a more participative political role.⁴⁷ Thus, by reducing presidential power, Zedillo inaugurated a new presidential style and created a broader space for the development of competitive politics.

Moreover, Zedillo distanced himself from the PRI and stressed the importance of holding free and fair elections.⁴⁸ As a result, electoral competition grew, and the PRI's victories were no longer the norm. In particular, the PRI lost its hegemony in local elections, where the PAN was able to appropriate the PRI's rural votes.⁴⁹

In sum, the decision to open Mexico's economy and to seek a close association with the United States constrained the authoritarian regime's manoeuvrability in the second half of the 1990s, making political fraud and repression much more costly and, therefore, less likely. Economic liberalization was thus instrumental in promoting a new political attitude in Mexico, one in which, as reforms extended, the structure of power—and of the president in particular—was reshaped.

However, there is a darker side to Mexico's openness to the world economy that is worth considering. Each limit on government action is, by its nature, a concession of national sovereignty. This fact might impose increasing constraints on the range of the government's political viable options. It thus follows that public trust in the Mexican government and its politicians might decrease as reforms unfold, exacerbating popular local resistance and, in turn, repressive authoritarian rule at a sub-national level.

The presidency's retreat was also a result of the gradual decentralization of power and resources to the regions, which increased the power and independence of several states.⁵⁰ Yet this "regionalization of politics," due partly to the neo-liberalist imperative of deregulation, created important challenges for economic policy coordination at the national level, since regional governors resorted to violence, repression and authoritarian rule to strengthen their positions.⁵¹

New political actors entered the political arena. The economic adjustments of the Salinas presidency and the political shock of the early 1990s created an electorate that was less loyal to the PRI and opened windows of opportunity not only for opposition parties but also for several social groups not operating through traditional party channels.⁵² The Ejército Zapatista de Liberación Nacional's rise in the wake of the Chiapas conflict, the so-called narco-politicians group and the farmer-debtors' movement became destabilizing forces within Mexican society.⁵³

Though direct opposition to NAFTA was muted, civil society was more vocal, protesting in the street at each major round of negotiations. While it may be legitimate to recognize the power of these new forms of locally-based civil mobilization to interact directly with global processes, it is also true that this new resistance could probably also be read as the direct consequence of the rescaling of the role of the Mexican state under neo-liberalism.⁵⁴ As the market approach to governance called for an upward centralization of the governmental central authority to the global level in order to accommodate economic interests, privatization and decentralization dynamics gradually opened new opportunities for sub-national and local governments. Rubio underlines this increasingly diverging gap

between the national and the sub-national dimension in Mexican politics and society. On the one hand, states, regions and local actors have been trying to assert their right to participate in national politics, as the central government partially withdrew its influence over local politics. On the other hand, the Mexican government, susceptible to international pressures, has been changing in a way that seems unresponsive to a considerable part of its citizens. But if elected governments do not have great freedom of action in their economic and social policy-making, due to powerful external constraints, people may be right to consider popular sovereignty as being significantly restricted by the logic of neo-liberalism. It thus follows that when people feel they cannot make much difference through the traditional instruments of participative democracy, they will look for alternative channels to make their voices heard. The market approach to governance thus restricts, rather than enhances, public participation and community-building.⁵⁵

While the nation's formal political institutions (the presidency, the congress, political parties and many interest groups) under Zedillo began to experience a profound transformation in terms of political opening, the non-institutional side of Mexican politics did not.⁵⁶ Organizations representing land invaders, militant unions that hold a monopoly in such sectors as electricity and oil, violence-prone students, illegal taxi drivers and other participants in the unofficial economy do not rely on elections to express their own preferences or positions, for they can influence the functioning of the state and the economy through illegal and often violent means. Such non-institutional groups threaten to undermine Mexican democracy and the stability of the country as a whole, but they are often protected by political parties (such as the PRI and the PRD), thus making their actions more difficult to identify and to restrain.⁵⁷

One of the main challenges facing Mexico today is whether the country will be able to bring these non-institutional actors into the formal political arena and create new institutions that can accommodate new demands for political responsiveness and accountability.

THE INSTITUTIONALIZATION OF UNCERTAINTY

According to Dresser, Zedillo was the first Mexican president from the PRI's ranks willing to sacrifice his party for economic liberalization and to acquiesce to the electoral rise of the opposition. But Zedillo was unable to create a popular consensus for economic adjustments and free trade. Salinas's strategy of vote-buying through social programs was no longer adopted: Zedillo denied public compensation schemes to liberalization's losers, thus deepening regional cleavages and inequalities, eroding government credibility and increasing public disaffection with NAFTA.⁵⁸

Salinas was able "to keep democracy off the NAFTA negotiating table."⁵⁹ He actually depoliticized free-trade negotiations and ensured the political viability of his neo-liberal agenda through a skillful redefinition of the ruling coalition and state-society relations. In contrast, under Zedillo the same silent integration into NAFTA did not occur. Despite the emergence of a new vibrant and active political arena and the "explosion of political action,"⁶⁰ the new president proved unable to substitute the components of the previous authoritarian system with stronger and credible democratic institutions.

Certainly, Zedillo fostered Mexico's transition toward a more pluralistic, participative and inclusive democratic system. But transition is, by definition, an ongoing process that includes uncertain and unpredictable outcomes. The ratification of NAFTA has influenced the Mexican political system in a way that makes the country more difficult to understand.

Under Zedillo, the interplay of NAFTA with the long-term political problems of seven decades of single-party rule resulted in a positive political opening. Yet, paradoxically, as Dresser argues, during the post-NAFTA era Mexico has become a more democratic yet disaggregated, complicated and decentralized country. In the past, Mexico stood out as one of the most predictable countries in terms of political orientation, since the PRI's electoral victories were the rule. However, since the mid-1990s, Mexico's political dynamics have been marked by the "institutionalization of uncertainty."⁶¹ Unresolved guerrilla warfare, poverty and inequality, competitive elections, corruption and drug trafficking will continue to pose serious challenges to any political coalition.

Zedillo made Mexicans understand that a reversal toward authoritarianism would never have happened. His country embarked a transition to democracy coupled with a deeper dedication to economic integration. What Zedillo actually provided was the "hardware of democracy": a broad political system; a more balanced relation among the executive, the legislature and the judiciary; open electoral competition; decentralization of power; and a more participatory civil society. Yet the country would have had to develop the instruments of the "software of governance" in order to make its commitment to democracy irreversible.⁶²

CONCLUSION

By providing a critical review on the NAFTA impact on the Mexican political system, this paper has concentrated on explaining the sequencing and the interplay of economic and political liberalization during the Salinas and the Zedillo administrations.

The NAFTA issue has entered the analysis as an intervening variable, interacting with the long-term political defining features of the Mexican political system: hyper-presidentialism, one-party rule, corporatist coalition-building and clientelistic state-society relations. Without assuming that democracy is necessarily the outcome of economic liberalization, this study has provided economic reasons for the different political arrangements that occurred in Mexico between 1988 and 2000.

President Salinas adapted the Mexican political system for neo-liberal reform. His redefinition of the ruling coalition, together with the transformation of state-society relations, worked to decrease the perceived political and economic cost of NAFTA, thus making the free-trade agreement politically viable. Therefore, economic liberalization did not result in a process of political opening, but in a paralysis of the Mexican political system along new populist, corporatist and clientelistic lines.

By contrast, economic integration and market reforms under Zedillo triggered an ongoing process of political liberalization. The 1994 political shocks in the wake of Mexico's entry to NAFTA forced the administration to remove the old authoritarian legacies of the Salinas era. However, party competition, fair elections and a vibrant civil society have been interacting with domestic uprisings and lack of political legitimacy. Thus, Mexico's path toward democracy has been marked by increasing political uncertainty.

The economic reforms of the 1980s and 1990s brought about a gradual redefinition of the structure of power that progressively liberalized the country's politics and provided new breath for a tired political system. These changes culminated in the 2000 election of Mexico's first non-PRI president for more than seven decades, Vicente Fox of the PAN, a development that seemed to signal the full emergence of a Mexican democracy. Whether—and when—the country will reach the status of a full-fledged democracy is still hard to predict. However, one point is clear. Whatever the final outcome, the Mexico that emerged

from the 2000 elections will never be the same. Although unruly, Mexican politics has dispersed political power to such an extent that the likelihood of returning to the old model of authoritarian rule has practically disappeared.

Yet the process of building a developed Mexican democracy remains complex. The point is not whether Mexico will succeed in maintaining this positive path toward democratization—in which the final rupture of the traditional link between the presidency and the PRI is the greatest achievement—but whether the country will be able to adapt the entire political system to new changing political realities.

When it comes to democratic experience, Mexico is a relatively young and untried country. Mexico has no experience of formal coalitions, institutionalized party competition, regular and pacific alternation of power and changes of leadership through fair elections or an effective integration of civil society into the political discourse. In order to make its commitment to democracy irreversible, Mexico must replace the old-style institutional political design. The risk of political paralysis is latent if politicians are not willing to dismantle many of the institutions of one-party rule, a period in which political paralysis was necessary for the maintenance of PRI hegemony.

While it is true that the old political system is dead, a new political attitude based on consultation, consensus and the exercise of democratic authority has yet to be created. More needs to be done to bring openness and accountability to all political levels.

The economic reforms of the 1980s and 1990s created, over time, opportunities for the development of a democratic polity that were inconceivable in Mexico only a few years before. But they also posed an extraordinary challenge for the development of a new political system that makes participatory governance, transparency and accountability its main elements. Otherwise, Mexico risks finding itself in limbo, constrained by political innovation on one side and by political inertia on the other.

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NOTES

¹ Judith Teichman, "Neoliberalism and the Transformation of Mexican Authoritarianism," *Mexican Studies/Estudios Mexicanos* 13, no. 1 (1997): 139; Carol Wise and Riordan Roett, eds., *Post-Stabilization Politics in Latin America: Competition, Transition, Collapse* (Washington, DC: Brookings Institutions Press, 2003), 171.

² Guy Poitras and Raymond Robinson, "The Politics of NAFTA in Mexico," *Journal of Interamerican Studies and World Affairs* 36, no. 1 (1994): 3-4.

³ Maria Lorena Cook, Kevin J. Middlebrook and Juan Molinar Horcasitas, "The Politics of Economic Restructuring in Mexico: Actors, Sequencing, and Coalition Change," in Cook, Middlebrook and Horcasitas, eds., *The Politics of Economic Restructuring: State-Society Relations and Regime Change in Mexico* (San Diego, CA: Center for US-Mexican Studies, University of California, San Diego, 1994), 29; Teichman, 137.

⁴ Cook et al., 19.

⁵ However, Salinas made some attempts to maintain the party's traditional working- and

middle-class support by selectively channelling public funds to the poor via the National Solidarity Program.

⁶ Manuel Pastor and Carol Wise, "The Origins and Sustainability of Mexico's Free Trade Policy," *International Organization* 48, no. 3 (1994): 479; Strom C. Thacker, "NAFTA Coalition and the Political Viability of Neoliberalism in Mexico," *Journal of Interamerican Studies and World Affairs* 41, no. 2 (1999): 78. Though the restructured coalition did not exclude any major group that had traditionally enjoyed representation, it tended to favor the interests of a "neoliberal duopoly" (that is, government and business), while reducing the relative weight of the labor and peasant sectors (Poitras and Robinson, 5). The coalition's formal consultation mechanism, together with the process of NAFTA negotiations, granted large, international firms great influence in the business community and preferential access to government officials (Thacker, 78). On the other hand, workers, peasant and popular sectors were replaced by three main organizations: the Popular Territorial Movement, the National Citizens Front and finally the Worker Campesino Pact (Theichman, 137).

⁷ Thacker, 62.

⁸ Jolle Demmers, "Neoliberal Reforms and Populist Politics: The PRI in Mexico," in Jolle Demmers, Jiliberto Fernández and Barbara Hogenboom, eds., *Miraculos Methamorphoses: The Neoliberalization of Latin American Populism* (London: Zed Books, 2001), 163.

⁹ Pastor and Wise, 480. The core of private sector support for free trade was composed of large Mexican manufacturing firms (especially those that could have access to the US market for their exports), medium-sized manufacturers, capital-intensive foreign businesses, domestic suppliers of foreign businesses in Mexico and the international financial community (Poitras and Robinson, 14).

¹⁰ Wayne A. Cornelius, "Mexico's Delayed Democratization," *Foreign Policy* 95 (1994): 56-57.

¹¹ Poitras and Robinson, 24. Larger labor associations inside the coalition followed the PRI's line in favor of free trade, despite the problematic impact that NAFTA might have had on Mexican workers. However, not all of them welcomed the free trade agreement. The opposition of the Worker Campesino Pact, for instance, is a good case in point (Poitras and Robinson, 23).

¹² Cook et al., 24.

¹³ Poitras and Robinson, 19.

¹⁴ Cook et al., 24.

¹⁵ Cornelius, 55.

¹⁶ Cook et al., 23; Pastor and Wise, 480.

¹⁷ Poitras and Robinson, 19. This adjustment also responded to PRI electoral concerns. Given the declining capacity of labor and peasant organizations to mobilize their members in support of the PRI candidates, as testified by the 1988 electoral debacle, a territorial structure allowed the party to adapt itself to various urban electorate (Cook et al., 24).

¹⁸ Cornelius, 57-58.

¹⁹ According to Poitras and Robinson, 20, the PRI relied upon "cybernetic fraud" (that is, the use of computers to manipulate voting lists) to win elections.

²⁰ Poitras and Robinson.

²¹ Pastor and Wise, 479.

²² Poitras and Robinson, 11.

²³ Demmers, 171; Cook et al., 31.

- ²⁴ Cook et al., 31.
- ²⁵ Teichman, 121.
- ²⁶ Cook et al.; Teichman; Poitras and Robinson; Wise and Roett.
- ²⁷ Cornelius. In 1993, Salinas introduced a new program oriented toward rural area development, Programa de Apoyo Directos al Campo (PROCAMPO).
- ²⁸ Teichman, 140.
- ²⁹ Wise and Roett, 173.
- ³⁰ Poitras and Robinson, 28.
- ³¹ Carol Wise, ed., *The Post-NAFTA Political Economy: Mexico and the Western Hemisphere* (University Park, PA: Pennsylvania State University Press, 1998), 13.
- ³² Pastor and Wise.
- ³³ The PAN, moreover, objected to the PRI's unwillingness either to consult with other sectors of the society on NAFTA or to be more open about the negotiation process in general. Potras and Robinson, 21.
- ³⁴ Poitras and Robinson, 15.
- ³⁵ Wise and Roett, 173.
- ³⁶ Pastor and Wise, 484.
- ³⁷ Francisco Panizza, "Beyond 'Delegative Democracy': 'Old Politics' and 'New Economics' in Latin America," *Journal of Latin American Studies* 32, no. 3 (2000): 737-63.
- ³⁸ Demmers; Poitras and Robinson; Teichman; Wise and Roett.
- ³⁹ Peter H. Smith, "The Political Impact of Free Trade on Mexico," *Journal of Interamerican Studies and World Affairs* 34, no. 1 (1992): 9.
- ⁴⁰ Smith; Poitras and Robinson; Stephen Fidler, "Mexico: What Kind of Transition?," *International Affairs* 72, no. 4 (1996): 713-25; Wise and Roett.
- ⁴¹ Luis Rubio, "Coping with Political Change," in Susan Kaufman Purcel and Luis Rubio, eds., *Mexico Under Zedillo* (London: Lynne Rienner Publishers, 1998), 14.
- ⁴² Wise and Roett, 179.
- ⁴³ Teichman; Thacker; Wise and Roett.
- ⁴⁴ The PRI ended up with 238 seats to 125 for the PRD, 118 for the center-right PAN and 19 for the smaller parties. It remained the largest party in the 500-member lower house. Rubio, 10.
- ⁴⁵ Luis Rubio and Susan Kaufman Purcel, eds., *Mexico Under Fox* (London: Lynne Rienner Publishers, 2004), 42.
- ⁴⁶ The economic package offered to the Mexican government in January 1995 by the United States, the International Monetary Fund and the international financial community facilitated a relative economic recovery and, as the crisis exacerbated, structural reforms and conditionality accompanied the disbursement of loans.
- ⁴⁷ Rubio, 17; Denise Dresser, "Post-NAFTA Politics in Mexico: Uneasy, Uncertain, Unpredictable," in Carol Wise, ed., *The Post-NAFTA Political Economy: Mexico and the Western Hemisphere* (University Park, PA: Pennsylvania State University Press, 1998).
- ⁴⁸ Fidler, 721.
- ⁴⁹ Wise and Roett, 185.
- ⁵⁰ Ibid.

⁵¹ Dresser, 226.

⁵² Rubio, 20.

⁵³ Dresser, 1998.

⁵⁴ M. Warner and J. Gerbasi, "Rescaling and Reforming the State under NAFTA: Implications for Subnational Authority," *International Journal of Urban and Regional Research* 28, no. 4 (2004), pp. 858-63.

⁵⁵ *Ibid.*, 859.

⁵⁶ Rubio and Purcell.

⁵⁷ Rubio and Purcell, 6.

⁵⁸ Wise and Roett; Rubio.

⁵⁹ Cornelius, 70.

⁶⁰ Rubio, 26.

⁶¹ Dresser, 256.

⁶² Rubio, 6.

SHEPHERDING SOVEREIGNTY? SLOW DEMOCRATIZATION IN BOSNIA AND HERZEGOVINA

Valery Perry

This article considers the possible limits to traditional notions of sovereignty within a post-war state-building process, based on the experience of post-Dayton Bosnia and Herzegovina (BiH). If time and a certain amount of breathing space are necessary for democratic institutions to be established, for parties to develop platforms and for civil society to take root, how can such a respite be provided so that the conditions necessary for successful transition exist? In post-war BiH, the answer has been through various forms of international administration, and the result has been a post-war period of semi-democracy. This article considers the case of BiH in light of the potential conflict between the notion of sovereignty and the goal of state-building in divided societies. While BiH is an interesting case, and some tentative lessons have been learned from it, the processes of post-war democratization and state-building are still ongoing.

INTRODUCTION

After the initial euphoria of relatively easy democratic transitions in countries like the Czech Republic, Hungary and Poland, the post-Cold War experience has increasingly demonstrated that the formation and consolidation of states—democratic or otherwise—is not necessarily easy or painless. The process is even more difficult in cases of states that have diverse populations and therefore require power-sharing mechanisms to ensure representation. At the same time that old, non-democratic systems and institutions are being dismantled, democratic transition processes can unleash dynamics inherent to the democratic ideal—multi-party political competition, media debates and civic movements. These can paradoxically leave the political playing field open to spoilers aimed at consolidating power through populist or ideological means. In a post-war state lacking institutions, infrastructure and the basic elements of rule of law, this mix of transition challenges can prove difficult if not impossible for a weak state to overcome.

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If time and a certain amount of breathing space are necessary for institutions to be established, parties to develop platforms and civil society to take root, how can such a respite be provided so that the conditions necessary for a successful transition exist? In post-war BiH the answer has been through various forms of international administration, and the result has been a post-war period of semi-democracy. However, as a relatively new experiment, the jury is still out on the most effective means to manage such a transition. This article reviews some of the theoretical underpinnings that shape the debate on sovereignty and intervention, and then considers some aspects of the international intervention in BiH to date, with the aim of describing a “slow democratization” process that is by no means easy, inevitable, linear or painless.

CONFLICTING CONCEPTS?

Prefixed Democracy?

In a world in which failed states can have global security implications, there is an increasing interest in the establishment of stable and, if possible, democratic regimes. Post-conflict, transition-oriented state-building can present a country, its neighbors and far-away states with numerous security concerns. But should—and to what extent—outside interveners be involved in supporting these transition processes?

In an ideal situation, citizens of the state will have the opportunity to elect leaders who will shepherd a country through difficult transition periods. However, in a weak state, or in a state weakened by war (civil or otherwise), such a smooth process might not be an option. In a world in which peaceful transition is not always viewed as the optimal way forward by all parties, and in which spoilers¹ and ethnic entrepreneurs can seek to exploit differences in order either to build their own power bases or simply plant the seeds for their own ideological goals,² this peaceful electoral path to democracy may not be possible—particularly in the short term and immediately after a war.

In their typology of three ideological schools that underpin various approaches to democratization and intervention in state-building, Hampson and Mendeloff describe the “fast-track,” “security firster” and “slow democratization” perspectives—a useful framework for contemplating intervention approaches. Fast-trackers believe that democracy can evolve rapidly, driven by local actors with an “appetite” for the democratic process, and that interveners should exert pressure to foster the process but then promptly withdraw and let the process move forward, buoyed by its own democratic momentum. Security firsters pragmatically view the primary role of an intervener as establishing stability and security, in a truly limited engagement and without moving to install any sort of specific political system or engage in any state-building. Slow democratizers assert that, in addition to security and basic stability for long-term progress, the foundations and institutions for statehood and a democratic system are a prerequisite for the gradual evolution of liberal democracy.³

If democracy does not happen as an event, but rather as a process, it is possible to have many variations along the democratization spectrum. In their working paper, “Democracy with Adjectives,” Collier and Levitsky detail the many nuances of a term that, in the simple pre-Cold War, bipolar world, may have seemed to the casual observer to be quite straightforward.⁴ The authors review the phenomenon of “problematic democracies,” specifically pointing out a number of “weakened” elements such as fragile regime consolidation, limited citizen participation, vulnerable social, political and economic stability, state sovereignty and several other potential limitations to full-fledged democracy.

Notably, the post-war state of BiH suffers from several of these noted weaknesses, limiting its democratic personality. Whether referred to as a limited democracy, managed democracy, guided democracy, developmental democracy, protected democracy, benign consulship, benign dictatorship or safety-net sovereignty, at the core, each of these terms acknowledges the limited nature of sovereignty during this phase of direct international engagement.

The Sovereignty and Self-Determination Debates

The literature on the issues of sovereignty and self-determination is extensive, and a lengthy bibliography was compiled as a part of the International Commission on Intervention and State Sovereignty (ICISS) effort.⁵ Realist approaches to international relations rely heavily on the notion of sovereignty and its corollary of national self-interest as the lynchpins of international relations. Sovereignty has managed to remain a key international organizing principle even throughout twentieth-century exercises in global cooperation. The principle of non-intervention is enshrined in Chapter I, Article 2, of the Charter of the United Nations.⁶ Intervention or interference in the domestic affairs of a state may be viewed as a breach of this principle of sovereignty. However, increased interaction among states on the global stage has led to a blurring of borders that was non-existent in the seventeenth-century Europe in which the notions of statehood and sovereignty took root, and has changed the way states relate to one another. The UN, while upholding the principle of sovereignty, addresses the possibility of intervention in certain cases.⁷ In his 1992 book, *An Agenda for Peace*, then UN Secretary-General Boutros Boutros-Ghali called on the UN to become more actively involved in peace-building activities by addressing the “deepest causes of conflict: economic despair, social injustice and political oppression,” thereby advocating a more pro-active approach to peace-building.⁸ It is clear that there is a tension between these two principles, and five key issues frame the debate.

The Stable International System Argument

Supporters of the principle of sovereignty point out that sovereignty and the corollary of non-intervention have provided for a relatively stable international system and brought order to an anarchic system. Respect for the principle of non-intervention can limit the use of force by states, thereby helping to mitigate acts of aggression by one sovereign state against another, and can stem imperialist and expansionist ambitions. In this light, intervention is viewed as an exercise in coercion that runs the risk of destabilizing a tested system.⁹

Critics argue that the notion of sovereignty does not necessarily guarantee healthy stability on the global level. Instead, as acknowledged in Boutros-Ghali's *Agenda for Peace*, threats to domestic peace can have a negative impact on regional or global stability.¹⁰ Domestic instability within borders can spill over and infect the international system. The stability many hoped for at the end of the Cold War was instead eclipsed by an increase in intra-state conflicts that have often had real or potential spillover effects. More broadly, the 11 September 2001 attacks demonstrated the limits of a global system in which international law is based solely on the structure of the sovereign state, as a transnational world can defy established international law.¹¹

The Legitimacy Argument

Adherents of the principle of sovereignty also question the legitimacy of intervention—which body can legitimately make the decision to intervene?¹² The UN Security Council?

Regional security organizations? Large individual states with influence in a certain area? Hayden questions why the international community should be granted the right to rule or the right to intervene, rather than those leaders elected by the people themselves in competitive elections.¹³ Additionally, the issue of consent is raised—whether the consent of the state in which the intervention will occur should be necessary, and if so, what happens if the actors of the state in question refuse or are divided on the issue of consent?¹⁴ Closely related is the challenge of selecting crises that warrant intervention. In a world full of crisis spots and in the absence of unlimited human or financial resources, how should the UN or any body make choices about intervention?¹⁵ If an intervention is requested by one side in a crisis, is accepting such an invitation tantamount to taking sides, thereby nullifying any pretence of neutrality? Critics such as Roberts question the motives of intervention, challenging the assumption that motives can ever be purely humanitarian in nature.¹⁶

These are justifiable concerns. However, others point out that as far as legitimacy is concerned, sovereign states or failed states themselves suffer from a legitimacy problem.¹⁷ There is no doubt that the decisions made to intervene are often still motivated by conflicting state interests that may be only tangentially related to the crisis under consideration. As a result, safeguards are needed, reflecting the still novel challenges of the intervention concept. The authors of the ICISS project address the issue of *right intention*, to ensure that while the occupation of territory by outside forces might be necessary in an intervention, it must not be the objective.¹⁸ Supporters of intervention often use arguments and parameters familiar to students of just war theory, noting that actions must be necessary, proportional and discriminate in order to protect innocents to the greatest extent possible.¹⁹ Additionally, the motivations for involvement might best be assured by a multinational approach that can be less likely to include motivations driven by national self-interest.

Self-determination—Earning It

Stanton, Hayden and Lindberg argue that the process through which people learn to be democratic is critical to democratization, noting that the democratic process is in and of itself a means for resolving conflicts.²⁰ Stanton and Whitman argue that those weak or failed states that are viewed as possible candidates for trusteeship or conservatorship are precisely those in which sovereignty is weak, suggesting that sovereignty can strengthen a state by galvanizing people around the idea of the vested interest they have in their own state.²¹ Using Hampson and Mendeloff's terminology, these voices might be considered the "fast-trackers," and they reflect some of the arguments used for a strict principle of non-intervention.

Such outlooks stand in stark contrast to others who note that the conditions of democratization can lead to a situation in which the newly opened media and marketplace of ideas can incite conflict among people in a weak and non-self-regulated system.²² While Stanton writes that people must learn certain norms of democratic political behavior, and come to recognize that "losing an election or losing a policy battle will not cause them irreparable harm,"²³ this "tough love" approach presupposes that the parties, politicians and citizens in a transition country *do* believe this. In fact, the environment of democratization is often seen as a zero-sum game by ethnic entrepreneurs or spoilers.²⁴

No Guaranteed Results or Resolution

Critics of intervention also question the result or end product, and whether an intervention

can actually resolve the problems in question or ensure future security.²⁵ Stanton points out that humanitarian interventions are, by their nature, not aimed at resolving the problem that has caused the crisis, but at alleviating the pain of the crisis—addressing the symptoms rather than the root causes.²⁶ Even worse, these critics note the potential for an intervention to worsen a crisis. Carment specifically refers to the moral hazards of a backfired intervention effort,²⁷ the potential for bias, and the potential unintended consequences of the addition of a third party into a conflict.²⁸ Some critics have further suggested that these difficult questions stem from a debatable emphasis on state-building activities, and particularly on the establishment and maintenance of democratic, multiethnic states. Kaufman controversially suggests that international interventions might be preventively deployed to *separate* populations before conflict can arise.²⁹

Pro-intervention voices will point to situations of grave humanitarian crisis and the responsibility to protect as reasons for intervention. Humanitarian intervention, as a concept, is quite new, having been formally established on 8 December 1988, in United Nations proceedings.³⁰ The legal basis for exceptions to the concept of non-intervention is within Chapter VII of the UN Charter. More subtle forms of intervention such as sanctions are provided for in Article 41 of the UN Charter, while the use of force is included in Article 42 of Chapter VII.³¹ Rather than debating the “right of intervention,” the ICISS adopted the framework of “the responsibility to protect,” both to uphold the principle of state sovereignty while at the same time seeking to ensure human rights and protection.³² The underlying theme in the Commission’s findings is that sovereign states have a responsibility to protect the people living within their borders, and if they fail or are unable to do so, the responsibility for the protection of the people rests with the international community of states.³³ The notion that sovereignty is *conditional* upon the extent to which the government in question respects basic human rights in its exercise of sovereignty is at the core of this initiative. “Behavior previously considered normal—or at least tolerable—now appears unacceptable.”³⁴ Therefore, sovereignty is not absolute, but can be subject to international law, norms and principles.

OPERATIONALIZING INTERVENTION

When one accepts that humanitarian intervention can be necessary, a whole range of questions concerning the appropriate level of involvement arises. Given these arguments for and against intervention, is it possible to formulate a doctrine or theoretical model for humanitarian intervention?³⁵ When might it be appropriate to put “people above government”?³⁶ In his essays on the concept of just war, Walzer suggests that while just war theory has traditionally rested on the concept of *jus ad bellum* (justice in the decision to go to war) and *jus in bello* (justice in the conduct of war),³⁷ a third principle, *jus post bellum* (justice after war), might be needed to address the need for just and sustainable post-war settlements. ICISS, too, refers to the “responsibility to rebuild,”³⁸ and indeed, post-intervention efforts often include state-building activities.³⁹ The ICISS report refers to limits to rebuilding and occupation, including the respecting of local priorities, the dangers of “unhealthy dependency” causing economic distortions, and the need to “strike a balance.”⁴⁰ However, even advocates of intervention in post-war state-building activities fail to suggest timeframes for such involvement or for the transition of authority to local actors. The question “How long is long enough?” is crucial to long-term sustainability.

The “how” of state building tends to center on democratization and related institution-building. In the heady days after the fall of the Berlin Wall, one could be forgiven

perhaps for assuming that once the shackles of authoritarianism were cast off, democratization would be an inevitable and linear process. However, as the wars and post-war rebuilding processes in the Balkans, and experiences in Afghanistan and Iraq, have shown, this is rarely the case. Fast-tracker ideals have suddenly seemed in many ways naïve. Instead, this democratic letdown has exposed both the intricacies of the process, has made clearer the difference between simple election-based definitions of democracy and the notion of constitutional liberalism and has forced a reconsideration of these processes and external support efforts.

A crucial issue to consider is the definition of democracy. Procedural definitions of democracy focus on the *process* of democracy, and most particularly on that most visible photo opportunity of democracy—elections.⁴¹ However, particularly in the wake of the democratization processes in the post-Cold War world, the notion that *electoral democracy* and *liberal democracy* constitute two potentially different political realities has been widely acknowledged.⁴² Diamond, Plattner, et al. point out the trend of an increasing number of electoral democracies at the same time as there is stagnation in the spread of political and civil freedoms.⁴³ Instead, *substantive* definitions of democracy may better explain what democratic states want when they hope for the rise of democracy elsewhere. Dahl refines the definition of a democracy by proposing the concept of a *polyarchy*, which is a governmental system characterized by free and fair elections, inclusive suffrage, freedom of expression, freedom and availability of alternative information and the right to associate.⁴⁴ Proponents of slow democratization would likely relate to the substantive definitions of the democratic ideal, and the complexities therein.

While it is relatively easy for international organizations to organize and supervise polling, it is a much more complicated—and long-term—process to support the development of conditions for constitutional liberalism. A basket of approaches has become common in the democratization industry, including support of election, judicial and municipal governance reform, as well as of civil society, human rights, reconciliation and media development projects. However, Carothers's challenged the conventional wisdom and the assumption that all of these so-called transitions are linear—moving *away* from authoritarian or dictatorial rule and *toward* democracy—in his discussion on the “transition paradigm,” opening the door to a much-needed debate among academics and practitioners alike.⁴⁵

If elections in a post-conflict or transition region are not necessarily always the optimal first solution, what can fill the gap between the end of a war and the establishment of a representative and functional government? What options are there in state-building strategy? Interim administrations can be one way to bridge this gap, and there is an emerging literature on this topic.⁴⁶ Some scholars have begun to address the complex issue of the timing of such interventions. Chesterman reviews the experience of UN-led transitional administrations, concluding that while there are many contradictions inherent in such a top-down approach, a “lengthy international presence will not ensure success, but an early departure guarantees failure.”⁴⁷ In *At War's End*, Paris provides an overview of the experiences of 14 post-war peace-building missions, concluding that the practice of peace-building through democratization and market liberalization should be replaced by “institutionalization before liberalization,” suggesting that, “ideally, no time limits should be placed on peace-building missions,”⁴⁸ and that international peace builders should serve as “surrogate governing authorities for as long as it takes to implement the liberalizing reforms.”⁴⁹ Others are skeptical of the role of outsiders in building democracies.⁵⁰ The

experience of BiH provides a rare case to consider issues of this kind and length of sovereignty limiting intervention activities.

AN EVOLVING INTERVENTION IN BiH

Since the war ended in Bosnia in 1995, the international community, in the broadest sense of the word, has been pushing, pulling, and dragging the country's politicians in an effort to establish a democratic system of government based on power-sharing and the letter and spirit of the Dayton Agreement. As BiH was a divided post-war state, this was at its core an exercise in state-building, and the differences between electoral democracy and real liberal constitutional democracy quickly became clear. Elections held nine months after the signing of the Dayton Agreement were faulty, and, far from planting the seeds of democracy or enabling an international exit strategy, legitimized and entrenched the wartime nationalist parties and their leaders and vividly demonstrated the fact that the war was not yet over. Frequent elections were held in the hope that wartime nationalist parties would ultimately be voted out (this has still not happened).⁵¹ The politics of fear has remained the dominant way of doing business, and there is little interest in compromise among parties who often continue to fight the war through political means. Dayton may have been an effective war termination strategy, but it has not been an effective democratization strategy.

In spite of the existence of the Office of the High Representative (OHR) as the chief civilian implementer of the Dayton Agreement,⁵² this position never enjoyed full executive power as a real protectorate authority.⁵³ However, in the absence of effective local leadership, the High Representative (HR) became increasingly involved in a range of peace implementation and reform efforts. The first HR, Carl Bildt, was practically impotent in terms of his power and resources. The real power in the country, the 60,000-strong NATO Implementation Force (IFOR), was reluctant to become involved in any activities that fell outside of their narrowly-defined military mandate. The second HR, Carl Westendorp, enjoyed greater capabilities after the decision to award the HR the Bonn Powers in late 1997 (which increased the powers and abilities of the HR to implement the Dayton Agreement).⁵⁴ Wolfgang Petritsch was the first HR with the ability and the political support to use the powers of the office to begin to push for real change, and serious reform efforts began during his tenure. Lord Paddy Ashdown was even more aggressive. He came into the office intending to build the structures of a democracy in spite of the active opposition or simple indifference of local politicians. This approach attracted much criticism,⁵⁵ but was in line with Ashdown's goal of putting BiH on an *irreversible* path towards European integration.⁵⁶ The fifth HR, Christian Schwartz-Schilling, assumed the position promising to let local ownership drive the reform process, planning to phase out the office and the Bonn Powers. At the time of writing, however, there has been some shifting support even within his own team, as reform has virtually stopped.⁵⁷ While he had been widely assumed to be the last HR, the Peace Implementation Council (PIC) decided that the office should remain longer than the planned June 2007 closure date.⁵⁸

This evolution of the international community's role in BiH has demonstrated an increasing recognition of the depth of the post-Dayton challenge of state-building in a divided country—away from a fast-track approach and toward a slow democratization perspective. While the years from 1996 to 1998 were focused on the conduct of elections, and to some lesser extent, on elements of political party development, voter education and civil society support, the approach since 2001 has been focused more on building the

institutions of government. This has involved setting up structures such as an independent judiciary, criminal code, conflict of interest law and a legal framework in line with European expectations. Elections are not equivalent to democracy, and they have not provided the foundation for state consolidation or democratic transformation. The idealism (or perhaps naïveté) of the first years of post-war reconstruction has been replaced by a grittier assumption that pressure was needed to hasten reforms and democratization, and to offset the agendas of the spoilers—often the same leaders who had led the people through the war. Sovereignty has in some instances been sidelined in the interest of pressing forward with peace implementation and reform goals.

While this cursory description can leave the impression that BiH is a protectorate in which the HR has unlimited executive abilities to push through reforms, this is not the case, particularly when compared with the experience in the District of Brcko. Brcko is a region in north-east BiH that has experienced a unique kind of protectorate. Ninety-nine percent of the non-Serb population living in Brcko was cleansed during the war, and the issue of the “ownership” of Brcko nearly broke down the Dayton peace negotiations. An Arbitral Tribunal made a series of three decisions between 1997 and 1999, ultimately establishing that the district would exist “in condominium” with both entities, while in fact it exists and functions outside the entity structure. (Annex 4 of the Dayton Agreement—the Constitution of Bosnia and Herzegovina—established BiH as a country comprised of two entities, the [predominantly Serb] Republika Srpska and the [predominantly Muslim and Croat] Federation of Bosnia and Herzegovina.)

This unique political status allowed for a different approach to peace implementation and reform, and a more hands-on style by the interveners. In BiH, elected politicians are supposed to implement the Dayton Agreement of their own accord, and (in theory) the OHR exists only as a backstop. In Brcko, the OHR Deputy High Representative (known as the International Supervisor⁵⁹) has enjoyed more sweeping executive authority and is thus less dependent on the goodwill of local political actors. While the HR has been forced to negotiate with elected and appointed politicians and political party leaders, Brcko did not even have district-wide elections between 1997 and 2004 (although Brcko’s citizens could participate in BiH’s general elections), and was instead directly governed by the supervisor and an appointed interim government. The supervisor in Brcko has held powers similar to the Bonn Powers since early 1997—ten months before the HR—though it is interesting to note that the simple act of having such powers has often negated the need for the supervisor to actually use them. The International Crisis Group has referred to Brcko as an “isolated phenomenon of liberal colonialism.”⁶⁰

This approach has allowed Brcko to be a sort of Petri dish for reform. While reform in the realms of education and justice was stalled for years in BiH, Brcko has led the way in implementing reforms in these areas months and even years before the rest of the country.⁶¹ Refugee return, once considered impossible in the deeply war-torn region, has been strong in Brcko. Economically, the district has also outshone the rest of BiH, as a result of prudent local governance, pro-business policies, strong and consistent donor support and a favorable border location—though there is still much room for improvement. Public opinion polling on a variety of issues, including identity-focused issues such as views on education, state identification and language, shows that Brcko is in many ways more moderate than the rest of the country—a stunning turnaround from its dismal post-war situation, but one that is by no means necessarily irreversible.⁶²

While Brcko is a clear case of an “intervention within an intervention,” another divided city in BiH, Mostar, has also had extensive—though very different—international engagement. Yet it remains a political basket case even in 2007.⁶³ In his study of the cases of Mostar and Brcko, Bieber suggests that the differing outcomes in the two cases reflect the different institutional designs of the local administrations, with Mostar being handicapped by complex consociationalism and lingering territorial divides, while Brcko has benefited from less formal, yet still effective, systems of power-sharing.⁶⁴ However, these different institutional designs may in themselves be due to the role and strength of the international engagement, as the supervisor in Brcko was able to negotiate more favorable institutions due to his/her differing relationship with the appointed assembly. Further, political stalemate in Brcko since the autumn 2004 elections—and most notably in late 2006 and 2007—suggests that it may not be the design of the institutions that has been the lynchpin of reform progress so much as the limited sovereignty and concurrent absence of party politics and related spoiler dynamics.

FOOD FOR THOUGHT AND LESSONS TO BE LEARNED

This review is by necessity brief, and the cases of BiH and Brcko will continue to provide fodder for study in years to come. It is difficult to assess the effectiveness of modern-day transitional authorities, as results are still pending on many of these efforts. Political development in BiH suggests that crucial to the concept of slow democratization is the word “slow.” The notion that sovereignty might be limited by outside actors seeking to establish or strengthen a democratic system is sure to be unpopular, and is equally sure to raise a host of questions with no easy answers. Who should play such a watchdog role? Who can oversee the overseers? How can reform efforts best be sequenced? How do you know when it is time to leave? How can a generation of domestic politicians be nurtured to take the reins upon international withdrawal? If citizens continue to vote for politicians who do not support reform or the goals of the intervener, is that a sign that the intervention is not wanted by the people? Or is it a sign of limited political choice in a weak democracy?

These questions are important not just for the Balkans, and the state-building experiment in BiH must be viewed in a broader context. Successful construction and consolidation of a multiethnic, democratic state in BiH is necessary precisely because the alternative of ethnic partition, population transfers and the redrawing of maps would set a precedent that would bode poorly for the stability of the global system. A world of countless ethnically pure statelets is too potentially chaotic to imagine, and would not likely end quests for further devolution.⁶⁵ If power-sharing and state-building cannot work in Europe’s backyard, why should it be expected to work in the Middle East, sub-Saharan Africa or the rest of the world?

Policymakers would benefit from careful consideration of the BiH experience. While it is difficult to be confidently prescriptive in a policy environment that has not yet been played out to its completion, several broad issues should be kept in mind. First, interveners must avoid the temptation to think that real democratization can be possible in the short term. Planning should be focused on the longer term, for example, 5–10 years as a starting point. Second, interveners must have an understanding of the possible spoilers to peace and transition processes, and have short- and long-term options on hand for how to marginalize these elements (for example, through electoral systems that marginalize spoilers and force moderation). Third, the sequencing of reform should be better understood. Hurried

elections inadvertently put the cart before the horse in traumatized societies lacking the preconditions for the development of a liberal democracy. Finally, the possible benefits of short-term limits on sovereignty and local politics—in other words, the provision of breathing space for institution-building and socio-political development—should be considered in light of long-term reform and peace consolidation goals. The post-Dayton experience of intervention and state-building in BiH—still relatively young in historical terms and not yet finished—should help to inform transition options when a temporary breach of sovereignty is more palatable than further partition or incomplete democratic consolidation. International intervention efforts like the one in BiH (or in Kosovo) will never be common—neither the political will nor resources would allow it. However, certain lessons can be learned and can contribute to post-conflict and transition work elsewhere.

NOTES

¹ Stephen John Stedman, "Spoiler Problems in Peace Processes," *International Security* 22, no. 2 (1997): 5–53.

² Stathis Kalyvas, *The Logic of Violence in Civil War* (Cambridge: Cambridge University Press, 2006).

³ Fen Osler Hampson and David Mendelof, "Intervention and the Nation-Building Debate," in Chester A. Crocker, Fen Osler Hampson and Pamela Aall, eds., *Leashing the Dogs of War* (Washington, DC: United States Institute of Peace Press, 2007).

⁴ David Collier and Steven Levitsky, "Democracy 'with Adjectives': Conceptual Innovation in Comparative Research," Kellogg Institute Working Paper no. 230 (1996).

⁵ The ICISS initiative was launched by the government of Canada in cooperation with several major foundations in 2000, in response to tragedies in places like Bosnia, Kosovo and Somalia and as a result of UN Secretary-General Kofi Annan's pleas to consider issues of humanitarian intervention and state sovereignty.

⁶ United Nations Charter, available at <http://www.un.org/aboutun/charter/contents/htm>, accessed 6 June 2006.

⁷ Ibid. Consider, for example, Chapter VII of the UN Charter, "Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression."

⁸ Boutros Boutros-Ghali, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping*, available at <http://www.un.org/Docs/SG/agpeace.html>, accessed 10 November 2004.

⁹ Adam Roberts, "The Road to Hell: A Critique of Humanitarian Intervention," *Harvard International Review* 16, no. 1 (1993): 10–13 and 63–65; Kimberly Stanton, "Pitfalls of Intervention: Sovereignty as a Foundation for Human Rights," *Harvard International Review* 16, no. 1 (1993): 14–16.

¹⁰ Boutros-Ghali, 1992.

¹¹ Ratna Kapur, "Collateral Damage: Sacrificing Legitimacy in the Search for Justice," *Harvard International Review* 24, no. 1 (2002): 42–46.

¹² Roberts.

¹³ Robert Hayden, "Dictatorships of Virtue? States, NGOs, and the Imposition of Democratic Values," *Harvard International Review* 24, no. 2 (2002): 56–61.

¹⁴ The case of Somalia was unique in terms of the evolution of coercive interventions, as it was the first instance in which the UN explicitly authorized a large military intervention

in one of its member states *without* the consent of the government, though one could point out that there was no government in Somalia to speak of to provide such potential consent (Roberts).

¹⁵ Richard K. Betts, "The Delusion of Partial Intervention," *Foreign Affairs* 73, no. 6 (1994): 20–33.

¹⁶ Roberts.

¹⁷ Marina S. Ottaway, *Democracy Challenged: The Rise of Semi-Authoritarianism* (Washington, DC: Carnegie Endowment for International Peace, 2003).

¹⁸ International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: International Development and Research Center, 2001).

¹⁹ Michael Walzer, *Arguing about War* (New Haven, CT: Yale University Press, 2004); Kapur.

²⁰ Stanton; Hayden; Staffan I. Lindberg, "The Surprising Significance of African Elections," *Journal of Democracy* 17, no. 1 (2006): 139–51.

²¹ Stanton; Jeffrey Whitman, "An End to Sovereignty," available at <http://www.usafa.af.mil/jscope/JSCOPE95/Whitman95.html>, accessed 12 November 2004.

²² Jack Snyder, *From Voting to Violence: Democratization and Nationalist Conflict* (New York: W.W. Norton, 2000); Edward D. Mansfield and Jack Snyder, "Democratization and the Danger of War," in Michael Brown, Sean M. Lynn-Jones and Steven E. Miller, eds., *Debating the Democratic Peace* (Cambridge, MA: MIT Press, 1999), 301–34; Roland Paris, *At War's End: Building Peace after Civil Conflict* (Cambridge: Cambridge University Press, 2004).

²³ Stanton, 15.

²⁴ Stedman; V.P. Gagnon, "Ethnic Nationalism and International Conflict: The Case of Serbia," *International Security* 19, no. 3 (1994–95): 132–68.

²⁵ Roberts.

²⁶ Stanton.

²⁷ David Carment, "The Struggle for Peace: Rethinking Intervention," *Harvard International Review* 23, no. 2 (2001): 54–58.

²⁸ The NATO air strikes in Kosovo are often cited as an example of the potential for an intervention "butterfly effect," as intervention intended to protect Albanian civilians had the effect of empowering Albanian militants and enabling the oppression of Serbs in the region (Carment).

²⁹ Chaim Kaufman, "Possible and Impossible Solutions to Ethnic Civil Wars," *International Security* 20, no. 4 (1996): 136–75.

³⁰ Rene Monsignor Coste, "View from the Vatican: The Moral Dimension of Intervention," *Harvard International Review* 16, no. 1 (1993): 28–29.

³¹ UN Charter.

³² ICISS.

³³ Ibid.

³⁴ Coste, 29.

³⁵ Roberts.

³⁶ Stanton.

³⁷ Walzer.

³⁸ ICISS.

³⁹ Paris.

⁴⁰ ICISS.

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⁵³ In *Getting to Dayton: The Making of America's Bosnia Policy* (Washington, DC: Brookings Institution Press, 2000), 157, Ivo H. Daalder reviews the debate ongoing during the peace negotiation process, and the tensions between the purely military tasks to be managed by NATO, and the civilian reconstruction effort, which had no obvious lead. The OHR was an attempt to fill this gap. Daalder describes how the OHR mandate was initially strong when a US negotiator thought that the civilian implementer would be a US national; however, it was intentionally weakened when it became clear that a European would hold the position, for fear that a strong civilian implementer could potentially interfere with the military peace implementation effort.

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IT COULD HAVE ALL BEEN SO MUCH EASIER: PETROBRÁS AND LESSONS FROM THE BRAZILIAN EXPERIENCE WITH NATIONALIZED ENERGY

Jonathan Kartt

After more than a decade of privatization in Latin American countries, the specter of energy nationalization in the name of national sovereignty has risen in the region's leftist, populist governments, notably Morales's Bolivia and Chavez's Venezuela. Brazil undertook an experiment in energy nationalization lasting five decades, from the formation of Petrobrás in 1938 until the enshrinement of its monopoly in the constitution of 1988; the company remains state-owned today, though recent reforms have changed the nature of the relationship. This paper investigates the successes and challenges of Brazil's experience with energy nationalization and draws important lessons for any country contemplating a similar experiment.

INTRODUCTION

Media coverage of Petrobrás, Brazil's national energy company, during the early years of Luiz Inácio Lula da Silva's presidency was decidedly negative. Common themes were fear of rollback of recent reforms and lamentation of Brazil's lack of progress in completely privatizing Petrobrás.¹ Such coverage, however, fails to consider the pace of structural change throughout the history of Brazil's oil industry. Nationalization itself took decades to accomplish. The first move toward nationalization came with the founding of Petrobrás and subsequent nationalization of undiscovered oil fields in 1938, and was not completely codified until the constitution of 1988 guaranteed monopoly status to Petrobrás.² To have reversed the process in little over a decade and taken significant strides toward liberalization, as was the case under Fernando Henrique Cardoso in the late 1990s, is relatively impressive considering the circumstances.³ Rather than seeking to reverse the trend, Lula has shown a much more moderate disposition than many expected from the leader of the Workers' Party (PT).

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In addition, the media coverage fails to credit the important role that nationalization of oil played in Brazil's development history. Aside from driving growth and development in the mid-twentieth century, the establishment of Brazilian sovereignty over resources, of which energy nationalization was a part, provided a number of political benefits and served as a source of Brazilian national pride.⁴ Furthermore, though Brazil has progressed toward privatization of Petrobrás in recent years, the case of Brazilian energy nationalization is relevant today as other Latin American nations consider similar experiments. Recent populist-toned speeches by Bolivia's Evo Morales and Venezuela's Hugo Chavez supporting energy nationalization recall a slogan from the mid-twentieth century push to nationalize Brazilian oil: "O petróleo é nosso" ("the oil is ours").⁵

This paper investigates the question: "What have been the major challenges facing Brazil's state energy company, Petrobrás, and what lessons can one draw from the Petrobrás experience about designing effective nationalized energy companies?" This paper argues that, though Petrobrás has been a mostly successful tool of state-driven economic development, a number of difficulties plagued Petrobrás, including widespread politicization and clientelism. The purpose of this paper is not to make an economic argument in favor of nationalization, but rather to draw lessons from the Brazilian case as a means for understanding potential pitfalls of energy nationalization in the name of resource sovereignty. In the first sections, the paper examines the successes and challenges, respectively, of Brazilian energy nationalization. Next, it analyzes the liberalization trend of the late 1990s as an attempt to address some of those challenges. The paper then draws some overall lessons for how to structure a nationalized energy company. Finally, in the last section is a brief discussion of the applicability of these lessons to the Bolivian case, which has seen a recent trend toward nationalization under the newly elected Evo Morales.

THE SUCCESSES OF PETROLEUM NATIONALIZATION

Paul Trebat argues for a number of potential growth-related benefits from nationalization of natural resource industries. These include making up for a weak private sector, the achievement of internal and external economies of scale and the development of competent business managers.⁶ Specific to the Brazil experience, there were two main positive effects of nationalization of oil: the assertion of national sovereignty over Brazilian resources and the beginning of a government-led drive to spur economic development.

The first benefit from the establishment of Petrobrás was the assertion of national sovereignty over Brazilian resources. Until nationalization, international oil trusts, notably Standard Oil, dominated the Brazilian energy sector for over two decades.⁷ The creation of Petrobrás in 1938 was largely a result of the belief that natural resources belonged to the government as caretaker of national well-being.⁸ The slogan "O petróleo é nosso," which began as the cry of student groups but expanded to the population at large throughout the 1940s, indicates the sovereignty motivation for oil nationalization.⁹ Brazilians at mid-century wanted to regain control of natural resources that had been granted away to international trusts through overly generous concession contracts, and nationalization effectively accomplished this goal after nationalist President Getúlio Vargas's suicide in 1954.¹⁰ After publication of Vargas's suicide note and the consequent triumph of oil-related nationalism, "Petrobrás became the most durable symbol of Brazilian sovereignty. No other state-owned enterprise (SOE) generated the same kind of mythic importance for the general public and for nationalists."¹¹

A second benefit from oil nationalization was the initiation of a long period of development led by government direction of the oil industry. During the international trust period, there was a general perception, largely true, that oil companies were not investing heavily to explore Brazil's hydrocarbon potential; with control of large reserves in the Middle East, early incentive for wide-scale Latin American exploration was weak. The rationale for nationalization included the belief that in the absence of private sector interest in developing Brazilian oil fields, the only way to create a functioning Brazilian oil industry was through state-led development.¹² To a great extent, this rationale proved sound in the early years of nationalization; growth reached an average 11.5 percent per year in the period from 1968 to 1973, a time of large-scale nationalization.¹³ As of 2004, Petrobrás revenue still composed 6 percent of Brazil's GDP, and the company was a crucial driving force in the economy as an employer and a consumer.¹⁴ Almeida argues that Brazil's development miracle can at least partly be attributed to the performance of SOEs, among which Petrobrás has played a dominant role.¹⁵

The success of Petrobrás in establishing Brazilian resource sovereignty and leading development throughout the twentieth century should not be taken lightly. Indeed, Petrobrás is viewed as having successfully transformed Brazil's economic position in its early years; success in driving Brazilian growth explains the maintenance of popular support for continued national control of Petrobrás.¹⁶ As Kingstone argues, "the benefits of maintaining state control have been a source of government revenue, national employment, and national pride."¹⁷ It is necessary to stress, however, that the national sovereignty argument is primarily a political one, and such is the domain of this paper. The economic rationale for nationalization is harder to defend than the clearly positive political benefits of Petrobrás's role in Brazilian development, particularly in the long run.

The purpose of this paper is neither to argue in favor of nationalization nor to give a balanced view of its benefits and drawbacks. Given appropriate circumstances, one can make reasonable arguments for at least partial nationalization of natural resources. Of greater interest is understanding how nationalized hydrocarbon companies can operate more effectively, given the desire to nationalize in the first place.

MAIN CHALLENGES FOR BRAZIL'S NATIONALIZED STRUCTURE

As the nationalized energy industry has evolved, a number of structural challenges to Petrobrás's functioning have surfaced. While a full economic analysis of Petrobrás's successes and failures over time would be insightful, the purpose of this article is to investigate the institutional difficulties that Petrobrás has faced from a primarily political perspective. Among these challenges, four stand out as having been especially troublesome: politicization of the national oil industry; the persistence of clientelism; failure to define clear roles and relationships, both for Petrobrás and for the managerial authorities that serve as a link to the state; and the inability of the system to accommodate reform.

Politicization

A particularly difficult challenge for Petrobrás has been rampant politicization of the oil industry. To a certain extent, politicization of Brazilian oil is to be expected given the fervently nationalistic origins of the company itself. Anxiety over Petrobrás and the conflict with anti-nationalist forces are even acknowledged as contributing factors to Vargas's suicide in 1954. His suicide note made reference to the nationalization struggle and condemned

opponents of nationalization, and the popular movement for further assertion of state control gained substantial momentum after the note was publicized.¹⁸

One major symptom of Petrobrás's politicization has been high management turnover. Turnover was very high during the early 1960s, corresponding to a similarly turbulent period in the political arena. Four different company presidents were appointed between 1961 and 1964, compared to four in the seven preceding years—already a relatively high turnover rate.¹⁹ Barbosa argues that the primary reason for poor performance of Petrobrás in the 1960s and 1970s is that “the turnover rate of presidents and directors...[was] very high due to the political nature of these positions, and there [was] no mechanism in place to stimulate efficiency and profitability.”²⁰ High executive turnover contributed to instability of management and served to increase politicization; if management could be dismissed at will by the government, it was more likely to respond to political concerns and think about keeping political patrons content, and less likely to concentrate on running an effective company.²¹

The problem of politicization extends beyond simple management turnover. A major factor in Petrobrás's formation and subsequent politicization was its dependence on government, rather than internally generated, revenue sources.²² On top of receiving significant government revenues for decades, the profits it did generate internally were due largely to high tariff levels on competing imports that increased the prices it could charge; this monopoly power accounted for two-fifths of Petrobrás's earnings from 1954 to 1960.²³ In this respect, the Brazilian case can also be seen as an example of protectionism in support of Brazil's overall import-substitution industrialization strategy, rather than solely as a means to control resources.²⁴ State dependency meant Petrobrás was politically vulnerable; politicians maintained a heavy influence over the company, particularly in its early years. As Smith argues, “[f]rom 1960, the fortunes of Petrobrás began noticeably to decline, as radical nationalism became increasingly influential in government, and successive presidents sought to control it and the political process.”²⁵ Congress also was able to politicize the company, as Petrobrás's investment plans were approved by Congress as part of the overall federal budget.²⁶

Though politicization is a problem in and of itself, strident economic nationalism had a number of economically distorting effects; there were two such effects on Petrobrás's financial operation. First, politicization led to the channeling of fiscal investment directly to the state oil company and discouraged outward-looking investment; one consequence was failure to invest in Bolivian gas fields in the 1950s. Second, high unpredictability and the lack of transparency created uncertainty, which posed additional challenges to Petrobrás's efficient operation.²⁷ Greater than problems for Petrobrás itself, however, were the implications for society as a whole. As SOEs, including Petrobrás, incurred public-sector debt and relied on continued injection of state funds, the government allocated fewer and fewer of its resources to social spending.²⁸ Thus, by continuing to prioritize development of the oil sector, the state simultaneously contributed to inequality by reducing spending on those who were less well off.

Clientelism

A second, related challenge Petrobrás has faced is the persistence of clientelism. After the end of the military dictatorship, presidents often employed political appointments as a means of building coalitions; many of these appointments have been to state-owned firms

such as Petrobrás.²⁹ Some argue that Petrobrás's very survival has depended upon the patronage benefits it controlled as Brazil's largest and most successful SOE, including handing out jobs, making investments and initiating purchasing contracts. Petrobrás's managers were the primary beneficiaries of this patronage system, and their influence over other members of the main business lobbies meant longstanding entrenchment of resistance to reform. In addition, individual members of Congress controlled access to some of these benefits, which gave them incentive to avoid proposing reform in the first place.³⁰

Petrobrás's promotion of clientelism was not limited to the state-owned sector of the Brazilian economy. Because decisions about many of the patronage benefits, particularly investment and purchasing contracts, were made by the state, private companies dealing with Petrobrás became dependent on state patronage for their survival.³¹ Many business decisions were thus made for clientelistic rather than profit-motivated reasons, and the likely results of such a system are the presence of economic waste and the introduction of a certain measure of corruption to an already politicized body.

Poorly Defined Roles and Relationships

A third challenge has been a poorly defined relationship between the state-owned business, Petrobrás, and the state itself. Though Petrobrás is a state-owned business, it is in fact a business, with responsibilities to make exploratory investments, produce petroleum and earn profit. The problem is that the control structure has been vaguely defined throughout Petrobrás's history. A major weakness was the use of the ministerial model, wherein Petrobrás reported to a ministry serving as an intermediary between the government and the enterprise.³² A major feature of this model was instability in the relationship between Petrobrás and the ministry; it swung between giving the company too much autonomy at some points, and subjecting it to overbearing micromanagement at others.³³ For example, after the oil shocks, the government decided that part of the means to restore macroeconomic control was through reassertion of authority over SOEs, including Petrobrás; at other times, as noted above, oversight was notably looser.³⁴ Araújo and Oliveira concur that subordination of state-run businesses through performance contracts to ministries within the executive branch is an ineffective way to run a state-owned business.³⁵

Furthermore, the company was subject to simultaneous control by multiple state agencies with overlapping jurisdictions. In the 1960s and 1970s, SOEs reported to several controlling bodies, including the Secretariat of Planning (SEPLAN), Special Secretariat for State Control of Enterprises (SEST), Ministry of Finance, and Central Bank. This led to mixed signals and fragmentation of decision making.³⁶ Though the regulatory structure changed in the late 1990s under Cardoso, there are still similar, if less severe, difficulties; authority and oversight are still divided between the Ministry of Mines and Energy and the National Petroleum Agency (ANP). This ambiguity arose because Cardoso needed to compromise on some of the details of the constitutional reforms and leave others for later implementation through regular legislation and *medida provisória*.³⁷ Intent to reform was determined at the constitutional level, but actual structure was left ambiguous, leading to difficulties in oversight and confusion, as Petrobrás sought to serve multiple constituencies. In recent years, there have been turf battles and periodic competition between executives of ANP and Petrobrás—the very company over which ANP is supposed to have authority.³⁸

Structural Inflexibility and Difficulty of Reform

The three challenges explored above were important in and of themselves; however, Petrobrás's largest underlying structural problem was the virtual nonexistence of a reform process to correct these other deficiencies. Prior to the 1988 constitution, the state had had a monopoly on oil prospecting and production since the 1967 constitution, which itself reinforced a federal law of 1950.³⁹ The 1988 constitution's ban on foreign investment extended the state monopoly on oil by prohibiting foreign and private sector investment in the whole industry.⁴⁰ Petrobrás's insulated position was progressively entrenched, culminating in the placement of the national oil company on the same legal footing as the separation of powers and the guarantee of basic rights.⁴¹ If the state had created the oil monopoly through standard legislation, reform would have been as simple as changing a law. But because its national status was written directly into the constitution, major changes in the oversight, structure or general operations of Petrobrás required modification of the document that underpins the nation's political structure. On paper, this is difficult to do in Brazil; constitutional amendment requires a legislative three-fifths super-majority, voted twice in each chamber of Congress.⁴²

In practice, the process is even more difficult and requires sophisticated legal maneuvering and a bit of luck. In addition to entrenching the oil monopoly, the 1988 constitution greatly diminished the president's power to legislate by decree, and thus his ability to control directly the structure of SOEs.⁴³ Also, due to the politically sensitive and clientelistic nature of SOEs, presidents faced difficulty in working through the nominal amendment channel, and thus struggled to build legislative coalitions in favor of reform. Brazil's high degree of legislative and party fragmentation posed a further challenge to building coalitions to change Petrobrás's control structure.⁴⁴ The ability of nationalist elements of the military to exert anti-reform pressure through rightist parties, with claims that oil represented a "strategic sector," was an additional impediment to reform.⁴⁵

Thus, Presidents Fernando Collor de Mello and Itamar Franco, with weak legislative coalitions, were not up to the task of reforming Petrobrás, and true reform had to wait until Cardoso took power in 1995.⁴⁶ Cardoso was more of a coalition-builder and saw legislative success in many areas where his predecessors had not. In 1995, Cardoso was able to amend the constitution in such a way as to allow some private sector competition in the energy sector; the Petroleum Law of 1997 established the ANP to oversee Petrobrás and new private sector competition. It is important to note, however, that these steps were only possible because Cardoso politicized unpopular oil worker strikes to demonize leftist and nationalist opposition to reform.⁴⁷ Thus reforms depended on the appearance of a politically capable, reform-minded leader, and on a confluence of events favorable to reform; without these circumstances, steps to clean up the energy sector might not have occurred.

RECENT LIBERALIZATIONS: A NEW WAY FORWARD?

Between 1995 and 1999, Cardoso took the first major steps of *destatização* in the petroleum sector, with an aim toward repairing Petrobrás's major problems. Though Cardoso himself preferred total privatization of Petrobrás, he was forced to compromise, and the first significant step was the passing of a constitutional amendment to open the sector to competition.⁴⁸ Following this opening was the establishment of the energy oversight and regulatory agency, ANP, in 1998, with responsibility for overseeing Petrobrás and promoting competition in the industry.⁴⁹ A third major change, as of June 1999, was the introduction of competitive bidding in the upstream hydrocarbons sector, in which Petrobrás itself is

now only a (strongly advantaged) participant.⁵⁰ Though it is early to tell what will come of the concessions won by private companies, this action has effectively broken up Petrobrás's monopoly and introduced competition, with ten companies in addition to Petrobrás winning concessions in the 1999 round.⁵¹

In addition to giving Petrobrás incentive to act less like a state-run agency and more like a proper business, the reforms of the mid-1990s also gave the firm a new means by which to do so. The reforms granted Petrobrás the flexibility to form joint ventures in the energy sector. As such, Petrobrás continued to benefit from preferential access to the state as the national oil company, while being allowed to realize some of the benefits of private-sector funding.⁵² Though Petrobrás was for a long time 100 percent government-owned, ownership is now a mixture of public and private investment, and the late 1990s saw the state's share of the company reduced from near totality to simple majority.⁵³

Despite best efforts at reform and some notable progress, a number of the decades-old challenges remain under the new structure. Even under the new regulatory bodies, executive branch appointments to head both ANP and Petrobrás are highly politicized, with the Ministry of Mines and Energy exhibiting tendencies to nominate appointees for reasons of partisanship and patronage.⁵⁴ The lack of an energy ombudsperson and the fact that ANP directors can be removed from power by the executive branch have led to continued, though diminished, politicization and capture by interest groups.⁵⁵ Interaction with legislators also remains far from ideal, largely because of a desire to maintain access to patronage resources and an ingrained socialistic tendency to manipulate the agency for aims of social welfare, as was done pre-ANP⁵⁶ (Kingstone argues that "ANP... while staffed with qualified personnel and backed with appropriate legal empowerment, [continues] to run the risk of political interference through political appointments or politically motivated barriers to the funding of their operations").⁵⁷

Thus recent liberalizations constitute a mixed bag. They have kept control of Petrobrás in state hands and permitted it to continue serving state development aims, and recent signs of new competition are promising. Recent literature is relatively weak in diagnosing the extent to which the reforms of the mid-1990s have provided durable cures for the old ills of politicization, clientelism and regulatory ambiguity. But initial signs point to some legacy of the difficulties of the old order, and to a certain extent these may be accepted as a natural price to pay for maintaining the presence of government in business. A major step to improve the petroleum sector, short of outright privatization, would be the introduction of stronger checks and balances between the branches of government. By requiring approval of management dismissal by the legislature, and by streamlining judicial oversight of the energy sector, which is sluggish and often causes delays in changes requested by ANP, the state could systematically improve Petrobrás's functioning.⁵⁸

CONCLUSION

From this survey of Brazil's experience with Petrobrás, we can derive a number of institutional best practices for improving the functioning of a nationalized hydrocarbons sector. First, governance structures should insulate state oil companies from politicization and cronyism to the greatest extent possible. Pires recommends four measures for a successfully depoliticized regulatory structure. These include selection of independent directors, at both the regulatory agency and company level, without clientilistic ties to the government; prohibition of arbitrary removal of directors; establishment of financial and administrative independence from the state, to the extent possible; and provision of

transparent and unpoliticized mediation and appeal procedures.⁵⁹ To ensure these measures are working, the structure should be such as to promote transparency; ways to do this might include holding regular public hearings and publication of support documentation to explain controversial decisions. Such transparency would have the additional benefits of promoting social legitimacy and maintaining public support for continued existence of the state oil firm.⁶⁰

Second, the state should seek to allow private competition to exist alongside the state-owned oil company, and to permit the national company to engage in some quasi-private sector practices, such as establishing joint ventures with private firms. In particular, the government should seek to make the state company self-sufficient, and wean the firm off undue subsidy fiscal sponsorship, in an effort to further combat politicization and clientelism. This measure was obviously not possible in the early years of the Petrobrás experience, as the very existence of the company was in part a reaction to private underinvestment. The energy sector in particular, with large upfront capital expenditures and long lead times to actual production, is a difficult space in which to divorce nationalized companies from the state, but once the state energy company becomes self-sustaining, as Petrobrás, the largest Brazilian concern, appears to be, opening up the sector to competition is an advisable step.⁶¹

Finally, states should give forethought to the ease of structural reform when deciding how to implement nationalization. This recommendation will mean different things in different systems. For example, in highly fragmented political systems, like that of Brazil, with an ineffective legislative process, weak party discipline and multiple veto points, states should avoid constitutionally-mandated energy nationalization. In other systems, including those dominated by a strong president who can count on weak legislative resistance, stronger measures would be important to insulate the firm from usurpation and unnecessary change.

Given the limited prospects for growth of the energy sector in the first half of the twentieth century, it seems that nationalization was a sensible policy. Aside from the unquantifiable benefits of developing national sovereignty and national pride, there is clear evidence that assertion of government control over the energy sector directly led to its rapid development. Given lack of interest among international firms in funding oil exploration and production, the benefits of nationalization in the early years were many, and the challenges explored above seem a small price to pay for Brazilian development. Compare the Brazilian energy sector's lack of development before Petrobrás with the achievement in 2006 of energy independence. As a result of the state-sponsored push for adoption of ethanol fuel for transportation, Brazil arguably has more sovereignty over its energy resources than most other nations.⁶² Other countries, notably Venezuela and Bolivia, have sought to realize similar benefits through nationalization in recent years. In the event that they continue with further energy nationalization, it will be important to keep in mind the lessons of the Petrobrás experience.

Lessons for Bolivia

Bolivia's gas-dependent energy sector, though relatively nascent, is more developed than was Brazil's at the time of nationalization in the first half of the twentieth century. Whereas international companies were ambivalent about developing Brazilian oil, a number of countries have actively invested in Bolivia, including Brazil and Argentina.⁶³ Bolivia has the second-largest gas reserves in South America, after Venezuela, but lacks funds for

development and depends on outside investment.⁶⁴ Furthermore, the dependence on gas rather than oil means that Bolivia's energy industry relies on pipelines to neighboring countries. This means that demand for its products comes from Brazil and Argentina, the very investors it risks alienating through nationalization.⁶⁵ These two points taken together mean that Bolivia must tread more lightly than Brazil in appropriating resources from private investors.

Recent contract renegotiations with the major international oil companies with investment in Bolivia, including Petrobrás, were harsh, but all of the companies renegotiated rather than pulling out of the country, as happened in Venezuela.⁶⁶ The future direction of nationalization is unclear, but with the country's state oil company, Yacimientos Petrolíferos Fiscales Bolivianos (YPFB), now effectively in control of a majority of the country's energy earnings, Morales would do well to consider the Petrobrás case as he considers whether to further entrench nationalization in the name of national sovereignty.⁶⁷

NOTES

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THE PECULIARITIES OF FOURTH-PARTY INTERVENTION: THE CASES OF SOUTH OSSETIA, TRANSDNIESTRIA AND ABKHAZIA

Melanie Youell

The dissolution of the Soviet Union saw the outbreak of numerous ethno-political separatist conflicts, as well as intervention by a particular kind of outside actor that could be termed “fourth party”—local outsiders with preexisting linkages to a group rebelling against its parent state. Analysis of fourth-party intervention in Georgia and Moldova suggests the following: first, fourth-party ties to separatists that are political and based on mutual interests prompt more willing intervention than ethnic affinity; second, fourth parties make internal conflicts more complex by involving third parties; and third, more sustained fourth-party intervention (associated with political, interest-based ties) makes resolution more elusive.

The end of the Cold War may not have caused the plethora of intrastate conflicts that marked the early 1990s, but it did provide the opportunity. Beginning between 1988 and 1992, internal, nationalist insurgencies confronted weak new states such as Azerbaijan, Georgia, Moldova and Tajikistan. The susceptibility of weak states to civil conflict is well documented.¹ Yet the dissolution of the Soviet Union permitted an additional phenomenon that proved an exacerbating factor for these conflicts—one that has not been well examined. This factor is the involvement of what this paper identifies as “fourth parties.”

If first and second parties are the two groups in dispute and third parties are other states or international organizations, then “fourth parties” are local groups intervening independently. Fourth parties are organized groups possessing structural leadership. Neither mercenaries nor mobs, the groups exist outside conflict—as community, civil society or political bodies—and are not “fourth parties” until they intervene in a local armed conflict that does not involve them directly. They may be part of a government but in deciding to intervene do not represent the state; they are decidedly independent, even rebellious, in that particular instance. Joining as a result of coercion or voluntarily, fourth parties are invariably sympathetic to the separatists in a conflict.

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This paper analyzes the impact of fourth-party intervention in the cases of South Ossetia (Georgia), Transdniestria (Moldova), and Abkhazia (Georgia).² All largely political disputes with ethnic overtones, these separatist conflicts developed amidst certain commonalities. These include the Soviet legacy, a history of autonomy, weak new parent states, separatists' perception of ethnic chauvinism by the state and some degree of separatist allegiance to Moscow.³

In August 1990, South Ossetia, in northern Georgia, declared independence from Tbilisi; violence broke out in January 1991 and escalated until the Sochi Agreement of June 1992 froze the conflict. Similarly, in August 1991, the Republic of Moldova declared independence from the Soviet Union; less than one week later the easternmost region of Transdniestria seceded, and violence followed until a July 1992 ceasefire. The northwestern Georgian region of Abkhazia declared autonomy as early as March 1989; in August 1992 violence erupted. The bloodiest of the three wars, the Abkhazian conflict finally froze with the Moscow Agreement in May 1994.

All three conflicts saw the immediate intervention of independent outsiders, or fourth parties. In the case of Transdniestria, the fourth party was the Soviet 14th Army stationed in Tiraspol. Suffering from low morale and something of an identity crisis, it began covertly providing arms to the separatists between September and December 1991, acting largely as a supranational body. The South Ossetians received fourth-party aid from their ethnic counterparts in the Russian region of North Ossetia, beginning in the spring of 1991. Finally, in August 1992, as violence broke out between the Georgian National Guard and Abkhazian insurgents, a militarized political organization known as the Confederation of Mountain Peoples of the Caucasus joined the cause on behalf of Abkhazia. It is worth noting that, before stepping in as peacemaker, Russia also aided the South Ossetians, Transdniestrians and Abkhazians against their respective central governments, but this was only after the start of fighting and after fourth parties became involved.

With respect to each of these conflicts, this paper intends to answer the following questions: (1) What was the fourth party's historical role in the territory and relationship with the disputing parties? (2) Why did the fourth party get involved in the conflict? (3) Did separatists anticipate fourth-party assistance? Did this impact their decision to rebel violently? (4) What impact did fourth-party involvement have on the conflict? How did it affect first and third parties?

What soon becomes clear upon analysis is that fourth parties are neither equivalent nor necessarily unitary. Certain trends, however, emerge. Through comparative analysis of these three conflicts, this paper will show that, while fourth parties have preexisting ties with and sympathies toward the rebellious groups they support, intervention is by no means inevitable; politically-minded interests and overt pressure from the "appealers," even more than these sympathies, compel fourth parties to intervene in the conflict. Furthermore, fourth parties complicate intrastate conflicts by providing material aid to insurgents as well as drawing in third parties. Finally, more sustained fourth-party intervention makes conflict more difficult to bring to a ceasefire.

LITERATURE REVIEW

Scholars have devoted a fair amount of research to intervention in intrastate conflict. Most look at why third parties intervene, whether for national power interests,⁴ humanitarianism,⁵ or ethnic affinities.⁶ Others consider the impact of third-party intervention on the duration

of an internal conflict.⁷ Still others seek to determine the effectiveness of those who intervene in terms of their ability to end a conflict.⁸ These analyses have two assumption-based limitations that make them inapplicable to the present analysis: first, they assume that intervening parties are states, multilateral organizations or non-governmental organizations; second, they assume the objective of intervention is to resolve the conflict. This state-based, problem-solving approach does not describe well the behavior of fourth parties.

Ted Robert Gurr,⁹ Paula Garb¹⁰ and others have brought in the issue of foreign sympathizers and the potential for the spread or “spillover” of ethnic conflicts. External sympathies play a role in fourth-party intervention, but the assertion that this leads to a spillover of violence across national boundaries is questionable. In the cases examined, the conflicts generally remained concentrated in the disputed territory within state borders.

C. R. Mitchell contends that external intervention is based on linkages between the intervening party and a disputing party; essentially, intervention is just the logical—though by no means inevitable—extension of a preexisting relationship.¹¹ These linkages may be transactional (for example, economic, political and military) or attitudinal (for example, ideological, religious and ethnic). Such linkages—identifiable for separatists and lacking for the central state they oppose—define the relationships between first and fourth parties. The supposed causality between linkages and intervention will be considered in due course; for the present, it is sufficient to consider how linkages affect the relationships between parties.

FOURTH-PARTY TIES

Fourth parties have certain linkages with the groups they come to support. It is for this reason that separatist groups turn to them for assistance. According to Mitchell, “the nature and intensity of these connecting links are decisive in determining which external parties become involved in an internal conflict and whether intervention takes place.”¹² Both ethnic and political ties played roles in the three conflicts under consideration and were intensified by the circumstances that sparked violence.

South Ossetia

The Ossetians are one of a myriad of ancient ethnic communities in the Caucasus striving to maintain their identity and territory against rival groups even as their numbers dwindle. The majority of Ossetians are Eastern Orthodox Christian, with a Muslim minority, and their language resembles Farsi. Soviet policy divided the Ossetians into northern and southern groups: North Ossetia became an autonomous region within the Russian Soviet Republic, while in 1922 South Ossetia formed as an autonomous province within the new Georgian Soviet Republic. In 1989, according to the last Soviet census, 335,000 Ossetians lived in North Ossetia, while 164,000 lived in Georgia, of which 65,000 dwelt in the small, northern territory of South Ossetia.¹³ Before the conflict, Ossetians were a minority within their corner of Georgia, but this should not have been especially problematic as Ossetians and Georgians in recent decades got along well and intermarriage was common.¹⁴

The imposing peaks of the Caucasian mountains serve as a natural border between North and South Ossetia. A single highway joins the capital cities of Vladikavkaz (North) and Tskhinvali (South) through a mountain tunnel known as the Roki Pass. Completed by the Soviets in 1985, this tunnel is one of only a handful of arteries in Georgia that cut through the mountain range into the modern-day Russian Federation.

Transdnistria

Stationed in the Transdnistrian capital city of Tiraspol in 1956, the Soviet 14th Army in the early 1990s numbered approximately 9,200 troops. It consisted of one motor rifle division, one tank battalion, one artillery regiment and one anti-aircraft brigade.¹⁵ Its placement was not without political significance, for Moscow considered Transdnistria more reliable than greater Moldova.¹⁶ Unlike the rest of Moldova, the strip of land east of the Dniestr River is ethnically and historically tied to Ukraine and Russia, rather than Romania. The Soviets incorporated the territory, an autonomous republic of Ukraine, into Bessarabia to form the Moldavian Soviet Socialist Republic in 1940, and Russian speakers began to migrate into the republic. As of 1989, Transdnistria's population was 40 percent ethnic Romanian, 28 percent Ukrainian and 25 percent Russian,¹⁷ with Russians concentrated in Tiraspol. As in the rest of the Soviet Union, Russians were afforded political and educational advantages, even as the minority in Moldova.

The 14th Army came to be seen as protector of the Russian minority and Russophones in Transdnistria. In the early 1990s, the force included many local conscripts and officers, which further tied it to the Dniestr region. The army's continued presence in Moldovan territory (as the Russian 14th Army) remains a serious point of contention between Chisnau and Moscow to this day.

Abkhazia

Unlike the Ossetians or the 14th Army, the band of Caucasian supporters who intervened on Abkhazia's behalf was a much newer, more ad hoc phenomenon. The most enduring of a number of Pan-Caucasian organizations, the Confederation of Mountain Peoples of the Caucasus (CMPC, renamed the Confederation of Peoples of the Caucasus the following year) formed in November 1991. Inspired by riots in Abkhazia against the Georgians in July 1989, the confederation was an attempt to organize and mobilize various regional ethnic groups to come to each other's aid in similar situations involving perceived state oppression.

Made up of representatives from sixteen Caucasian peoples, the CMPC was to be a regional administrative organization modeled after the European Community, with a council of ministers and parliament. Abkhazians, Chechens and Kabardians led the organizing effort. In the Caucasian cauldron, where interethnic tension is legendary and exacerbated by the Soviet legacy, unification proved arduous and not entirely fruitful. Even years after the Abkhazian war, as Paula Garb concludes, "a Pan-Caucasian ethnic identity is barely embryonic."¹⁸ In truth, the CMPC is a federation of separate nationalisms bound together by the mutually recognized fact that no single group can achieve political autonomy or statehood on its own.

FOURTH-PARTY INTERVENTION

While ties between these external parties and dissatisfied groups existed to varying degrees circa 1990, this does not in and of itself explain why the North Ossetians, the 14th Army and the CMPC became involved in violent conflicts in Georgia and Moldova. Marshall would argue that their intervention was the logical extension of their previous respective relationships, and that both "appealers" and "interveners" have motives for playing their roles.¹⁹ What might those motives have been in these cases? Events on the ground suggest the decision to intervene was not as clear-cut as one might think.

The intervention of the North Ossetians and the CMPC does, in fact, seem logical, though the types of intervention differed. These groups had definite ties (one ethnic, the other based on nationalist interests) to the insurgent peoples they supported. Blood bound the Ossetians in the north and south. The south began voicing its desire for a union with the north in 1988, and to that end declared independence from Georgia in August 1990. Co-conspirators in the north supplied the south through the vital Roki Pass soon after violence broke out in Tskhinvali between the Georgia National Guard and Ossetian Defense Forces on 5 January 1991. What exactly they supplied is unclear. In a January 1991 interview, Akhsarbek Galazov, Chairman of the North Ossetian Supreme Soviet, expressed sympathy and support for the south. While he confirmed the north was taking in refugees and sending food, medicine, fuel and money, he resolutely denied North Ossetian militants were being permitted through the Roki Pass.²⁰ He did not mention arms.

Clearly (though surprisingly), there was some hesitation on North Ossetia's part to intervene. While individual North Ossetians were recruited to the south, the government of North Ossetia, with its own political position to consider, chiefly in regard to Moscow, limited its support to humanitarian aid and money, not military support.

The CMPC, meanwhile, had been formed in light of the intensifying Abkhazia conflict and with the expressed intent of mobilizing volunteer fighters in the event that tension boiled over. It was really a mutual assistance agreement. Simply put, Chechens came to the assistance of Abkhazians because they believed the Abkhazians in turn would support the Chechen revolt against Russia.

The president of the confederation, Musa Shanibov, called the situation in Abkhazia a case of genocide. In response, the CMPC channeled a steady stream of volunteer fighters (particularly from Chechnya, but all confederation republics were represented), money and weapons to the separatists.²¹ The CMPC at various times threatened to unleash tens of thousands of militia fighters. But that is not to say the confederation was itself necessarily in general command: as many as 60 percent of volunteer fighters in Abkhazia went without the knowledge of the CMPC—although the leadership certainly sanctioned their involvement.²²

The case of the 14th Army in Moldova is more nebulous. Transdniestria was a Soviet stronghold; in breaking off from Moldova, separatists sought to remain a part of the Soviet Union and avoid unification with Romania. The Army, under the command of Lieutenant-General Gennadii Yakovlev, and Transdnistrians alike hailed the August 1991 attempted coup by Soviet hardliners in Moscow. Although the coup did not succeed, the Soviet regime remained instable; the military establishment in response acted with greater autonomy.²³

Soon after the failed coup, on 2 September 1991, Transdniestria seceded, the Supreme Soviet voting to join the Soviet Union. At this point, the 14th Army officers found themselves in a predicament. The very nation they represented was crumbling, morale was low and questions of identity and loyalty abounded. Meanwhile, loyal Soviets took up arms in their respective communities and appealed intensely to the 14th Army for aid.

Through a combination of successful coercion, willing donation and outright theft, they got it. In September 1991, the Dniestr Soviet Socialist Republican Guard became operational and began covertly receiving arms from the 14th Army thereafter.²⁴ The precise “when” and “how” of the 14th Army's involvement is “ambiguous,” according to a 1994 report by the Organization for Security and Cooperation in Europe (OSCE). The report cautiously states with “reasonable certainty” that the 14th Army transferred arms during

the “hot phase” of the war, which would have been between March and June 1992.²⁵ Many scholars likewise focus on the 14th Army’s active involvement in the spring of 1992.²⁶

However, evidence suggests earlier initial complicity. On 7 December 1991, Moldovan leadership claimed before the United Nations that the 14th Army was distributing hundreds of arms to insurgents.²⁷ Furthermore, 14th Army commander Yakovlev accepted the post of Transnistrian defense chief that same month. A number of officers joined Transnistria’s defense forces; others recruited local residents. In March 1992, Mircea Snegur, president of Moldova, openly blamed the conflict on separatists acting with the support of the Soviet 14th Army command.²⁸

Independent intervention by the 14th Army turned out to be short-lived. In January 1992, the troops were transferred to the Commonwealth of Independent States (CIS) armed forces. Yakovlev was relieved of his command and replaced with Yuri Netkachev. The new army leadership resisted involvement in the civil conflict under intense pressure. Once Russian president Boris Yeltsin transferred the 14th Army to Russian control in April 1992, the army resumed involvement in the Transnistrian conflict, but this time under a third-party state.

The course of events in each of these cases illuminates the fact that linkages alone cannot account for fourth-party intervention. The decision to intervene depended on individual motives. Interestingly, the most definitive, enthusiastic example of support came in a case when ethnic ties were not at play—in Abkhazia. Political or interest-based linkages produced the most sustained intervention.

FOURTH PARTIES AND SEPARATISTS’ DECISION TO REBEL

Ted Gurr has identified several key conditions that determine whether or not ethno-political groups ultimately take up arms, including the salience of identity (language, religion, comparative disadvantage or superiority in society), incentives (resentment of past losses, hopes for relative gains and loss of political autonomy) and capacity for action (territorial concentration and formation of coalitions).²⁹ Identity and incentives can be seen as the building blocks of affinity linkages between separatists and their fourth-party supporters; fourth parties themselves provide capacity for action.³⁰

Soviet policy had afforded each of these three regions political autonomy and the right to speak their respective local languages. Trouble came when newly independent Moldova and Georgia tried to deinstitutionalize this Soviet legacy.³¹ Elites in South Ossetia, Transnistria and Abkhazia who backed the separatist movements were undoubtedly aware of two factors in their favor that provided capacity for action given the perceived threat. First, their respective parent states were weak, with only nascent security forces of their own. Second, there were external parties whose sympathies could be exploited. These observing parties also encouraged insurgents by denouncing the state leadership for discriminatory policies.

Given the dearth of available information about the decision making of the South Ossetians, Transnistrians, Abkhazians or any insurgent group for that matter, scholars must rely on circumstantial evidence. What is clear is that all three groups appealed for aid (namely arms or money or both) without which they would not have been sufficiently equipped to take on state forces. Indeed, the insurgency leadership probably anticipated garnering this assistance. But the mere presence of external, sympathetic parties would presumably have made little difference had the conditions not existed already for ethno-political conflict.³²

IMPACT ON THE CONFLICT

Gurr asserts that external intervention “makes it more likely conflicts will be protracted and resistant to settlement.”³³ The conflicts in South Ossetia, Transdnistria and Abkhazia were indeed difficult to halt. The question is whether fourth parties are culpable for that fact, and how.

Each of these conflicts would have been difficult to manage, even without the involvement of external supporters. Statesmen and scholars can attest to the difficulty of managing internal, ethno-political conflicts. Michael E. Brown identifies two basic reasons for this intractability. First, ethno-political conflicts tend to take place in weak states, which means groups and troops are not easily controlled and often commit gross abuses against each other and the civilian population. Second, there are very high stakes at play. Often the very survival of the insurgent group hangs in the balance.³⁴

Thus, fourth-party intervention makes an already thorny situation even more complex. That complexity can be seen in the impact fourth parties have on third-party states and on the management of the conflict.

Fourth Parties and Third Party-Intervention

The indirect impact on a conflict by fourth parties results in even greater complication than does their provision of material aid. In analyzing internal conflict, Brown stresses that it is crucial that “opportunistic neighbors” be kept out;³⁵ fourth parties essentially invite them in. The current study characterizes these groups as largely independent or supranational, but no group in the present international system is truly outside the reach of the state. For that reason, fourth parties tend to drag their host states into conflicts. The result is third-party intervention, for better or worse.

In these three cases, it is very possible Russia would have intervened, whether or not fourth-party groups with ties to Russia had become involved. Moscow is not shy about keeping a hand in the near abroad. But the fact remains that fourth party groups intervened first, and that only after their intervention did Russia jump on the bandwagon. Due to fourth-party involvement, Moldovan and Georgian authorities criticized and blamed Russia for interfering even before the Kremlin was actually involved. It is true that Moscow remained intentionally passive even as Russian troops and citizens independently got mixed up in the conflicts,³⁶ but overt intervention came later.

Abkhazia is a case in point. In Abkhazia, as many as two thousand Russian citizens (among them Chechens, Ossetians, Kabardins and Ingush) fought alongside insurgents.³⁷ In October 1992, referencing these north Caucasian volunteers, a Georgian general accused Russia of fighting an undeclared war in Abkhazia.³⁸ Moscow’s involvement at this point, however, was limited to attempts to protect and evacuate Russian nationals. Over the next year Russia brokered two ceasefires; both failed. At last, on 23 October 1993, Moscow acquiesced to appeals by Georgian president Eduard Shevardnadze and, in return for Georgia joining the CIS, deployed troops to halt the conflict.

Independent intervention by Russian and Soviet citizens thereby gave a pretext for the Kremlin’s intervention. In Transdnistria, nearly 10,000 14th Army troops found themselves in the middle of a Moldovan civil crisis. After the force had been put under the control of the CIS in January 1992, Russian president Boris Yeltsin transferred the 14th Army to Russian control in April, ostensibly to keep them out of conflict. In reality, the Russian troops were very much involved over the ensuing months under Netchakov and General Aleksander Lebed, and became a peacekeeping force along the Dniestr River

after the July 1992 peace settlement. In South Ossetia, North Ossetians provided material aid and likely smuggled arms. Meanwhile, local government officials in Vladikavkaz and Tbilisi waged a war of words, exacerbating international tensions. Yeltsin himself expressed support for the Georgian government early in the conflict; a year later he was party to the Sochi Agreement that froze the conflict. As in Transdniestria and Abkhazia, Russian troops served as the bulk of the peacekeeping forces in South Ossetia. As such, Moscow maintains a hand in the Soviet successor republics of Moldova and Georgia to this day; there will be no resolution of these frozen conflicts without Russia's blessing.

Fourth Parties and Lasting Ceasefires

Study of these conflicts suggests that more willing, sustained fourth-party involvement (previously identified as being based on political, interest-based ties rather than ethnic affinity) causes violent conflicts to be more difficult to halt. This is a point that deserves greater investigation, but one that this paper discusses briefly.

Jeff Chinn claims the 14th Army was a "provocative force" early in the Moldovan civil war.³⁹ Yet however much Soviet arms and men fuelled the early insurgency, the army's *independent* involvement (between September 1991 and January 1992) was so limited that it did not seriously impact the implementation of a ceasefire. Once Moscow determined that the conflict had become too unruly, following the Transdniestrian-14th Army victory at Bender in June 1992, Yeltsin and Snegur signed a ceasefire that continues to last.

In South Ossetia, violence escalated early in 1992, as both sides struggled futilely to maintain control over their armed forces. While fourth-party intervention in Transdniestria was limited in terms of duration, in South Ossetia it was limited (at least officially) in substance. This was the case, even though presumably fierce ties of ethnicity bound the Ossetians in Russia and Georgia. Yet, as in Moldova, a ceasefire signed 24 June 1992 by the Russian and Georgian presidents endured.

Abkhazia is another story. The intensity and staying power of that conflict was greater than the others. Bolstered as they were by the CMPC and other volunteers, Abkhazian separatists broke four ceasefire agreements before a fifth held. The first, declared 3 September 1992, lasted a month. After the United Nations established an observer mission in the region in early 1993, Russia brokered a second ceasefire on 14 May 1993. Claiming the Georgians were not complying quickly enough, the Abkhazians broke that agreement as well. Following a third ceasefire on 27 July 1993, Tbilisi withdrew 80 percent of its forces from Abkhazia, whereupon the separatists attacked and retook the capital city of Sukhumi.

Riding high, the Abkhazians rejected Russian efforts at mediation in September 1993. They succeeded in driving Georgia's forces and some 230,000 Georgian civilians from their territory before agreeing to a fourth ceasefire in October 1993.⁴⁰ This agreement likely would have stuck, had ousted President Zviad Gamsakhurdia and his rebel followers not taken the opportunity to invade Georgia proper by way of Abkhazia that same month. At this point, Shevardnadze appealed to Russia to intervene. The Moscow Agreement of 14 May 1994 ended the violence.

The connection between the sustained fourth-party involvement of the CMPC and this series of slippery ceasefire agreements is not so much causal as it is correlated. But the Abkhazians had little reason to cease fighting when they found success on the battlefield. And most would agree that success was due largely to the outside support the separatists enjoyed in the form of money, arms and men from the CMPC. The CMPC, with

its ability to control the ebb and flow of outside fighters, actually became a player during the negotiations. As long as the reinforced insurgents made progress, the intensity and brutality of the conflict remained high, and as long as Russia sat by passively, no ceasefire stood much of a chance.⁴¹

CONCLUSION

Analysis of the conflicts in Georgia and Moldova suggests, through inductive reasoning, three hypotheses. First, certain ties or linkages exist between fourth parties and the separatist groups they support, but those ties do not necessarily lead to willing intervention; ties that are political and based on mutual interests prompt more willingness to intervene than those based on ethnic affinity. Second, fourth parties exacerbate internal conflicts by increasing their complexity; not only do they reinforce separatists with material assistance, they also tend to pull in third party states, with their own interests in seeing the conflict continue or cease. Finally, conflicts with more willing, sustained fourth-party involvement are more difficult to manage, and to bring to a lasting ceasefire.

The robustness of these hypotheses remains in question due to the limited availability of insights into the inner workings of either separatist groups or fourth parties and to the limited scope of this study. Applying the hypotheses to other intrastate conflicts outside the former Soviet Union will provide more conclusive evidence as to their veracity.

The conflicts in Transnistria, South Ossetia and Abkhazia remain unsettled. Having won on the battlefield, separatists maintain effective control over the territories in question. Yet no group has been recognized by the international community as an independent state, and presumably will not be so long as the Moldovan and Georgian governments hold fast to the principle of territorial integrity.⁴² Fourth-party actors have receded with the violence. Despite a 1994 troop-withdrawal agreement, a portion of the Russian 14th Army (now reduced to an "Operational Group of Russian Forces") remains as peacekeepers in Transnistria. Outside fighters have retreated from South Ossetia and Abkhazia, some finding their way to Chechnya, but mostly not.⁴³

The fourth-party phenomenon is one that deserves further study. It is too simplistic to lump these local, independent, external actors within the broader category of third parties. Their behavior, incentives and lack of international accountability differentiate them from states or international organizations. Understanding the motivations and impact of fourth parties could be of the utmost importance for the management of certain conflicts.

NOTES

¹ See Michael E. Brown, "Ethnic and Internal Conflicts," in Chester A. Crocker, Fen Osler Hampson and Pamela R. Aall, eds., *Turbulent Peace: The Challenge of Managing International Conflict* (Washington, DC: United States Institute of Peace Press, 2001), 209–26; David Keen, "Incentives and Disincentives for Violence," in Mats Berdal and David Malone, eds., *Greed and Grievance* (Boulder, CO: Lynne Rienner, 2000), 19–41; James D. Fearon and David D. Laitin, "Ethnicity, Insurgency, and Civil War," *American Political Science Review* 97, no. 1 (2003): 75–90.

² This study will focus solely on post-Soviet separatist conflicts that, at the outbreak of fighting, did not include third-party state assistance. As such, Tajikistan is not included because it was not a separatist conflict, nor is Nagorno-Karabakh because it involved Armenia as a patron from the start and was essentially an interstate war between Armenia

and Azerbaijan.

³ It is not the intent of this paper to examine in depth all the factors contributing to open conflict in these three cases. Rather, I point out those commonalities and contributing factors that prompted the involvement of fourth parties. For a closer look at the backgrounds of these conflicts, see James Hughes and Gwendolyn Sasse, eds., *Ethnicity and Territory in the Former Soviet Union: Regions in Conflict* (London: Frank Cass Publishers, 2002); Svante E. Cornell, "Autonomy as a Source of Conflict: Caucasian Conflicts in Theoretical Perspective," *World Politics* 54 (2002): 245–76.

⁴ Hans Morgenthau, "To Intervene or Not To Intervene," *Foreign Affairs* 45, no. 3 (1967): 92–103; Hedley Bull, *Intervention in World Politics* (Oxford: Clarendon Press, 1984).

⁵ Alan Dowty and Gil Loescher, "Refugee Flows as Grounds for International Action," *International Security* 21, no. 1 (1996): 43–71.

⁶ C. R. Mitchell, "Civil Strife and the Involvement of External Parties," *International Studies Quarterly* 14, no. 2 (1970): 166–94; David Carment and Patrick James, "Two-Level Games and Third-Party Intervention: Evidence from Ethnic Conflict in the Balkans and South Asia," *Canadian Journal of Political Science* 29, no. 3 (1996): 521–54.

⁷ Ibrahim Elbadawi and Nicholas Sambanis, "External Interventions and the Duration of Civil Wars," paper presented at the World Bank conference on "The Economics and Politics of Civil Conflicts," Princeton, NJ, 18–19 March 2000, available at www.worldbank.org/research/conflict/papers/lengthofwarv4.pdf, accessed 17 April 2007; Patrick Regan, "Third-Party Interventions and the Duration of Intrastate Conflicts," *Journal of Conflict Resolution* 46, no. 1 (2002): 55–73.

⁸ David Carment and Dane Rowlands, "Three's Company: Evaluating Third-Party Intervention in Intrastate Conflict," *Journal of Conflict Resolution* 42, no. 5 (1998): 572–99; Patrick Regan, "Choosing to Intervene: Outside Intervention in Internal Conflicts," *Journal of Conflict Resolution* 60, no. 3 (1998): 754–79.

⁹ Ted Robert Gurr, "Minorities and Nationalists," in Crocker, Hampson and Aall, eds., 163–188.

¹⁰ Paula Garb, "Ethnicity, Alliance Building, and the Limited Spread of Ethnic Conflict in the Caucasus," in David A. Lake and Donald Rothchild, eds., *The International Spread of Ethnic Conflict* (Princeton, NJ: Princeton University Press, 1998), 185–99.

¹¹ Mitchell, 166–94.

¹² *Ibid.*, 182.

¹³ It bears noting that Georgia considers North Ossetia to be simply "Ossetia," and prefers to call the South, which exists within the Shida Kartli province, the Tskhinvali region ("Regions and Territories: South Ossetia," BBC News, available at http://news.bbc.co.uk/1/hi/world/europe/country_profiles/3797729.stm, accessed 13 November 2006).

¹⁴ John MacKinlay and Evgenii Sharov, "Russian Peacekeeping Operations in Georgia," in John MacKinlay and Peter Cross, eds., *Regional Peacekeepers: The Paradox of Russian Peacekeeping* (Paris: United Nations University Press, 2003), 73.

¹⁵ Library of Congress Country Studies, "Moldova: The Armed Forces," available at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+md0068\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+md0068)), accessed 6 December 2006.

¹⁶ Jeff Chinn, "The Case of Transdniestri (Moldova)," in Lena Johnson and Clive Archer, eds., *Peacekeeping and the Role of Russia in Eurasia* (Oxford: Westview Press, 1996), 104.

¹⁷ Transdniestria's Russians accounted for only a quarter of the total Russian population in Moldova in the early 1990s. Library of Congress Country Studies, "Moldova: Ethnic

Composition," available at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+md0026\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+md0026)), accessed 6 December 2006.

¹⁸ Ibid. and Garb. Most of this section draws on Garb's analysis.

¹⁹ Marshall, 172. Marshall speaks in terms of third-party, state interveners, but the argument holds.

²⁰ A. Grachov, "First Step Must Be Taken—On Events in South Ossetia," *Pravda*, 21 January 1990, 2, trans. in *Current Digest of the Soviet Press* XLIII, no. 3 (1991): 30.

²¹ Nikolay Astashkin, "Sending of CMPC Volunteers Suspended," *Krasnaya Zvezda*, 2 September 1992, trans. in "Mountain Peoples' Confederation Seeks to Unite Caucasus," BBC Summary of World Broadcasts, 4 September 1992.

²² Liana Minasyan, "Caucasus: The CMPC Hasn't Declared War on Anyone—But the Fate of the Governments of the Northern Caucasus Republics Will Be Determined by Their Attitude Toward the Abkhaz Question," *Nezavisimaya Gazeta*, 6 October 1992, 3, trans. in *Current Digest of the Soviet Press* XLIV, no. 41 (1992): 14.

²³ Human Rights Watch, "War or Peace? Human Rights and Russian Military Involvement in the Near Abroad," December 1993, available at <http://www.hrw.org/reports/1993/russia/>, accessed 17 April 2007.

²⁴ Trevor Waters, "Russian Peacekeeping in Moldova: Source of Stability or Imperialist Threat?," in MacKinlay and Cross, eds., 143.

²⁵ OSCE, "Transnistrian Conflict: Origins and Main Issues," 1994, available at www.osce.org/documents/mm/1994/06/455.en.pdf, accessed 17 April 2007.

²⁶ See Charles King, "Eurasia Letter: Moldova with a Russian Face," *Foreign Policy* 97 (1994–1995): 111.

²⁷ All Union Radio, Mayak, 7 December 1991, trans. in "Moldovan Leadership Appeals to UN over Soviet Aggression," BBC Summary of World Broadcasts, 9 December 1991.

²⁸ D. Dyakov, "Snegur, Russian Leaders Don't Want to Whip up Tension," ITAR-TASS, 3 March 1992, trans. in BBC Summary of World Broadcasts, 5 March 1992.

²⁹ Gurr.

³⁰ Ibid., 178.

³¹ Monica Duffy Toft, "The Failed Transition in Georgia," in Hughes and Sasse, eds., 133.

³² Here I paraphrase Stuart J. Kauffman, "Spiraling to Ethnic War: Elites, Masses, and Moscow in Moldova's Civil War," *International Security* 21, no. 2 (1996): 118. Kauffman speaks of state patrons: "[T]he key role of foreign patrons is to help those groups who are inclined to fight get the means to do so. If the internal conditions for ethnic war are not present, foreign patrons can do little harm."

³³ Gurr, 178.

³⁴ Michael E. Brown, "Introduction," in Brown, ed., *The International Dimensions of Internal Conflict* (London: MIT Press, 1996), 28.

³⁵ Ibid., 29.

³⁶ Human Rights Watch reported that the Russian government "failed to investigate, let alone prosecute" reported cases of involvement and abuses by Russian troops stationed in conflict zones. Human Rights Watch, "War or Peace?," available at <http://www.hrw.org/reports/1993/russia/>, accessed 17 April 2007.

³⁷ According to Rossiski Vesti, as quoted by James Rupert, "Civil Wars in Ex-Soviet Republics Draw Russia Into Troubled Morass," *Washington Post*, 15 July 1993. A20.

Additionally, Russian troops in Georgia (up to 20,000, plus thousands of border guards) were “targets of harassment, thievery and bullets.”

³⁸ Interfax, 27 October 1992, trans. in “Georgian general accuses Russia of waging undeclared war,” BBC Summary of World Broadcasts, 29 October 1992.

³⁹ Chinn, 103–19.

⁴⁰ The US State Department estimated the number of displaced persons to be between 230,000 and 250,000. US Department of State, Country Reports on Human Rights Practices for 1993 (February 1994), 881.

⁴¹ For more on success and failure in mediation, see Marieke Kleiboer, “Understanding Success and Failure in International Mediation,” *Journal of Conflict Resolution* 40, no. 2 (1996): 360–89.

⁴² Edward Walker, “No War, No Peace in the Caucasus,” in Gary K. Bertsch et al., eds., *Crossroads and Conflict: Security and Foreign Policy in the Caucasus and Central Asia* (London: Routledge, 2000), 152.

⁴³ Garb expounds on the failure of Abkhazians in general to reciprocate Chechens’ intervention into their separatist conflict (Garb, 185–99). Though Garb would not agree, Walker claims this snub has “soured” relations between the North Caucasian groups (Walker, 163).

REFUTING THE DEMOCRATIZATION PEACE THEORY?

INTERNAL CONFLICT AND DEMOCRACY IN COLOMBIA AND PERU, 1990-2002

Jonathan Taylor

Peru and Colombia both faced severe internal conflicts between 1990 and 2002, in which guerilla groups challenged state sovereignty by contesting its monopoly of legitimate violence. Peru was able to defeat its insurgency during this time period through military and police actions, but Colombia was unable to resolve its conflict through either negotiations or military force. During this period, Colombia attempted to replace political violence with participatory democracy, while Peru's democracy self-destructed and the country reverted to authoritarianism. These outcomes are surprising in light of prevailing political science literature, which argues that democratization is the key means to resolve internal political violence. This article tests the hypothesis that literature supporting the democratization peace theory was counter-productive in these two cases. It does so by examining whether democratic depth was inversely related to the resolution of internal conflict. The article concludes that democracy was not causally related to the resolution of internal conflict, but that this variance in outcomes can be explained by two variables outside the democratization peace paradigm: the nature of the guerilla groups and the socio-economic structure of the rural provinces in which the insurgencies were based.

EXAMINING INTERNAL CONFLICTS THROUGH THE LENS OF DEMOCRATIZATION

The rapid shift by former communist states toward liberal democratic systems that followed the dismantling of the Berlin Wall led many to hope that all the world would soon resemble the United States and Western Europe.¹ During the 1990s, democracy and democratization became seen as central goals for the developing world, especially for countries transitioning out of authoritarianism or faced with endemic internal conflict. In those heady days, scholars who accepted the theory of the democratic peace² theory applied its assumptions—that democracy prevents political violence between nation-states—to internal conflicts. The theory advocates that internal political violence is caused by weak states with political systems that cannot peacefully accommodate internal power struggles, and thus actors

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resort to the use of armed force.³ These assumptions about democratization were combined with theories from conflict management literature, which emphasized that any durable conflict resolution requires solutions to the underlying political problems.⁴ Such conflict resolution scholarship advocated, particularly during the 1990s, that democratic norms and liberal institutions were a necessary part of any sustainable and durable political system. While not universal in the conventional conflict management literature,⁵ the combination of these two trends predominated and created a paradigm that can be called the democratization peace theory.

This theory is strongly challenged by the experiences of two South American countries beset by internal conflicts during the 1990s. Peru and Colombia both faced sizeable internal insurgencies by communist guerilla groups as the Cold War ended, and, contrary to expectations, both conflicts intensified in the early 1990s. Colombia attempted to replace internal political violence with deeper democratic processes, following the recommendations of democratization theorists.⁶ Peru, on the other hand, suffered a breakdown of democratic governance when the freely elected President Alberto Fujimori used military force to shut down the legislature, eliminated the independent judiciary and centralized power around the executive branch and intelligence services. By the end of the decade Peru was able to crush its internal belligerents through military force and re-establish government sovereignty over the whole of its territory, while in Colombia the political violence intensified, despite efforts at both negotiations and military offensives, and the conflict continued into the twenty-first century. Close analysis, however, demonstrates that the level of democracy was not a significant explanatory variable in these two conflicts, thus indicating that the democratization peace theory—while not sufficient for prediction in these cases—is not as counter-productive as it might appear upon first glance.

Testing the Democratization Peace Theory

Peru and Colombia form an ideal pair of test cases to determine not only whether the democratization peace theory can be incorrect in describing the manner in which internal conflicts are abrogated, but also whether this theory can be counter-productive as a prescriptive measure. The background of these nations is quite similar, as are most potentially explanatory variables for internal conflicts. Both are *mestizo* nations whose societies are the product of a mixture of Spanish colonial conquest and indigenous cultures, and whose violent history is replete with economic oppression and racist policies enacted by a ruling white elite. Second, while there were racial overtones in the rhetoric of guerilla forces and anti-indigenous sentiment inherent in the national governments, these were not ethnic conflicts by any conventional definition of the term.⁷ While both states were liberal democracies in 1990, neither had strong, inclusive democratic institutions. Geographically, these countries have some of the world's highest mountains and densest rainforests, as well as the exceptionally high-altitude settlements of the *altiplano*. As of 1990, both faced an internal armed insurrection by groups claiming adherence to Marxist ideology with the avowed goal of the destruction of the state, and these guerilla forces controlled or perpetually contested the sovereignty of the government in certain areas.⁸

Most important, both conflicts were almost completely independent of external sources for support, as funding for guerilla groups came from the production and trafficking of narcotics, in particular cocaine.⁹ Cocaine trafficking is most commonly associated with Colombia's conflict, as almost all of Colombia's armed actors, from Marxist revolutionaries to reactionary paramilitaries, were involved in drug trafficking. Peru's armed conflict,

however, was also inextricably linked to the drug trade, and in 1990 Peru was the world's largest producer of cocaine and cocaine paste.¹⁰ Both of Peru's revolutionary forces were intimately involved in all aspects of the growing, processing and exportation of cocaine from Peru, and derived a large amount of their funding from these activities. A commonly held view regarding Colombia's continuing internal civil war is that the material benefits actors derive from their involvement in the drug trade—regardless of pretension to ideology—are what motivate the intractable nature of the struggle.¹¹ This theory might seem to have significant explanatory power in explaining protracted armed conflict in Colombia on its own, but in the context of the comparison between Peru and Colombia the economic opportunity variable is essentially held as a constant.

Hypothesis and Argument

This paper examines the following hypothesis: is there a causal relationship between the dependent variable of democratic depth and the independent variable of conflict resolution in the cases of Peru and Colombia from 1990 to 2002? As previously stated, the discovery of a causal relationship would not only contradict the democratization peace theory but indeed show it to be counter-productive. The causal mechanism of this hypothesis contains two parts corresponding to both potential means of resolving internal conflict: military victory or a negotiated, power-sharing resolution. With regard to military victory, democratic norms and processes could prevent aggressive action against rebel groups, prohibiting brutal military actions that violate human rights norms, including both the use of violence and judicial procedures that might be able to end the internal struggle. A second reason why democracy could inhibit the resolution of a civil war is its ability to complicate negotiations through fragmentation on the part of the government, which can tempt parties outside the governing coalition to undercut the negotiation process.

The dependent and independent variables studied in this work are clearly differentiated within each country. The independent variable that this paper measures is the resolution of internal conflict. Specifically, resolving the internal conflict is defined as establishing uncontested sovereignty by the state over the whole of its territory, without political violence by non-state actors that threatens the organized life of the community. By this definition, Peru's internal conflict was resolved in the period studied (probably by the end of 1997), while Colombia did not resolve its internal conflict by 2002 (and nor has it by April 2007). The dependent variable is the democratic nature of the national government for each country. While this paper will not dwell in depth on theories of democratic governance, in the two cases there were clear and undeniable trends toward democratic deepening in Colombia and democratic breakdown in Peru.

In testing this hypothesis against the factual background of events in Peru and Colombia from 1990 to 2002, this paper will argue that the test hypothesis is not sufficient to explaining the relationship between the dependent and independent variables—that is, the level of democratization (the dependent variable) does not significantly explain resolution of conflict (the independent variable). Thus, while in this case study there is not a counter-productive relationship between democratization and peace, nor is the democratization paradigm capable of explaining whether or not these conflicts were resolved. To explain this variance we must operate outside the democratization peace paradigm and examine two non-tested variables to explain the variance in outcomes: the structure, cohesiveness and ideology of the anti-government guerilla groups, and the socio-

economic structure of the rural and provincial areas, as this structure determined the character and motivations of regional self-defense forces.

The first and most important explanatory variable, which is not included within the democratization peace paradigm, is the nature of the guerrilla groups. The ideological and unitary nature of the guerilla forces in Peru made military victory possible, while the fragmentation of Colombia's rebel groups strongly encouraged prolonged conflict. Peru's Shining Path (Sendero Luminoso)¹² was an extremely rigid hierarchal organization based on a monolithic Maoist ideology that created a cult of personality around its leader, Abimael Guzman. The ideological fervor of the Shining Path's leadership made it impossible for the government to reach a negotiated settlement, which left a military victory as the only viable resolution to the internal conflict. The Shining Path's ideology also led it to make strategic mistakes that undermined its support amongst the populace and allowed the military to eventually press its advantage, while the deification of its leader left the organization vulnerable to marginalization once Guzman was captured. In contrast, Colombia's guerilla groups had neither rigid hierarchical structures nor idolization of a revolutionary leader. Far from being monolithic in any sense, there were two Colombian guerilla groups with serious fighting capacity and each faced a significant degree of internal fragmentation. Such fragmentation made both negotiations and military victory more difficult, as there was always a different group of armed actors ready to fill the void whenever another was co-opted or defeated.

The second explanatory variable this paper proposes is the socio-economic structure of the rural areas of the countryside of the two nations. Colombia has always had a rural elite, based on the fact that coffee plantations, cattle ranches and haciendas in the Colombian countryside are highly profitable. The advent of cocaine cultivation was merely an addition to the already profitable industries that already existed. Peru, on the other hand, has never had a rural elite. Land in Peru's highlands and jungle, where the rebellion was centered, is not naturally profitable for agrarian purposes. This lack of a rural elite allowed the peasant class to create self-defense forces in Peru that helped re-establish government sovereignty without them becoming strong independent actors, thus making them part of the solution rather than part of the problem. In Colombia the rise of self-defense forces began as a means to combat violence perpetuated by the anti-government revolution groups, but they soon grew into paramilitary forces as agents of the landowning elites, who had the means to make them significant fighting forces. After the democratic deepening began, they were used as a means to outsource the counter-insurgency campaign.¹³ Fragmentation and fighting between the paramilitaries and the guerillas has made a negotiated solution far more difficult, and indeed the government has had to create a separate peace process to neutralize these ostensibly pro-government groups. The major difference between the cases is that with no rural elites and no profit-making enterprises from the land in Peru, there were neither the demand nor the resources to form private armies.

DEMOCRATIC BREAKDOWN AND THE FALL OF THE SHINING PATH IN PERU

Origins and Beliefs of the Shining Path

The ideology of the Shining Path had its origins in a period of military rule in Peru during the 1970s, but the organization did not conduct its first operations until the restoration of democracy in 1980. That the Shining Path gained prominence just as Peru was poised to return to a fully democratic system suggests that this revolutionary movement was from

the beginning not one that could easily be pacified or co-opted by democratic governance.¹⁴ While guerilla movements arose in every Latin American country following the success of the Cuban revolution, the Shining Path represented a dramatically different type of revolutionary group from the romantic struggle epitomized by Che Guevara.¹⁵ With its emphasis on ideological purity, its cult of personality, its rigid hierarchical structure and its tolerance, even zeal, for mass murder in the pursuit of its revolutionary aims, the Shining Path bore more semblance to the Khmer Rouge of Cambodia or to such modern Islamic fundamentalist groups as Al Q'aida than it did to other Latin American revolutionary groups.¹⁶ Whereas previous guerilla movements fought in the name of greater representation, the Shining Path targeted the democratic process itself.

The Shining Path was founded as a Maoist offshoot of the Peruvian Communist Party, in a move led by Party Secretary Abimael Guzman, who was established as the group's founder and undisputed leader (both ideological and organizational).¹⁷ Guzman's followers declared him to be the "fourth sword" of Communism, following Marx, Lenin and Mao, as the focal point for a new worldwide revolution.¹⁸ Guzman was a professor of philosophy and education at the University of San Cristobal de Huamanga in Ayacucho, where he held an almost hypnotic power over many of the students and faculty.¹⁹ From their ranks, he organized a disciplined cadre of revolutionaries, ready for ideological and eventually military operations in the countryside. At the same time as the ideological message was taking hold, the revolutionary core at Huamanga was preparing for military operations that they called the "Popular War."²⁰ The first phase of the Shining Path's insurgency coincided with Peru's economic collapse during the 1980s,²¹ while policies pursued by President Alan Garcia (from the traditional APRA party) plunged the country into hyperinflation and severe recession.

The abject failure of the state to provide for economic security made the claims of the Shining Path more appealing to the impoverished rural masses, particularly in the Quecha-speaking highlands.²² To many in these areas, the state was a distant abstraction, and the political parties were agents of the white, Lima-based elites who had been exploiting indigenous people since the Spanish conquest. At the same time, the state's internal intelligence apparatus was all but non-existent, making military counterinsurgency efforts ineffective or counter-productive.²³ In the late 1980s, once the Shining Path began to take control of territory in the highlands, the Garcia administration responded by strengthening its intelligence apparatus. However, the continuing economic crisis, the dismal performance of Garcia as president and the deteriorating security situation exacted a heavy toll on the democratic institutions of the country and created a situation ripe for democratic breakdown.

From Strategic Equilibrium to Complete Collapse

In early 1990 the Shining Path made a strategic decision to take the revolutionary struggle to the capital, with systematic bombing campaigns in Lima that targeted economic and political elites. In public statements Guzman declared that the Shining Path was moving to consolidate its strategic equilibrium and to create a situation in which it could pursue a final offensive that would lead to the destruction of the Peruvian state. In line with the millenarian ideology of the Shining Path, this decision was an inevitable byproduct of its success in gaining control over sections of the highlands and establishing itself as a serious military force in many parts of the country.²⁴ While the shift towards consolidating strategic equilibrium frightened the populace,²⁵ it ultimately led to the rapid and complete downfall of the Shining Path movement. The offensive weakened the Shining Path's presence in the

rural communities where it had received significant support during the 1980s. During the resulting military crackdown on Shining Path-held areas, the cadres of Senderistas no longer had enough of a presence to protect these communities against the military forces. This development shifted the center of gravity of the political support away from the Shining Path and gave the government's strategy of using peasant self-defense groups—the Rondas Campesinas—the chance to succeed.²⁶

In early 1992, rising Shining Path violence, particularly in the capital, precipitated a serious political crisis that led to the breakdown of Peru's democracy. One result of the economic deterioration of Peru in the late 1980s was the weakening of the traditional political parties, Accion Popular and APRA, and their replacement by political parties that were merely temporary vehicles for individual candidates.²⁷ The vacuum in the political center allowed for the spectacular rise of Alberto Fujimori, an agronomy professor of Japanese origin who ran as an anti-establishment candidate and translated the national mood against the traditional political class into a stunning victory in the election of 1990.²⁸ A large proportion of the populace had come to the conclusion that democracy was an impediment to the fight against the Shining Path, believing this vicious foe could not be defeated by an institutionally weak democratic system.²⁹ The military, in its close alliance with the Fujimori government, was frustrated by the political establishment's conduct of the counterinsurgency operations, especially the judiciary, which it claimed was intimidated and easily bribed.³⁰ Fujimori and the military decided to grasp complete political control of the country by closing down the legislature through the use of force on 5 April 1992 in a move that has become known as the self-coup, or *autogolpe*.³¹

Between 5 April and 12 September 1992, the country was rocked by the most intense period of violence in the modern era, and to many it seemed like the gamble undertaken by Fujimori was backfiring. Outside assessments, including one by the RAND Corporation, concluded that there was a serious possibility that the Shining Path was going to win the guerilla war and take over the government.³² This situation, however, was dramatically reversed when government agents apprehended the leader of the Shining Path, Abimael Guzman, in a safe house in Lima on the morning of 12 September 1992.³³ It is difficult to overstate the importance of this event on the resolution of Peru's internal conflict, as the operation netted not only Guzman and other top Shining Path members, but also invaluable information contained on party members' identities and whereabouts. The operational capacity of the Shining Path was immediately degraded, while the trove of intelligence helped to increase dramatically the effectiveness of the government's counterinsurgency operations.³⁴ After several months of incarceration,³⁵ Guzman sent letters from prison stating that he wanted negotiations with the government, and in a television appearance renounced violence. These actions were crucial in completely demoralizing the remaining bands of Senderistas, and helped lead to an almost complete disassembly of the organization by 1995.³⁶ Despite avid claims by Fujimori that the *autogolpe* led to the capture of Guzman, in fact it was accomplished for reasons completely independent of the democratic breakdown, as it resulted from an intelligence-gathering operation begun under Garcia.³⁷ Indeed, Fujimori was out of town at the time of the capture and did not know about the operation until after Guzman was already in custody.

This issue of the judiciary was the one anti-democratic measure taken by Fujimori that contributed to the government's victory in this struggle. After the *autogolpe*, Fujimori created large-scale military tribunals and special civilian courts with so-called faceless judges, whose identity and appearance remained anonymous, in trying suspected Shining

Path and MRTA members.³⁸ Such a draconian solution to a real problem regarding the weakness and vulnerability of the judiciary led to the imprisonment of hundreds of innocent people and the systematic violation of the rights of all those accused of engaging in or supporting political violence.³⁹ Judicial impotence had created significant barriers to the previous resolution of the conflict through military and police force and aroused the ire of the security forces; thus, the weakness of democratic institutions helped lead to the democratic breakdown.

PROTRACTED CONFLICT AND DEMOCRATIC DEEPENING IN COLOMBIA

Internal Conflict and Limited Democracy

The internal political violence that gripped Colombia from 1990 to 2002 had older roots than that of Peru,⁴⁰ and many analysts argue that it is in fact the continuation of a process of political violence that has gripped Colombia for over a century.⁴¹ Two traditional elite-instigated parties, the Liberals and Conservatives, have fought violently for political control in Colombia, inspiring intense party affiliation within the Colombian populace. The period from 1946 to 1957 saw such intense political violence between these two parties that it is known simply as La Violencia (the Violence). This conflict ended with the creation of the National Front, a political power-sharing agreement between elites, which solidified the limited democratic nature of the Colombian political system.⁴² While this agreement was crucial in stopping political violence, by locking the elites into power it also blocked other forces from gaining access to the political system. Such a system, combined with the prevalence of extant locally-based armed militia groups, created conditions ripe for the rise of new armed political actors. Thus, unlike Peru's guerillas, who rose to prominence during a period of political openness,⁴³ Colombia's guerillas were fighting for access to (or control of) a closed, though formally democratic, political system.

Guerillas, Paramilitaries and Drugs: The Fragmentation of Armed Actors

In the period of the National Front, a great array of anti-government armed political actors gained prominence in Colombia, of which only the Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) remained significant forces after 1990.⁴⁴ The violence perpetuated by these insurgent groups led to the creation of anti-guerrilla paramilitary forces of various stripes, which came together under the loose umbrella organization United Colombian Self-Defense Forces (AUC) in 1997.⁴⁵ From the beginning, these armed actors were intertwined with the interests of the rural landowning class and the provincial elites.⁴⁶ In 1965 the Colombian government began arming citizens after a presidential decree that legalized the creation of private armies for self-defense.⁴⁷ While this law was revoked in 1989 as part of negotiation efforts, it became impossible to put the genie back in the bottle, and private militias became the rule in Colombia.⁴⁸

The government saw paramilitary actors as a means of helping the military in counterinsurgency operations,⁴⁹ and, despite the revocation of their legal status, after 1990 these paramilitary actors gained a more prominent role fighting the guerillas. As part of this effort, the government established a new self-defense program, known by its acronym CONVIVIR ("to live together"), which was envisioned as a lightly armed civilian force that could help reassert government authority while avoiding the creation of more violent, drug-funded paramilitary organizations.⁵⁰ This effort was designed to be more like the Rondas Campesinas in Peru, but it failed, as the CONVIVIR groups became close to the paramilitary apparatus and were disbanded in 1997. This process coincided with a change

in the mission of the paramilitaries, as they became forces focused on maintaining the economic status quo and fighting against democratization efforts,⁵¹ increasing involvement with the drug trade and becoming the primary source of human rights abuses.⁵²

Democratic Deepening as Conflict Resolution: The Constitutional Assembly

The presidential election of 1990 was an extremely contentious one, as three major candidates were assassinated in the run-up to the election. The struggle for peace and security in Colombia became the top campaign issue, and, in a separate ballot initiative, Colombians voted overwhelmingly to reform the constitution so as to address the political crisis and the violence that was overtaking the country.⁵³ Cesar Gaviria was elected and followed through with the mandate given to him by this plebiscite to convene a constitutional assembly (Constituyente) to write a new, more democratic constitution, one that shook up the traditional two-party system that had been the focus of political life for a century.⁵⁴ It is clear that constitutional reform was designed to replace political violence with a new participatory democracy, to be in the words of Gaviria a “tool of peace.”⁵⁵ It was, however, approved and implemented in 1991, just before Colombia’s internal conflict entered its most violent phase.

While this process was supposed to undercut support for guerilla groups by addressing claims of exclusion and disenfranchisement, the new system had the perverse effect of increasing the level of violence by outsourcing it to paramilitary organizations. While the constitution established more direct control over the military by the central government, there was an increase in the number of human rights abuses and incidences of violence, as reduced pressure on the FARC and ELN through official sources led to indirect repression by the paramilitaries.⁵⁶ While this was a direct consequence of democratic reforms, it in fact refutes the argument that Colombia’s democratic deepening prevented the use of brutal tactics that would be necessary for the government to achieve military victory. Anti-guerilla violence became harsher but did not lead to the destruction of the anti-government forces. Instead, such violence helped to entrench the paramilitaries as independent actors free of government control.⁵⁷

The democratic deepening also coincided with the government’s successful efforts to destroy the major drug cartels between 1991 and 1994.⁵⁸ While this struggle eliminated these armed groups, it also opened up space for the political actors to gain more control of the drug trade, and the fragmented nature of the armed political actors (both guerilla and paramilitary) meant that organized drug production and trafficking in Colombia continued.⁵⁹ With the prevalence of multiple armed factions, any military operation that succeeded against a certain faction created space for a different armed faction to fill the vacuum.⁶⁰ The state proved that it was not strong enough to prevent armed actors from taking control of territory, and the ruthless violence and drug trafficking by the paramilitaries showed that such self-defense forces could not be relied upon to reassert government sovereignty.

Return to Negotiation: The Pastrana Period

The Conservative candidate Andres Pastrana attempted to solve Colombia’s internal conflicts through direct negotiations with the FARC and ELN. He created *la zona de despeje*, the demilitarized zone, which was designed to give the FARC breathing space for negotiations and to dampen violence, and gained significant United States funding and support for measures designed to combat the narcotics trade.⁶¹ Pastrana had a strong popular mandate to make peace, but after two years of dialogue, the negotiations broke down, as

factions within the FARC continued to carry on with business as usual.⁶² Negotiations were finally cut off completely when the FARC hijacked a plane and kidnapped the President of the Senate's Peace Commission on 20 February 2002. The failure of negotiations with the FARC during the Pastrana period has received extensive analysis within the conflict management literature.⁶³ The failure has been blamed on many factors, such as: the overwhelming economic benefits of the cocaine trade; the lack of a mutually hurting stalemate; insufficient international support; the fragmentation of the rebel groups; an undermining of negotiation efforts by political opposition parties; the lack of government actions against paramilitary forces; and the normalization of violence within Colombia.⁶⁴ Of these variables, there are only three factors that must be addressed to elucidate the comparisons to Peru and the argument of this article regarding democratization peace theory.⁶⁵

The first of these factors is the fragmentation of the armed political actors. This explanatory factor supports this article's argument that the nature of the guerilla forces is the most important variable explaining conflict resolution in Peru and Colombia, as this fragmentation helped to frustrate any negotiated or military resolution to Colombia's conflict. This fragmentation of the armed groups was twofold, as there were more armed actors with serious military capacity in Colombia than in Peru, and as each segment of the same group contained many separate and feuding factions. The second factor is the role of the paramilitaries in prolonging the conflict, harming rather than supporting efforts to reassert governmental sovereignty. The paramilitary groups in Colombia presented a significant obstacle to a negotiated resolution, as the rebel groups claimed that they were hesitant to disarm and demobilize while their blood enemies, the paramilitaries, were still armed and active.⁶⁶

Finally, the role of opposition parties is important in determining whether the democratic deepening caused by the new constitution hindered Colombia's efforts to end its internal conflict. In analyzing the facts of the breakdown, it seems unlikely that the democratic deepening had a significant impact on the level and degree of political opposition to Pastrana's peace process. In fact, there was strong political support across the spectrum for making concessions to the FARC, and it was only after the process failed to stop systematic violence by the FARC that Pastrana lost political support.⁶⁷ Furthermore, the strongest political opposition did not come from outside the traditional political parties but from within, and while the democratic changes may have increased incentives for dissent within the system, there is no compelling evidence that this is the case.⁶⁸

CONCLUSION

The hypothesis this paper tests—that democracy can be an impediment to resolving internal conflicts—runs contrary to the commonly held assumptions of many political scientists, particularly those scholars who study democratization theory and apply it to conflict management. Despite the circumstantial evidence suggesting that the internal conflicts in Colombia and Peru directly contradict this democratization peace theory, there are two key structural factors beyond democratization variables that strongly favored the resolution of Peru's conflict through governmental military victory and the prolongation of conflict in Colombia. First, the nature of the armed political actors varied substantially. In Colombia, the fragmented, non-hierarchical nature of the anti-government guerillas made both military and negotiated resolutions difficult, while the rigid hierarchical and ideological structure of the Shining Path made the organization vulnerable to defeat. Second, the economic

structure in Peru allowed for the peasant self-defense forces to reassert government sovereignty once the Shining Path had lost the support of the rural population. Self-defense forces in Colombia, even those supposedly lightly armed and close to the civilian population under the CONVIVIR program, were easily co-opted by landowning elites and acted independently of state interests, making negotiated or military resolution vastly more complicated.

Despite the fact that this article argues that democratization peace theory is not counter-productive in this case, there are some uncomfortable lessons in the comparison of Peru and Colombia for scholars of conflict management. While the variables of democratic breakdown versus democratic deepening are not crucial in explaining the variance in outcomes in these two countries, they do not necessarily support the idea that respecting human rights and democratic processes is the only durable means for conflict resolution. First of all, the reform of the court system in Peru did increase the effectiveness of counter-insurgency efforts, at the price of serious violations of due process. Second, the constitutional assembly in Colombia did have some effect on prolonging the conflict by giving the paramilitaries the opportunity to fill a void caused by the military's retreat, and this fostered intractable conflict between paramilitaries and the guerrillas. A final note on these lessons, however, is that these casual mechanisms are not inherent to democratic norms, but are rather the result of weak democratic institutions, particularly the armed forces and the judiciary. Indeed, it is arguable that the only possible permanent solution for both of these weaknesses is to strengthen and institutionalize democratic processes, rather than diluting or eliminating them.

NOTES

¹ This concept became embodied most famously in the phrase "the end of history," after the title of Francis Fukayama's book of the same name.

² Democratic peace theories are based on Immanuel Kant's concept of perpetual peace. For modern explorations of this concept, see Michael Doyle, "Kant, Liberal Legacies, and Foreign Affairs, Part 1," *Philosophy and Public Affairs* 12, no. 3 (1983).

³ See Peter Harris and Ben Reilly, eds., *Democracy and Deeply Rooted Conflicts* (IDEA, 1990); Andrew Reynolds, ed., *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy* (Oxford: Oxford University Press, 2002). This theory also owes much to Charles Tilly's work, in particular *From Mobilization to Revolution* (Reading, MA: Addison-Wesley, 1978).

⁴ See I. William Zartman, *Cowardly Lions* (Boulder, CO: Lynne Rienner, 2005). The introduction lays out the author's belief that effective prevention of civil wars relies on effective building of national institutions along democratic lines.

⁵ In particular, the democratization process has more recently also been seen as creating opportunities for internal conflict. See Michael S. Lund, "From Lessons to Action," in Fen Osler Hampson and David M. Malone, eds., *From Reaction to Conflict Prevention: Opportunities for the UN System* (Boulder, CO: Lynne Rienner, 2002), 158-83. Lund refers to the exacerbating of conflicts by imposing liberal western models before countries are ready for them "liberalization conflicts." While democratization and liberalization are not necessarily the same phenomena, in the context of post-Cold War conflict management for all intents and purposes they are describing the same process.

⁶ See, for instance, Harvey F. Kline, "The Attempt to Replace Violence with Democracy,"

in Howard J. Wiarda and Harvey F. Kline, eds., *Latin American Politics and Development* (Boulder, CO: Westview Press, 2000), 173-99.

⁷ While the belligerents in Peru and Colombia drew their largest support largely from non-white populations, in the minds of all participants the conflict was about ideology, class struggle and power distribution, not ethnic hatred.

⁸ Throughout this piece I will use the classical Weberian definition of sovereignty, "maintaining the monopoly on legitimate violence throughout a territory," as it relates to internal armed conflicts.

⁹ "[A] principal reason that the FARC in particular has resisted the involvement of outside actors appears related to the fact that, quite simply, it has not needed it." Cynthia J. Arnson and Teresa Whitfield, "Third Parties and Intractable Conflicts: The Case of Colombia," in Chester Crocker, Fen Osler Hampson and Pamela Aall, eds., *Grasping the Nettle: Analyzing Cases of Intractable Conflict* (Washington, DC: United States Institute for Peace Press, 2005). The Shining Path had similar attitudes towards external support. See David Scott Palmer, "The Shining Path in Peru," in Edwin Corr and Stephen Sloan, eds., *Low-Intensity Conflict: Old Threats in the New World* (Boulder, CO: Westview Press, 1993), 161.

¹⁰ Gabriela Tarazona-Sevillano, *Sendero Luminoso and the Threat of Narcoterrorism* (Washington, DC: Center for Strategic and International Studies, 1990). In 1988, coca cultivation in Peru's Upper Huallaga Valley alone was 211,000 hectares, while in 1990 only 40,000 hectares were cultivated in all of Colombia, according to the Government of Colombia and the US Department of State through the use of UNCDP Landsat and Spot satellite imagery.

¹¹ This argument owes much to the theories of Paul Collier, who developed the economic model of conflict, and those who have built upon this model. The economic theories of conflict de-emphasize grievances and disgruntlement as explanatory variables, and instead emphasize the correlation between economic opportunities in a conflict situation and alternative opportunities open to those who make up the core of the armed political actors. See Paul Collier, "Economic Causes of Civil Conflict and Their Implications for Policy," World Bank Thinking Paper, 2000. See also Mats Berdal and David Malone, eds., *Greed and Grievance: Economic Agendas in Civil Wars* (Boulder, CO: International Peace Academy, 2000).

¹² Formally, the Shining Path calls itself the Communist Party of Peru by Way of the Shining Path of Mariategui (El Partido Comunista del Peru por el Sendero Luminoso de Jose Carlos Mariategui) after the founder of the Peruvian Communist Party. The section on Peru's guerilla movements will focus almost exclusively on the Shining Path, also referred to simply as Sendero, as they were the only armed political actor to represent a serious threat to the state's sovereignty. The secondary guerilla group, the Marxist Revolutionary Army, or Tupac Amaru (MRTA), was weak militarily and politically, with its only significant violent act the occupation of the Japanese embassy in 1996-1997. According to the Peruvian Truth and Reconciliation Commission Report of 2003, the MRTA were responsible for only 1.5 percent of the violence in Peru during this period, compared to 60 percent by the Shining Path.

¹³ William Aviles, "Paramilitarism and Colombia's Low-Intensity Democracy," *Journal of Latin American Studies* 38 (2006): 379-408. Aviles refers to this as this phenomenon as the "privatisation of repression."

¹⁴ David Scott Palmer, "The Shining Path in Peru: Insurgency and the Drug Problem," in Edwin G. Corr and Stephen Sloan, eds., *Low-Intensity Conflict: Old Threats in a New World* (Boulder, CO: Westview Press, 1993), 151. Palmer points out that the Shining Path has continued its warfare in spite of three successive national democratic elections in which the largest legal Marxist party in Latin America participated heavily.

¹⁵ Carlos Ivan Degregori, "After the Fall of Abimael Guzman: The Limits of Sendero Luminoso," in Maxwell Cameron and Philip Mauceri, eds., *The Peruvian Labyrinth: Polity, Society and Economy* (University Park, PA: Pennsylvania State University Press, 1997), 179. He argues that the Shining Path represents "a radical point of rupture with the model of the Latin American armed struggle."

¹⁶ Degregori calls this Sendero's "Death Cult." Guzman famously calls for Peru to pay "the quota" for the revolution, meaning that the country would have to "cross the river of blood" to get to the other side of revolutionary triumph, which could cost one million lives, and that genocide was a convenient means of reaching this equilibrium.

¹⁷ Tarazona-Sevillano, 2.

¹⁸ Degregori, 1997, 188.

¹⁹ Degregori, 1997, 180. The city of Ayacucho is the provincial capital of Peru's poorest department (province), and development indexes rank it amongst the lowest of any region in the Western Hemisphere.

²⁰ Gustavo Gorriti, *The Shining Path: A History of the Millenarian War in Peru* (Chapel Hill, NC: University of North Carolina Press, 1999).

²¹ This economic collapse was caused by the Latin American debt crisis and the resulting "lost decade" which hit Peru particularly hard. See Cynthia McClintock, "The Decimation of Peru's Sendero Luminoso," in Cynthia Arnson, ed., *Comparative Peace Processes in Latin America* (Washington, DC: Woodrow Wilson Center Press, 1999), 225-27.

²² Some authors suggest that Presidents Belaunde and Garcia did not react strongly to the threat of the Shining Path because they were unconcerned about the plight of the highlands, and only took strong action when the Shining Path began a bombing campaign targeting the urban elites. This analysis, however, ignores the fact that both governments did in fact attempt a large number of counterinsurgency measures throughout the 1980s. Although these measures were overwhelmingly incompetent, it seems more likely that the central government underestimated and misunderstood the Shining Path threat rather than they were indifferent to it.

²³ McClintock, 231.

²⁴ The Shining Path in this phase did not seem to be motivated by economic or territorial interests but only in the pursuit of its vision of worldwide revolution. See Degregori, "Reflections," in *Comparative Peace Processes in Latin America*, (Washington, DC: Woodrow Wilson Center Press, 1999), 251-56.

²⁵ McClintock, 225.

²⁶ Both Presidents Belaunde and Garcia had attempted to establish peasant self-defense forces but both of these efforts did not provide the RCs with sufficient weaponry or political support to have an impact on the level of Senderista violence. Instead those charged with self-defense patrols were either co-opted or killed, thus further deepening resentment by the rural population against the government.

²⁷ Steven Levitsky, "Fujimori and Post-Party Politics in Peru," *Journal of Democracy* 10, no. 3 (1999): 78-92.

²⁸ Maxwell Cameron, "The Eighteenth Brumaire of Alberto Fujimori," in Cameron and Mauceri, eds. "Polls showed that the characteristic that most endeared Fujimori to the electorate was his avoidance of any public affiliation with traditional political parties or politicians." Fujimori's popularity continued for the first two years of his presidency, which were marked by a drastic austerity program that successfully curbed inflation. Despite the economic and societal pain caused by this austerity program, known as the Fuji-shock, after several years of hyperinflation the Peruvian people supported these measures as a

means to bring about macroeconomic stability.

²⁹ The *autogolpe* was received with wild enthusiasm by a large majority of the Peruvian public, to whom the political class had been completely discredited in large part because of their failure to quell the insurgency. Cameron, 52-54.

³⁰ The military also feared prosecutions for human rights violations committed in the fight against the insurgents.

³¹ The *autogolpe* is generally considered to be a democratic breakdown, though it can also be viewed as a lessening of the democratic character of the Peruvian regime from a delegative democracy to a semi-democratic or so-called competitive authoritarian regime. Levitsky, 1999. See also Levitsky and Lucan Way, "The Rise of Competitive Authoritarianism," *Journal of Democracy* 13, vol. 2 (2002).

³² Degregori, 1997, 188.

³³ Instead of fighting to the death, Guzman is reported to have simply said "[i]t was my turn to lose" when he was apprehended. Degregori, 1997, 180.

³⁴ Some scholars mistakenly believed that the Shining Path leadership had created a strong enough cadre of secondary leaders that it would be able to continue operations unabated in the event of Guzman's capture. Tarazona-Sevillano, 23.

³⁵ Fujimori's decision to display Guzman in a cage in the center of Lima shortly after his capture has been viewed as both beneficial and harmful in the struggle against the Shining Path. Proponents say that, regardless of potential violations of human rights or humanitarian law, the display of Guzman appearing as a caged animal helped to destroy the noble image on which his cult of personality relied. Others point out that this attempt to humiliate Guzman allowed him to order the long-prepared-for offensive and outraged international public opinion.

³⁶ A band of Sendero holdouts, known as "Sendero Rojo," led by a leader named Comrade Feliciano, continued fighting through the 1990s, but they were unable to mount a serious threat to the state. Since 2000, Sendero factions have only been active in the coca-producing regions, with occasional spates of violence in other areas. Occasional fears of a broader Sendero revival, in particular following the 2003 bombing near the US embassy, appear to be unfounded. See Jeremy Weinstein, "A New Threat of Terror in the Western Hemisphere," *SAIS Review* 23, no. 1 (2003).

³⁷ Reputedly this psychological "breaking" of Guzman did not involve torture or any other "undemocratic" techniques, but rather prolonged discussions and negotiations with Guzman by Fujimori's disgraced and currently imprisoned spy chief, Vladimiro Montesinos. For a fascinating recounting of the interaction between Montesinos and Guzman, see Jane Holligan and Salley Bowen, *The Imperfect Spy: The Many Lives of Vladimiro Montesinos* (Lima: Peisa, 2003).

³⁸ Previous attempts had been made to create adequate legal means to try suspected militants, but these were overwhelmed by poor planning as well as by systematic intimidation and violence against the judiciary by the Shining Path. Tarazona-Sevillano, 79-98.

³⁹ Human Rights Watch, "Presumption of Guilt: Human Rights Violations and the Faceless Court in Peru," August 1996, available at <http://hrw.org/reports/1996/Peru.htm>, accessed 29 January 2007.

⁴⁰ This article specifically chose not to treat the history of internal violence as a variable in explaining the differences between Peru and Colombia's internal conflicts. It appears to the author that such a variable confuses cause and effect, as it essentially advocates that the cause of prolonged conflict is prolonged conflict. However, the extended nature and

historical roots of the conflicts are represented in the analysis of the nature of the insurgencies that is at the heart of the argument of the paper.

⁴¹ This has led one Colombian scholar to state that Colombians are “born with party identification cards attached to the umbilical cord,” even amongst the peasant class. Eduardo Santa, *Sociología política de Colombia* (Bogotá: Ediciones Tercer Mundo, 1964), 37.

⁴² Kline, 182.

⁴³ Palmer, 200-26. Palmer calls Peru “one of the most open political systems in the hemisphere” between 1980 and 1992.

⁴⁴ They are both known by their Spanish abbreviations. Formally the FARC is called the Fuerzas Armadas de Colombia—Ejército del Pueblo and the ELN the Union Camilista Ejército de Liberación Nacional. The FARC has its roots in communist factions that were fighting on behalf of the Liberal Party during La Violencia, which persisted after other militias ceased fighting. By 1966 these groups came together officially to form the FARC. The ELN was formed during the period of the National Front, and was founded by Catholic leaders inspired by liberation theology and the Cuban revolution.

⁴⁵ Known formally as the Autodefensas Unidas de Colombia.

⁴⁶ Mauricio Romero, “Paramilitary Groups in Contemporary Colombia,” in Diane Davis and Anthony Pereira, eds., *Irregular Armed Forces and their Role in Politics and State Formation* (Cambridge: Cambridge University Press, 2003), 178. Notably this also included the drug dealers turned landowners, who joined the provincial elites after accruing enough capital and power.

⁴⁷ Human Rights Watch, *Colombia’s Killer Networks: The Military-Paramilitary Partnership and the United States* (New York: Human Rights Watch, 1996).

⁴⁸ Kline, 191.

⁴⁹ Romero argues that the paramilitaries’ *raison d’être* passed through three stages: (1) from origins through the mid-1980s, retaliation funded by drug traffickers and economic elites for kidnapping and extortion by the guerillas; (2) from the late 1980s through the early 1990s, an anti-subversive project that relied on the complacency and collaboration of sectors of the armed forces; (3) by the mid-1990s, a movement to restore the rural status quo and resist any reforms that would change structures of power and wealth. Romero, 182.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Aviles, 379.

⁵³ Marc Chernick, “Negotiating Peace Amid Multiple Forms of Violence,” in Arnson, ed., 179.

⁵⁴ The constitution deepened democracy in four ways: it introduced every conceivable mechanism of direct democracy; it provided for the democratization of political parties, unions, universities and other power holders; it adopted a generous bill of rights; and it introduced greater electoral fairness rules, such as direct popular election of governors and free access to television for candidates and parties. Manuel Jose Cepeda, “Democracy, State and Society in the 1991 Constitution: The Role of the Constitutional Court,” in Eduardo Posada-Carbo, ed., *Colombia: The Politics of Reforming the State* (London: Institute of Latin American Studies, University of London, 2003), 73.

⁵⁵ Chernick, 180.

⁵⁶ Aviles, 381.

⁵⁷ Gary Hoskins and Gabriel Murillo, "Colombia's Perpetual Quest for Peace," *Journal of Democracy* 12, no. 2 (2001).

⁵⁸ In particular the government focused on the Medellin cartel of Pablo Escobar and the Cali cartels. Jennifer Holmes, Sheila Amin Gutierrez de Pineres and Kevin Curtin, "Drugs, Violence and Development in Colombia: A Department-Level Analysis," *Latin American Politics and Society* 48, no. 3 (2006): 157-84.

⁵⁹ Indeed, coca production reached its peak in 2000. In 1991 there were less than 40,000 hectares of coca production, which steadily increased to 160,000 hectares in 2000 and which then began to fall in part because of the huge influx of resources for eradication efforts from Plan Colombia, sponsored by the US government. Holmes et al., 161.

⁶⁰ Arnson and Whitfield, 247.

⁶¹ "Plan Colombia," the massive American aid package aimed at halting the flow of drugs from Colombia to the United States, went into effect in 2000, but was unable to bring about a resolution—negotiated or military—to the conflict. While a detailed study of Plan Colombia is not necessary for the argument of this work, it is important to emphasize a few things about this program. First of all, despite the original intentions of the program as a balanced effort of military aid, eradication programs, economic development and institutional strengthening, after the breakdown of the peace process with the FARC it came to represent more and more the search for a military solution to the conflict. Thus, the emphasis swung from a focus on a negotiated solution to a military one, and neither—even with considerable outside support—has been successful in resolving Colombia's conflict.

⁶² Arnson and Whitfield, 256.

⁶³ Ibid.

⁶⁴ Ibid.; Chernick, 179.

⁶⁵ The other variables can be dispensed with as follows: the benefits of cocaine trafficking, as explained earlier, is paralleled by the involvement of the Peruvian guerillas in the drug trade; the lack of a mutually hurting stalemate is certainly questionable from an empirical standpoint, is notoriously difficult to measure, and further has no analog in the Peruvian case; any international involvement was more than seen in the Peruvian case, and thus if it was insufficient (which seems highly unlikely as a causal factor), it is not relevant for comparative purposes; and the normalization of violence is not considered a dependent variable in this case study comparison because it confuses cause and effect.

⁶⁶ While there may well have been some degree of cynicism in this claim to avoid having to make compromises during negotiations, it is not an implausible argument given the history of the conflict and the nature of the hatred between the two organizations. Arnson and Whitfield, 240-46.

⁶⁷ This continuation of violence by the FARC is largely explained by the factors indicated above, especially the continued armed presence of the paramilitaries as well as inter- and intra-group competition for resources and legitimacy caused by fragmentation.

⁶⁸ Arnson and Whitfield, 232-36.

HIZBULLAH AND LEBANESE NATIONALISM

Faysal Itani

This paper examines the background and ideology of Hizbullah and, from that, attempts to determine whether or not Hizbullah is a Lebanese nationalist party. Special emphasis is placed on the “Lebanonization” path on which the group embarked in the 1990s and its comparison with the party’s core ideology. The paper then contextualizes the group in Lebanon’s current crisis and identifies the political implications of Hizbullah’s character on the group’s role in the crisis.

HIZBULLAH AND LEBANESE NATIONALISM

Much has been written and said about Hizbullah—its origins, doctrine and evolution within Lebanon’s Byzantine political system. The rise of the group—from a band of ragtag militants to a sophisticated paramilitary organization and political party—is a remarkable development in itself. Hizbullah is the modern success story of political Islam—a party that enjoys deep popular support among its own constituency while simultaneously instilling awe in its enemies. Hizbullah’s war on Israel and its subsequent liberation of occupied Lebanese land have made it the hero of the Arab street and helped in casting itself as a champion of Lebanese pride and sovereignty.

Recent developments in Lebanon, however, signify a period of uncertainty for the future of the Islamic party, in particular for its status as an armed force but also for its political legitimacy in the eyes of many Lebanese. Hizbullah has involved Lebanon in an unpopular war and embarked on a campaign to overthrow its elected government. As of now this effort has met with little success and has generated considerable backlash from several Lebanese groups, resulting in a political crisis for Hizbullah and for Lebanon as a whole. Because this crisis is rooted in conflicting visions of Lebanon’s future and regional mission—and because it involves two opposing camps brandishing the national flag in that vision’s name—it is compelling to ask: is Hizbullah a Lebanese nationalist party? Do

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its worldview and strategy aim to protect and advance the national interest as an ultimate priority?

It is the author's position that while Hizbullah's relationship with Lebanon and its people is complex and multi-layered, it is not ambiguous. A close reading of the party's doctrine and belief system demonstrates that Hizbullah is not a Lebanese nationalist movement, nor has it ever been one. In arguing this case, this paper will not attempt a critique of Hizbullah's political vision on practical or normative grounds. The author's aim is not to argue for or against Hizbullah's ideology but rather to show that the nation itself is not Hizbullah's ultimate focus, but rather a means to an end. This fact has important implications for public policy in Lebanon.

NATIONALISM DEFINED

An attempt to answer the paper's main question must begin with a definition of nationalism. Much can be written on the concept of nationalism itself. It is not the author's intention to attempt an epistemological exposition of the different schools of thought on nationalism. Nationalism in the sense that concerns the case at hand can be clearly defined: it is the idea of the nation as one's primary affiliation and identity.¹ Another supplementary definition describes nationalism as "the policy of asserting the interests of a nation, viewed as separate from the interests of other nations or the common interests of all nations."² Hizbullah's status as a nationalist party will be measured against these definitions.

THE LEBANESE SHIA

Hizbullah emerged in the chaos of Israel's 1982 invasion of Lebanon.³ Its ability to mobilize popular support and organize an effective military effort was rooted in several factors. The first was the domestic political context in which Hizbullah emerged, namely that of the Shia Muslim population of Lebanon. Long ruled by a quasi-feudal network of wealthy landowners, they had little voice in public affairs until the 1960s, when an Iranian-born cleric by the name of Musa Sadr began to nurture a Shia political identity in Lebanon.⁴ Hence, the Shia possessed at best a weak affiliation to the Lebanese state, a state that in any event had effectively ceased to function by the time of Hizbullah's emergence. Sadr's disappearance in 1978 under mysterious circumstances left a political vacuum among the Shia that Amal—the party Sadr's political and social activism created—and its increasingly fragmented leadership proved unable to fill.⁵

It was in this political climate that Israel invaded Lebanon in 1982. The Shia of Lebanon had long suffered from the presence of Palestinian militias on their land, which basically comprised South Lebanon and the Beqaa Valley.⁶ Thus they initially welcomed the Israeli army's destroying the Palestinian infrastructure in Lebanon. Soon, however, the continued Israeli occupation and a series of mistakes by the occupiers led to rising tensions with the Shia of Lebanon. That this tension and the clashes it produced broke out into a full-scale insurgency is partly due to developments in a distant, non-Arab country. These developments radically transformed the ideological map of the Middle East and subsequently that of Lebanon as well.

THE ISLAMIC REVOLUTION AND THE RISE OF HIZBULLAH

The Islamic Revolution of 1979 overthrew Iran's unpopular monarchy and replaced it with a revolutionary religious regime. Ayatollah Ruhollah Khomeini's ambitions to export

his revolution were stalled by Iran's ruinous eight-year war with Iraq. Following the outbreak of war and the resulting stalemate, Iran's leadership saw in Lebanon's Shia, and their struggle against Israel, an opportunity to spread the revolution and with it the battle against the West and its Israeli ally. Thus, following the Israeli invasion, it deployed a contingent of its Revolutionary Guards to the Beqaa area in Lebanon, where the fighters came in contact with and proceeded to train and arm Lebanon's Shia for a war against the Israeli occupation.⁷ Hizbullah would go on to fight this war with considerable success, compelling the Israeli army to withdraw unilaterally from Lebanon in May 2000 and boosting the party's standing among the Shia of Lebanon. Hizbullah was not the first or only party to mount a campaign of violent resistance to the Israeli occupation. But its discipline and commitment, coupled with the fact that the Israeli army occupied mainly Shia territory, meant that the bulk of the effort was borne by the Lebanese Shia and Hizbullah in particular. In parallel, ideological and strategic factors led Hizbullah to fight a series of battles with its Shia political rival Amal in the late 1980s over control of the sect's politics and its urban base in the suburbs of South Beirut.⁸ This fighting ended—along with Lebanon's civil war—in a Syrian-brokered settlement culminating in the 1990 Taif Accords.⁹

At this point, Hizbullah faced a series of difficult decisions over the direction in which to take the party in the context of a Lebanese national settlement and the resumption of an institutionalized domestic political process. The election of Hasan Nasrallah as Hizbullah's Secretary General in 1992 was to have profound effects on the choices made by the party and the subsequent path on which Hizbullah embarked in the 1990s. The Taif settlement in particular signified the consolidation of Syrian hegemony—ensured by the presence of 30,000 Syrian troops—in Lebanon and of Syria's constraining influence on Hizbullah activities and strategy.¹⁰ Although Hizbullah gradually accommodated itself to the changes brought by Taif and the Pax Syriana, it was under Nasrallah that the party began to display its penchant for pragmatism and to come to terms with the political realities of Lebanon. Nasrallah publicly toned down the Islamic agenda of Hizbullah and molded its image into that of a national resistance party fighting to liberate Lebanese territory from Israeli occupation. Nasrallah's decision to allow Hizbullah to participate in Lebanon's 1992 parliamentary elections represented another step in integrating the party with national affairs. He reasoned that political participation would serve "to prove to friends and foes alike that Hizbullah is not a group of combatant youths, but a popular trend with a vast base in Lebanon."¹¹ This step can be said to have symbolized the beginning of the "Lebanonization" of Hizbullah.¹²

Nasrallah took a series of other steps in the following years to integrate further Hizbullah into the Lebanese mainstream and bolster its image as a national party with local concerns and interests. Especially prominent was his escalation of a massive social welfare and media program aimed at mobilizing and winning over the Lebanese Shia and funded primarily by the Islamic Republic of Iran.¹³ Hizbullah's construction group Jihad Al-Bina undertook massive development projects in South Lebanon, including supplying potable water to meet almost half of the area's needs. Hizbullah also extended agricultural assistance to farmers among the economically disenfranchised Shia.¹⁴ Efforts included a broad education program providing needy students with scholarships that in the year 2000-2001 amounted to over three billion US dollars.¹⁵ Hizbullah further entrenched itself in Lebanese life through its network of licensed media outlets, including the TV station Al Manar, a host of newspapers and the radio station, Al Nour. This media wing continues to employ hundreds of people, broadcast Hizbullah ideology and commentary and attempt to

win over the Lebanese.¹⁶ Al Manar in particular garnered a wide viewership—particularly amongst Lebanese Shia—and was beamed by satellite across the world.

Above all, the core of Hizbullah's Lebanonization and its battle for hearts and minds has been its successful resistance against a resented Israeli occupation. It is difficult to overstate the magnitude of this achievement and the perception of it in the eyes of Lebanese. To them, the Israeli withdrawal from Lebanon represented a major defeat for the seemingly invincible Israeli military and was hailed by Hizbullah as "the first Arab victory in the history of the Arab-Israeli conflict."¹⁷ Admiration for the group's perceived victory over Israel was by no means limited to the Shia, although the loose national consensus over Hizbullah's war against Israel would begin to weaken following the Israeli withdrawal in May 2000.¹⁸ Hizbullah itself made good use of its victory and the resulting political capital and pitched the resistance as a legitimate national endeavor as much as an Islamic one. Significantly, when other political figures began to question its continuing battle against Israel in the Shebaa Farms after May 2000, Hizbullah was quick to accuse its detractors of a lack of patriotism.¹⁹

Thus, Hizbullah made a series of strategic and tactical decisions—particularly throughout the 1990s—that carefully bolstered the party's image as an integral part of the Lebanese nation. The party was able to cast itself as a protector of Lebanon and its people and as a mainstream participant in the country's polity and society.

ISLAM AND AL WALI AL FAQIH

Hizbullah's political choices, however, are only part of the picture. A solid understanding of who the group is and how it sees the world and nation is needed if we are to assess its status as a Lebanese nationalist party. For this, we must look to the statements and official doctrine of the party and not merely to its pragmatic choices in recent years.

Like many Islamist parties, Hizbullah holds Islam and its revelation through the message of the Prophet Muhammed and the Holy Quran to be the true and final message of God to mankind. Islam is seen as comprehensive and all-encompassing. For Hizbullah, political participation is integral to being Muslim—indeed, anyone who divorces himself from worldly affairs is not considered a Muslim at all. Thus, public affairs are at the heart of the Hizbullah reading of Islam and the Quran, both of which are seen as doctrines of worship with direct relevance to the individual, society and authority—including that of the state. It follows that the establishment of an Islamic state is by definition the ultimate goal of the true Muslim, as outlined in Hizbullah's "Open Letter" of 1985. This state must, however, be established through free public choice and the consent of the governed as there is "no compulsion in religion."²⁰ This statement was an early sign of Hizbullah's coming to terms with the multi-sectarian fabric of Lebanon's society and its demand for a modicum of pluralism.

Hizbullah adheres to the Shia school of Islam as an ideology rather than as purely a sectarian identity.²¹ The sect emerged during a split within the ranks of Muslims over the succession of power in the Islamic Umma (the Islamic term for the universal community of Muslims) following the death of the Prophet Muhammed. A number of political and ideological developments led the Shia to adopt a doctrine of political quietism and aloofness from public affairs throughout most of their history. First, the Shia sought to protect themselves against persecution at the hands of the Sunni hegemony that prevailed throughout most of Arab history. Second, and more fundamentally, the Shia came to believe that a series of holy men, the Imams, were the only ones worthy of leading the Islamic Umma.

The last of these Imams is believed by the Shia to have gone into occultation to return one day and establish justice for Muslims in this world, the implication being that until then it is pointless and wrong for Shia to involve themselves in affairs of the state—a doctrine known as quietism.²²

All this was turned on its head with the Iranian Revolution of 1979 and the coming to power of Ayatollah Khomeini. Khomeini and his clerical establishment rejected Shia quietism, insisting that the time for political action was now. According to this philosophy, rightful rule rests with the Jurist-Theologian—or Al Wali Al Faqih—as the leader and commander of all Muslims. This doctrine, to which Hizbullah adheres, holds the nationality of this leader as irrelevant. His authority extends to all Muslims and transcends geographic and natural borders.²³ Indeed, for Hizbullah, Al Wali Al Faqih personifies the continuation of the spiritual authority of the Prophet Muhammed himself and that of the infallible Imams that followed him.²⁴

Until his death in 1989, Ayatollah Khomeini himself assumed this authority, to which Hizbullah pledged allegiance and obedience. This authority is now personified in Ayatollah Ali Khamenei, whom Hizbullah continues to hold as the true and final authority of the Islamic community—one whose leadership encompasses all Muslims and to whom allegiance is an “obligation and commitment.”²⁵ It is important to note that Hizbullah retains a margin of “maneuvering room” in operational and tactical decisions in Lebanon.²⁶ This includes decisions about alliances, participation in electoral politics and the nature and direction of the jihad against Israel. Nevertheless, final authority and legitimacy stems from Al Wali Al Faqih, who remains the “custodian of the entire nation of Islam and whose power of command is not confined to any circle within it.”²⁷ Thus, while Hizbullah retains the option of choosing the mode of confrontation and holy struggle with any enemy, it is Al Wali Al Faqih that designates who this enemy is and whether or not defensive jihad is obligatory for his followers.²⁸

Thus, Hizbullah is not, as recent accusations charge, loyal to Iran and subservient to its national interest. Rather, the party pledges full allegiance to Al Wali Al Faqih, who happens to be Iranian. The relationship is rooted more in Hizbullah’s universalistic Islamist ideology than in any particular attachment to Iran as a nation-state.

SYRIA AND THE “SPECIAL RELATIONSHIP”

Hizbullah’s relationship with Syria has been the topic of much debate both within Lebanon and among foreign policy-makers seeking to understand the dynamic between the Islamic party and Syria’s ruling Baath regime. Accusations in Lebanon surrounding the party’s links with Syria have been particularly bitter lately, given the tensions that have characterized recent relations between the two countries. Thus, it is important to examine this relationship more closely in order to ascertain or disprove Hizbullah’s status as a Lebanese nationalist party.

The thoroughly secular nature of the Syrian Baath regime ruled out an ideological convergence and partnership between Hizbullah and Syria at the time of the party’s emergence in the early 1980s.²⁹ Syrian President Hafez El Assad—who effectively ruled Lebanon throughout the 1990s—chose to tolerate Hizbullah as a tool with which to exert pressure on Israel and agreed to serve as a conduit for Iranian money and weapons bound for the party. His patronage was not, however, unconditional. Indeed, the Syrian-sponsored Taif Accord of 1991 was imposed on Hizbullah despite the party’s opposition to its principles.³⁰ In the years that followed—a period of Syrian hegemony over Lebanon often

referred to as Pax Syriana—serious clashes broke out between the Hizbullah and the Syrian-installed Lebanese government in which Syria showed that it would not hesitate to use force to keep Hizbullah in line.³¹ Syria also pushed electoral laws in Lebanon that undermined Hizbullah in some cases and entered into peace negotiations with Israel—a path to which Hizbullah is vehemently opposed.

Nevertheless, the relationship—and Syria's support for Hizbullah's war against Israel both before and after its withdrawal from Lebanon in May 2000—endured for a number of years and continues to this day.³² Announcements of support for Hizbullah's resistance were frequent and pronounced throughout the period of Pax Syriana. Syria's suspected involvement in the murder of former Lebanese Prime Minister Rafiq Hariri seriously damaged its relations with several Lebanese parties. Yet Hizbullah remained steadfast in its praise for Syria—and the praise has been reciprocated. In the aftermath of the assassination of Hariri, following vocal calls from Lebanese for the withdrawal of Syrian troops from Lebanon and an end to its meddling in the country's politics, Hizbullah organized mass protests to affirm the party's appreciation for Syria's role in Lebanon. Syria in turn has backed Hizbullah's continued war on Israel and its opposition to Lebanon's government.

This is not to say, however, that Syria's loss of hegemony in Lebanon has not resulted in changes in the Syrian-Hizbullah relationship. Syria no longer retains the high level of control over Hizbullah that it once had.³³ Indeed, the current freeze in Israeli-Syrian peace talks, the pressure on Syria over its alleged role in killing Hariri, and Hizbullah's increasing regional popularity, including in Syria, following its strong showing against Israel in July 2006 may imply that it is Syria that needs Hizbullah and not vice versa.³⁴ Syria's beleaguered Assad regime might also be reluctant to jeopardize its much-needed relationship with Iran and may thus be obliged to continue providing material and political support to Hizbullah in Lebanon.³⁵

What is clear is that Hizbullah's relationship with Syria does not follow a slave-master dynamic (or vice versa). Hizbullah is not an ideological ally of Syria, nor is it a Syrian puppet, despite its reliance on the Assad regime for arms and materiel. There are reports that Bashar Assad himself may have personal admiration for Hizbullah party leader Hasan Nasrallah.³⁶ Regardless, the Syria-Hizbullah marriage has always been and remains a marriage of convenience and, increasingly, one of equals. The evolution of this bond will depend heavily on the shape of events in the region and within both Lebanon and Syria, but it is dubious to assert that Hizbullah's interests in and vision for Lebanon are by definition linked or identical to those of the Syrian regime.

HIZBULLAH: ISLAMIST, NATIONALIST OR BOTH?

The above examination of Hizbullah reveals a group with a rich and complex worldview and philosophy. There is a tendency to take cognitive shortcuts when describing such groups, particularly because they may seem extreme, militant or aggressive. Hizbullah may be all these things, but it is much more.³⁷ It is at once an Islamist party with close ties to Iran and a local actor, fully in touch with the Shia of Lebanon and their interests, fears and aspirations. It enjoys generally positive relations with Syria, and yet has made itself into an important local player able to survive—if not quite thrive—without the support of its neighbor. Its successful resistance activity against Israeli occupation has earned it the respect of Lebanese. Its extensive social network and welfare activities have earned it legitimacy among its constituency, and it would thus be wrong to exclude Hizbullah from

Lebanon's politics or to shun it as an outsider divorced from the affairs of its countrymen. One may not share Hizbullah's Islamic ideology or beliefs and may disagree with its praising Syria in light of recent developments in Lebanon, but the price of living in a free society is the tolerance of ideas and principles that one finds distasteful.

Yet this analysis is not intended as a critique of Hizbullah's policies or ideology. The morality of Hizbullah's cause and politics is a subject of much potential interest and debate, but it is not at issue here. Our concern is whether or not Hizbullah's claim to being a Lebanese nationalist party, with primarily the interests of Lebanon at heart, holds water. This study defined nationalism as a sense of allegiance to the nation and a pledge to preserve and advance its interests above all others—the idea of the nation as the primary affiliation and identity. Hizbullah's submission to the authority of Al Wali Al Faqih, regardless of the latter's national identity and political office, places the interests and convictions of an Islamic clergy before that of the nation. Hizbullah may feel genuine concern for Lebanon—for its territorial integrity and the interests of its citizens—or it may not. Regardless, true authority, legitimacy and supreme leadership are embodied in an establishment with no accountability to Lebanon, its state or its political process. Lebanon happens to be the country in which Hizbullah arose and established itself, and Hizbullah has shown an ability to be flexible in accommodating itself to the realities of the nation and its citizens. Lebanon itself, however, remains a means to an end—noble or otherwise.

This does not imply that Hizbullah is a tool of Iran, nor that it does not enjoy a certain degree of autonomy within the context of Lebanon's political system. Clearly it does, and will continue to do so as long as it can claim a modicum of support among its own constituency. Nor does Hizbullah's not being a Lebanese nationalist party suggest that the affairs of Lebanon—particularly those of its Shia Muslim population—are of no concern to it. There are compelling reason to believe that Hizbullah is genuinely committed to the cause of liberating Lebanese territory. Hizbullah's philanthropic efforts also speak to a concern for the well-being of its constituency, notwithstanding the fact that this commitment has translated into substantial political capital for the party. A lack of nationalism does not of course qualify a political party as immutably evil or treacherous. It does, however, imply the absence of a genuine nationalist sentiment toward the nation of Lebanon and a philosophy of working *through* Lebanon rather than for it.

THE IMPLICATIONS FOR LEBANON

Having established that Hizbullah is not a Lebanese nationalist party, it is imperative to examine the implications for Lebanon's current political crisis and Hizbullah's role in it as well as for the party's future in Lebanon. In order to do so, a brief overview of the current situation in Lebanon is warranted.

The roots of today's Lebanon crisis are deep and complex. The underlying tensions that led to it have prevailed in various degrees throughout Lebanon's post-civil war period. However, these tensions can be said to have boiled over with the assassination of former Lebanese Prime Minister Rafiq Hariri on 14 February 2005 in a massive explosion in the capital of Beirut.³⁸ The political developments that followed his killing drew the faultlines for today's political standoff, which pits a Hizbullah-led opposition against pro-government forces.

Both the UN investigation into the assassination and many Lebanese pointed the finger of suspicion at the Assad regime and its Lebanese allies. Spontaneous public demonstrations began to form in the days that followed the bombing, demanding the full

withdrawal of Syria from Lebanon and the truth behind the killing of Hariri.³⁹ These events—which came to be known as *Intifadat al Istiqlal* (or the “Cedar Revolution” in the West)—placed Hizbullah in an awkward position as a staunch ally of Syria. The party held its own demonstrations in the weeks that followed to show support for the regime in Damascus. Eventually a new government was elected towards the end of 2005 comprising anti-Syrians who worked to further undermine Syria’s political role in Lebanon and establish an international tribunal to try the killers of Hariri.⁴⁰ Pressure mounted on Hizbullah to distance itself from Syria and, more importantly, to surrender its weapons to the Lebanese government and integrate its armed forces with the Lebanese military. Hizbullah became less vocal in its support for Assad, but disarmament talks with the government quickly reached an impasse as tensions over Hizbullah’s future mounted.

It is against this backdrop that Hizbullah kidnapped two Israeli soldiers on the Lebanese-Israeli border in July 2006, provoking a war that killed hundreds of Lebanese and resulted in heavy damage to the Lebanese economy and infrastructure. Hizbullah managed to hold out against Israel for several weeks and emerged a victor in the eyes of its supporters in Lebanon and beyond. Other Lebanese, however, including the government, were resentful of the damage sustained by the country and saw Hizbullah’s continued war on Israel as dangerous adventurism rather than legitimate resistance. Accusations flew back and forth, with Hizbullah being accused of complicity with Iran and Syria and the government of protecting US and Israeli interests. Hizbullah soon embarked on a plan to overthrow the Lebanese government and replace it with one in which Hizbullah and its allies would have veto power over major national decisions. Mass protests were organized toward this end and continue until today, with the opposition refusing to drop its demands and the government vowing to remain in power. Hizbullah’s demonstrations and announcements say little about Islamic ideals and nothing at all about *Al Wali Al Faqih*. Instead, the opposition brandishes the flag of Lebanon and speaks out against sacrificing Lebanon to foreign interests. Its opponents contest that Hizbullah is acting not in the interests of Lebanon but of Syria and its patrons in Iran. Regardless of one’s views on the current political crisis, the tone of the opposition—led by Hizbullah but also comprising some Christian and Sunni Muslim groups—is for the most part strictly Lebanese, emphasizing national sovereignty, the protection of Lebanon from Israeli aggression and the importance of Hizbullah’s participation in Lebanese policy-making.

How can this be reconciled with the earlier examination of the party and the paper’s rejection of Hizbullah as a Lebanese nationalist party? The answer lies in the distinction between Hizbullah’s core leadership and its mass following among Lebanon’s Shia Muslims. As seen above, Hizbullah has expended much energy and resources on providing the historically disenfranchised Shia with services, protection against Israel and—perhaps most importantly—a strong and clear political voice in Lebanon’s confessional system. These are the sources of Hizbullah’s support among its constituency. Lebanon’s Shia are overwhelmingly concerned with their interests in Lebanon and the direction of the country, not with the decrees of *Al Wali Al Faqih* and the Iranian clerical establishment. They see Hizbullah as a source of dignity for the Shia sect but also for Lebanon itself in its struggle to liberate and defend its territory from Israeli occupation. It follows that the message the party propagates as an opposition movement must resonate with its constituency if it is to have any political impact—hence the emphasis on the national interest as opposed to militant Islam and the rule of Iranian clerics. Hizbullah, as we have seen, is not nationalist. But many of Hizbullah’s supporters may very well be.

This distinction has important implications for the political struggle in Lebanon today as well as for the country's future. Hizbullah's achievements in social services and the liberation of Lebanese land are impressive and even admirable. It has however become clear to many Lebanese that the party's continuing status as an armed force crafting an independent foreign and military policy poses a significant threat to the physical and economic security of Lebanon and the authority of its elected national government. A political party that pledges allegiance and obedience to an unaccountable actor—and a foreign one at that—is problematic in itself. Its existence as an armed entity outside the powers of the Lebanese state is doubly so. Yet any attempt to disarm Hizbullah, with its hundreds of thousands of supporters, by force would most definitely lead to civil war in Lebanon, which poses an acute dilemma for the Lebanese state.

It would seem that encouraging a gradual evolution in Hizbullah and among its leadership is a wise option. If the group undergoes a transformation in its philosophy or worldview, it may ultimately switch allegiance from Al Wali Al Faqih to Lebanon itself. Even if the party refuses to disarm, this would go a long way towards allaying the concerns of other Lebanese about Hizbullah's loyalties and long-term vision. Changes in party politics and strategy are by no means unprecedented. Islamist parties have in the past undergone significant transformations, such as the Egyptian Muslim Brotherhood's decision to participate peacefully in politics and give up armed struggle. Yet to ask Hizbullah to withdraw allegiance to Al Wali Al Faqih is to undermine the very core of its philosophy, indeed its very existence both ideologically and politically. It goes far beyond asking or hoping for a change of tactics and approach. It is akin to asking a committed communist to withdraw endorsement of the cause of the proletariat. This author remains skeptical towards the possibility of such a change in the ranks of Hizbullah and towards basing national policy on hopes of it coming about. This is not to say that a complete revision of core principles among Hizbullah's ranks is not a possibility—only that it remains a distant one at best.

It follows that Lebanon's main focus ought to be on Hizbullah's status as an armed militia unaccountable to the Lebanese state and, more specifically, on the political situation and popular support that allows it maintain this status. Current and future Lebanese governments should work peacefully to undermine Hizbullah's reasons for maintaining its militia and thus its ability to command support for this armed status. This will require a complex, multifaceted approach towards the Lebanese Shia in particular—and towards resolving Lebanon's conflict with Israel—that is beyond the scope of this paper. The author's point is that Hizbullah is not a Lebanese nationalist party and is unlikely to become one, and that the Lebanese must work on winning the hearts and minds of the party's supporters in full awareness of this fact.

NOTES

¹ Lowell W. Barrington, "'Nation' and 'Nationalism': The Misuse of Key Concepts in Political Science," *PS: Political Science and Politics* 30, no. 4 (1997): 713.

² Kenneth W. Terhune, "Nationalistic Aspiration, Loyalty, and Internationalism," *Journal of Peace Research* 2, no. 3 (1965): 277.

³ Adam Shatz, "In Search of Hizbullah," *New York Review of Books* 51, no. 7 (2004): 2.

⁴ Judith Palmer Harik, "Between Islam and the System: Sources and Implications of Popular

Support for Lebanon's Hizbullah," *Journal of Conflict Resolution* 40, no. 1 (1996): 44.

⁵ Ibid.

⁶ Augustus Richard Norton, "Changing Actors and Leadership Among the Shiites of Lebanon," *Annals of the American Academy of Political and Social Science* 482 (1985): 115.

⁷ Shatz, 2.

⁸ Magnus Ranstorp, "The Strategy and Tactics of Hizbullah's Current 'Lebanonization Process,'" *Mediterranean Politics* 3, no. 1 (1998): 118.

⁹ Shatz, 9.

¹⁰ Ranstorp, 117.

¹¹ Ibid., 116.

¹² Ibid., 103.

¹³ Ahmed Hamzeh, *In the Path of Hizbullah* (Syracuse, NY: Syracuse University Press, 2004), 60, 63 and 65. See also Ranstorp, 124; Shatz, 8.

¹⁴ Hamzeh, 51–52.

¹⁵ Ibid., 56.

¹⁶ Ibid., 59–60.

¹⁷ Shatz, 3.

¹⁸ UNSC Resolution 425 marked Israel's withdrawal from Lebanese territory, according to the United Nations. However, Hizbullah insists that Israel still occupies a strip of territory known as the Shebaa Farms, and proclaims the continuation of the struggle to liberate Lebanese land to this day. For more on the Shebaa Farms controversy, see Hamzeh, 96–98.

¹⁹ Judith Palmer Harik, *Hezbollah: The Changing Face of Terrorism* (London: I. B. Tauris, 2004), 153.

²⁰ Naim Qassem, *Hizbullah: The Story from Within* (Saqi, 2005), 21–31. This contrasts with rival party Amal's identity as a party for the Shia of Lebanon as opposed to an ideologically Shia party.

²¹ Ibid., 32.

²² Harik, 8–9.

²³ Qassem, 55.

²⁴ Ibid., 53.

²⁵ Ibid., 56.

²⁶ Ibid.

²⁷ Ibid., 57.

²⁸ Islam distinguishes between the defensive, or lesser, *jihad* and the greater *jihad*. The former is the obligation of all Muslims to defend the Islamic community from aggression, by military or other means. The latter refers to the "*jihad* of the soul," or the struggle through which one aspires to be a devout and proper Muslim.

²⁹ Shatz, 3.

³⁰ Ranstorp, 117.

³¹ Ibid., 119.

³² Qassem, 241.

³³ Hamzeh, 146.

³⁴ Ibid., 147.

³⁵ Ibid., 150.

³⁶ Shatz, 3.

³⁷ It is certainly possible that there exist divisions within Hizbullah itself over the direction in which to take the party. Yet Hizbullah has been remarkably consistent in its public positions, and this analysis proceeds on the basis of known facts rather than speculation on internal developments within Hizbullah. That topic in itself however merits further examination.

³⁸ For a full description of the developments leading up to and including the assassination, see Nicholas Blandford, *Killing Mr. Lebanon* (London: I. B. Tauris, 2006).

³⁹ For an overview of the protests and subsequent political developments, see Oussama Safa, "Lebanon Springs Forward," *Journal of Democracy* 17, no. 1 (2006): 1.

⁴⁰ Syrian troops withdrew from Lebanon in the weeks following the assassination.

PARADIPLOMACY: SCOPE, OPPORTUNITIES AND CHALLENGES

Stefan Wolff

Paradiplomacy refers to the foreign policy capacity of sub-state entities: their participation, independent of their metropolitan state, in the international arena in pursuit of their own specific international interests. It thus challenges a number of theories of the discipline of international relations, which do not normally consider sub-state entities as subjects of international relations, as well as states' traditional claim to sovereignty. Drawing on three West European examples, this article argues, however, that the paradiplomacy phenomenon is consistent with both international relations theory and state sovereignty when viewed through the lens of conflict resolution and autonomy.

INTRODUCTION

Paradiplomacy is a relatively new phenomenon and subject in the study of international relations. It refers to what one could describe as a foreign policy capacity of sub-state entities, their participation, independent of their metropolitan state, in the international arena in pursuit of their own specific international interests. This is a conceptually and practically challenging development. From a conceptual point of view the discipline of international relations does not normally consider sub-state entities as subjects of international relations; and from a practical point of view, states' claim to sovereignty,

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their unique right to engage with other players in the international arena, is, in a sense, hollowed out and perhaps fatally undermined if they have to share this essential prerogative of stateness.

Paradiplomacy as an emerging policy capacity of sub-state entities in general can be enjoyed by both the states, provinces, regions or *Länder* of federations and by the autonomous entities of otherwise unitary states. The latter are often established to overcome another, not uncommon challenge to state sovereignty—the demand for self-determination by particular communities that normally define themselves *qua* a distinct (ethnic) identity from the rest of a state's population and, as part of this, claim a portion of that state's territory as their own. Autonomy thus challenges state sovereignty at two levels—internally and externally—but at the same time offers a unique mechanism to turn these challenges into opportunities for constructive conflict management.

The overall argument of this article is that rather than seeing paradiplomacy as a threat, it should be embraced as a necessity and an opportunity in the process of managing and ultimately resolving what might otherwise be protracted self-determination conflicts—demands for self-determination by identity communities can often be met without the redrawing of existing state boundaries by granting enhanced powers of self-governance, including limited competencies in the area of external relations. Following a brief conceptual introduction to the meaning of autonomy, this paper explores the policy areas in which such entities participate in the international arena. It then makes some general observations about how opportunities and interests of the various actors involved determine the practical scope of paradiplomacy, and illustrates this with three western European examples—Flanders in Belgium, Catalonia in Spain, and Scotland in the United Kingdom. Finally, this paper returns to the question of whether paradiplomacy is indeed a challenge to state sovereignty and what its practical limits and opportunities are for contributing to the constructive management of self-determination conflicts.

AUTONOMOUS ENTITIES: A CONCEPTUAL DEFINITION

Before discussing the scope, opportunities and challenges that autonomous entities' participation in the international arena pose, it is necessary to define relatively precisely what we mean by such entities in order to conduct a meaningful comparison.

There is relatively little agreement among academics about the definition of autonomy. The discussion will be limited here to *territorial* forms of autonomy and will not discuss *corporate* autonomy, even though the latter theoretically, but rarely practically, could also pursue various forms of participation in the international arena.

The basic idea underlying the territorial concept of autonomy is that the autonomous entity is defined in territorial terms. Thus, a population living in a certain territory is granted autonomy without regard to which ethnic group the individuals belong. Territorial autonomy, in this most general sense, therefore describes self-governance of a demographically distinct territorial unit within an existing unitary state,¹ which comprises the following elements: (1) *demographic distinctiveness of autonomous entity*: the majority of the population, or at least a significant minority, is ethnically, culturally, linguistically or religiously distinct from the country's dominant group; (2) *devolution of power*: autonomous entities exercise legislative, executive and judicial powers independent of other sources of authority in the state in a significant number of substantive policy areas. These powers are exercised by the legislative, executive and judicial institutions of the autonomy, that is, by a regional assembly, a government, courts, and executive agencies under regional control,

including the police; (3) *legal entrenchment*: the status of the autonomous entity is normally constitutionally entrenched, and sometimes internationally guaranteed. At the same time, the country's constitution and its international obligations impose legitimate limits on the exercise of powers by the autonomous entity; (4) *limited powers of external relations*: autonomous entities will not normally enjoy traditional foreign affairs powers, but in some cases have limited authority to engage in international contacts that correspond to the substantive competencies that have been granted to them. In some instances, there may also be specific opportunities for the development of special links to cross-border cooperation and/or membership of particular international bodies; (5) *integrative mechanisms*: the powers of self-governance will typically be balanced with tools that ensure the continued and effective integration of the autonomous unit with the overall state. This includes the availability of dispute settlement mechanisms at the level of the constitutional court, arrangements for the transfer of resources between the center and the autonomous unit, and the guaranteed representation of the autonomous unit in the structures of national government.

Following this definition, we find entities that fulfill the majority of the criteria enumerated above on all continents. They are particularly numerous in Europe and less prominent in Africa. Examples include Nagorno-Karabakh in Armenia; Nakhchivan in Azerbaijan; Brussels, Flanders and Walloon in Belgium; the Federation of Bosnia and Herzegovina and the Republika Srpska in Bosnia and Herzegovina; the Faroe Islands and Greenland in Denmark; the Åland Islands in Finland; Corsica in France; Abkhazia, Ajaria and South Ossetia in Georgia; Aceh and West Papua in Indonesia; Valle d'Aosta, Friuli Venezia Giulia and Trentino-South Tyrol in Italy; Gagauzia and Transnistria in Moldova; the North Atlantic Autonomous Region and the South Atlantic Autonomous Region in Nicaragua; Guangxi, Inner Mongolia, Ningxia, Tibet, Xinjiang, Hong Kong, and Macau in the People's Republic of China; the Autonomous Region of Muslim Mindanao in the Philippines; the Azores and Madeira in Portugal; Nevis in St. Kitts and Nevis; Príncipe in São Tomé and Príncipe; Vojvodina in the Republic of Serbia; the Basque Country, Catalonia, Ceuta, Galicia, and Melilla in Spain; Darfur and Southern Sudan in Sudan; Gorno-Badakhshan in Tajikistan; Zanzibar in Tanzania; Tobago in Trinidad and Tobago; Crimea in Ukraine; Northern Ireland, Scotland, Wales, the Channel Islands and the Isle of Man in the United Kingdom; and Karakalpakstan in Uzbekistan.²

PARTICIPATION IN THE INTERNATIONAL ARENA: POLICY AREAS

Among the criteria listed above, (4) is obviously of particular interest for this comparative analysis. On the one hand, it makes clear that autonomous entities do normally participate in the international arena; on the other hand, it also begins to establish more clearly the scope of this participation. First, with very few exceptions, most notably Belgium and to a lesser extent Bosnia and Herzegovina, autonomous entities do not engage in traditional foreign policy. Rather, they have limited capacities to pursue policies in the international arena in areas in which they have substantive competencies to make decisions independently of, but within the existing constitutional framework of their metropolitan state. This situation mirrors a process that has been ongoing at the level of central governments for at least a decade: foreign ministries are no longer the exclusive provenance of foreign policy. Rather, as a result of, among other things, globalization and intensifying regional integration, subject ministries have come to develop their own foreign policies, most notably in the areas of economic and trade policy, the environment, agriculture and even more traditionally

domestic policy areas such as justice and home affairs. For example, Nakhchivan in Azerbaijan has agreements with other states to be a transit point for oil and gas from Iran toward the Caucasus. The Inner Mongolia Autonomous Region of China and the US state of California have agreements promoting cooperation in the areas of trade, business, culture and education. Similarly, Ningxia of China has built up trade relations with more than 60 countries and regions around the world. Macau, also in China, continues to develop relations and agreements with foreign states and regions, as well as international organizations, primarily in relation to its competencies in economics, trade, finance and monetary policy, shipping, communications, tourism, culture, science and technology and sports. Friuli Venezia Giulia in Italy has joint projects with four new European Union (EU) member states—the Czech Republic, Hungary, Poland and Slovenia—in which the sides exchange experts in various technical aspects of public administration. Gagauzia in Moldova and Tatarstan in Russia signed an Agreement on Trade, Economic, Scientific, Technical and Cultural Cooperation in May 1999. Macau has maintained economic and trade representatives in Lisbon, Portugal and Brussels, Belgium. A trade and cooperation agreement between Macau and the European Community (now the EU) was signed in 1992, when Macau was still a Portuguese colony. Interestingly, the Chinese government facilitated and encouraged the further participation of Macau in the international arena after China regained sovereignty over it, establishing a Forum for Economic and Trade Cooperation between China and Portuguese-speaking countries that convenes triennially in Macau. The Autonomous Regions of Madeira and the Azores in Portugal are able to participate in the negotiation of international agreements that Portugal intends to enter into and have the right to establish cooperative relations with foreign regional entities.

In addition to the above, criterion (4) also points to the fact that there are a number of cases in which autonomous entities enjoy special opportunities to engage in cross-border cooperation. This is particularly the case in instances where there are ethnic kin shared between (neighboring) states or where there are actual kin-states (states in which members of the same ethnic group form the titular nation). This practice is relatively well-developed and institutionalized in Europe. Northern Ireland, South Tyrol, the Åland Islands, Gagauzia, Crimea and Republic Srpska, to name but a few, have all established extensive forms of such cross-border relations. For example, South Tyrol in Italy has maintained very strong relations with Austria throughout the post-1945 period, and Austria has played a constructive role in resolving the conflict between the province and the Italian government over the implementation of South Tyrol's autonomy. Even before Austria's accession to the EU in 1995, extensive cross-border cooperation had developed, and in January 2006 a petition signed by 113 of 116 German-speaking mayors in South Tyrol was presented to the Austrian government requesting further protection and guardianship. The 1998 Agreement on Northern Ireland, which is part of a new Anglo-Irish Treaty, puts cross-border relations between the region and the Republic of Ireland on a firm international legal footing, and also provides the framework for broader cooperation among regions and states within the British Isles. Further to the east, the governor of Gagauzia in Moldova visited Turkey in March 2006 and met with senior Turkish officials, including State Minister Besir Atalay and Energy and Natural Resources Minister Hilmi Güler, to discuss Turkey's support for Gagauzia.

Within the framework of the EU, regional cross-border cooperation is also highly developed and institutionalized, including through various EU-sponsored cross-border, transnational and interregional projects (INTERREG). For example, the autonomous region

of the Valle d'Aosta in Italy participates in the Western Alps Working Community, or *Communauté de Travail des Cantons et des Régions des Alpes Occidentales* (COTRAO), which also plays an important role for cultural and educational cooperation between local authorities across borders. Together with its neighbouring French region of Rhône-Alpes, as well as eleven other European regions, Valle d'Aosta participates in INTERREG III B *Mediterraneo Occidentale* involving regions from six different EU member states and Switzerland. The region is also part of a smaller Italian-French inter-regional group, *Alpi Latine—Cooperazione Transfrontaliera* (ALCOTRA).

Finally, criterion (4) emphasizes that autonomous entities occasionally enjoy membership rights in specific international bodies. These can be regional organizations, such as the Nordic Council, which includes the Åland Islands of Finland, the Faroe Islands and Greenland of Denmark; subsidiary bodies of international or regional organizations, such as the Committee of the Regions, which is an advisory body within existing EU structures and contains virtually all autonomous entities in EU member states, as well as a wide range of other territorial entities from cities to federal states; and international non-governmental organizations, such as the European Bureau for Lesser Used Languages, which lobbies on behalf of Europe's minority languages, or the Unrepresented Nations and Peoples Organization (UNPO). In addition, autonomous entities are frequently given opportunities to send representatives to regional and international organizations, such as the UN and EU whenever these organizations, or their subsidiary organs, treat issues relevant to the autonomous entities. For example, the Nordic Council allows formal membership of autonomous organizations as equals of metropolitan states. This case is not unique. Hong Kong maintains its own delegation in several international organizations alongside China, such as the Asia-Pacific Economic Cooperation body, the Asian Development Bank, the Bank for International Settlements, the Copyright Clearance Center, the International Olympic Committee, the World Meteorological Organization and the World Trade Organization. Hong Kong is a corresponding member of the International Organization for Standardization and an associate member of the International Maritime Organization and the United Nations Economic and Social Commission for Asia and the Pacific, and maintains a branch of Interpol. The autonomous entity also sends its own delegation to international sporting events, such as the Olympic Games.

Thus, for the most part, autonomous entities participate in the international arena in areas in which they have substantive policy competencies. This often includes policy areas that are both symbolically and practically important for the preservation, development and expression of an ethnic group's identity (that is, their culture, education, language policy and religious practice) and areas in the general purview of territorial governments (that is, the economy, the environment, social policy and rural and urban development). Participation in the international arena is a consequence of increased levels of self-governance. Attempts by states to reassert full control over external relations are counter-productive in the sense that such attempts not only disrupt the peaceful coexistence of state and autonomous entity, but also seriously impede the ability of the autonomous government to govern effectively.

OPPORTUNITY AND INTEREST STRUCTURES

Having the legal ability to participate in the international arena and actually doing so are, of course, two different things. The degree to which autonomous entities are participating in the international arena depends essentially on how their opportunity and interest structures

are shaped. Opportunities in general have increased for non-traditional international actors such as autonomous entities, through globalization and its associated advances in communication, travel and trade; through a related proliferation of regional and international governmental and non-governmental organizations; and through the growing number of issues that can no longer be handled successfully locally or even nationally. However, this general trend says very little about the actual *policy capacity* that autonomous entities have to pursue policies in the international arena. Advanced regions, like the Åland Islands, the Belgian regions, Catalonia, Hong Kong, Macau, Northern Ireland or South Tyrol, have both the human and material resources to do so, but these are lacking in less developed regions, including Gagauzia in Moldova, Bougainville in Papua New Guinea, the Autonomous Region of Muslim Mindanao in the Philippines or the South and North Atlantic Autonomous Regions of Nicaragua.

In addition, interest structures also shape the way in which autonomous entities prioritize their international efforts. For example, an autonomous entity like South Tyrol is particularly active in its relations with neighbouring Austria (of which it was part until 1919) and within various EU-sponsored INTERREG programs, as these address both identity and economic issues important to South Tyrol. Northern Ireland has similarly intensive relations with the Republic of Ireland within the framework of the Council of the Isles (linking all devolved regions of the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland), but also across the Atlantic into the United States and Canada to maintain and utilize diasporic relationships. Hong Kong and Macau, on the other hand, have maintained a global network of trade missions and representations that they built up during their time as British and Portuguese colonies, respectively, and that facilitate the existence and expansion of their global economic links.

Flanders, Belgium

Belgium has a total of six governments (the Bilingual Region of Brussels, the federal government, the joint Flemish-speaking Region and Community, the French-speaking Community, the French Region and the German-speaking Community), which are equal to each other, but with strictly defined areas of mostly exclusive and very few concurrent competencies.

As there is significant convergence between the internal and the external competencies of the federated entities (that is, the three territorial regions of Brussels, Flanders and Walloon), these governments have to manage their competencies in day-to-day domestic policy and, as far as applicable, in the international arena. Representing both the Flemish-speaking Region and Community, the government of Flanders has competencies both of a corporate nature (related to Flemish speakers) and a territorial nature (related to the territory of Flanders). This encompasses an extremely wide portfolio of policy areas, including language policy, cultural policy, education and welfare, as well as the economy, the environment, employment and infrastructure. This means that in all these areas the government of Flanders can:

- conclude treaties with third parties;
- enjoy diplomatic representation abroad;
- have direct presence and input in multilateral negotiation delegations; and
- participate formally in the process of formulating the substance of the foreign policy position of the Belgian federation in policy areas for which they have been assigned competence.

As far as exclusive regional competencies are concerned, the Belgian federal government has only a coordinating role. As far as concurrent competencies are concerned, however, the federal government has both a coordinating role and a stake in the formulation of the substance of foreign policy. Thus, even though the federal government formally retains its lead role in the area of foreign policy, the government of Flanders enjoys maximal foreign policy autonomy unless it undermines the overall coherence of Belgian foreign policy.

As a result of these far-reaching competencies, Flanders has more than 100 different representatives abroad, including diplomats in Austria, the Czech Republic, France, Germany, Hungary, the Netherlands, Southern Africa (including Botswana, Lesotho, Mozambique, Namibia and Swaziland), the United Kingdom and the United States. There are, in addition, 76 trade and commercial attachés abroad, 11 branches of the Flemish Tourist Office abroad, and seven branches of the Flanders Foreign Investment Office.

Catalonia, Spain

The Spanish system of devolution offers the option of broad powers to its autonomous communities. The constitution specifies competencies specific to the autonomous communities, as well as powers that remain exclusive to the central government. However, it is possible that some of the legislative competencies retained by the central state are delegated to the autonomous communities as well, provided the latter desire this and delegation is feasible. Thus, while the Spanish system in theory is one of symmetric devolution, in practice there is a certain degree of asymmetry that has resulted in some communities holding far more extensive powers than others. Among them, Catalonia enjoys significant autonomy in a very wide range of policy areas.

Even though the Spanish constitution explicitly retains competence in international relations for the central government, the devolution of powers to Catalonia in areas such as economic development, education and tourism has meant that external activities in these areas have become a natural task for the Catalan government in order to discharge its functions effectively.

Within the department of the president, the directorate general for international projection of sport is charged with the promotion of international activities for Catalan sport and the facilitation of international competitions for Catalan sports teams. The ministry of economy and finance, the directorate general for trade and the directorate general for tourism have tasks including the international promotion of Catalan industry and tourism, while the ministry of education and universities has a directorate general for universities, which is responsible for, among other things, the integration of Catalan universities into the European space for higher education.

Catalonia's participation in the international arena also extends to the conclusion of specific agreements with other entities and organizations, including, for example, California, Kyonggi Province (Korea), Scotland, the National Center for Scientific Research (an administrative branch of France's Ministry of Research) and the National Assembly of Quebec.

Part of Catalonia's participation in the international arena specifically involves the promotion of relations with Catalan communities outside Catalonia (within Spain, but also in France and involving the Catalan diaspora around the world). In this sense, Catalonia assumes, almost uniquely, the role of a patron- or kin-state for co-ethnics outside its territory, while the reverse is normally the case: autonomous entities benefit from relations with kin-states (for example, Hong Kong and the United Kingdom; Macau and Portugal;

Northern Ireland and the Republic of Ireland; South Tyrol and Austria; and Quebec and France).

Scotland, United Kingdom

The United Kingdom operates an asymmetric system of devolution. Three regions—Northern Ireland, Scotland and Wales—have distinct levels of competencies that they can exercise autonomously from the government in Westminster, while England has no devolved powers. With devolution in Northern Ireland currently on hold, and devolution in Wales fairly limited, focusing on Scotland provides the opportunity to explore another example of how an entity with fairly substantive autonomous powers domestically participates in the international arena.

Scotland's powers are quite extensive. In fact, they are only defined in the UK legislation through an enumeration of so-called reserved matters, that is, policy areas in which the central government retains exclusive competencies. These reserved matters include most importantly, the Union of England and Scotland, foreign affairs and defence. Foreign affairs, in this context, encompasses any relations with territories outside the United Kingdom, with the EU and its institutions, as well as any other international organizations. Scotland is also placed under the obligation to observe and implement international obligations, including those under the Human Rights Convention and Community law. Thus, in contrast to Catalonia and Flanders, while Scotland has comparable domestic policy capacities, its foreign policy autonomy is extremely restricted.

Scotland's presence and participation in the international arena is consequently more limited. It includes the Scottish Executive's EU office in Brussels, a US office operating out of the British Embassy in Washington, DC, and a recently established office in China, based in the British Embassy in Beijing. Scottish Development International has operations in 17 countries around the globe. Finally, the Scottish Qualifications Agency has offices in Beijing.

The Scottish Executive's priorities in the area of external relations are thus equally constrained and include the promotion of Scottish devolved policy interests in and beyond the EU, the building of links with regions and countries in and beyond the EU, the promotion of a positive image of Scotland overseas and, interestingly, the effectiveness of Scotland's relations with the UK government.

The main achievements of the Scottish Executive are within Europe: cooperation Agreements with Bavaria, Catalonia, North Rhine-Westphalia and Tuscany, and its participation in formal organizations of regional authorities, such as the Committee of the Regions, the Congress of Local and Regional Authorities of Europe, the Groups of Regions with Legislative Powers, and the Conference of Peripheral Maritime Regions.

LIMITS AND OPPORTUNITIES FOR CONSTRUCTIVE CONFLICT MANAGEMENT

To what extent can autonomous entities' participation in the international arena contribute to constructive conflict management? Autonomy is a mechanism to prevent or settle conflicts between a specific territorially-defined community and its central government, and can only prove successful if both sides are committed to a peaceful and political resolution of their differences and to making such an arrangement work. In this situation, then, the participation of an autonomous entity in the international arena is both a consequence of granting autonomy and, in several policy areas, most likely a condition of the success of the conflict settlement. This involves both symbolic dimensions of recognizing the complete

nature of the devolution of powers from the central government to the autonomous entity, and material dimensions of enabling autonomous entities to pursue policies in which they have competencies to the fullest extent of their remit. In such cases, denying autonomous entities in such cases any participation in the international arena is likely to undermine the autonomous regime and may thus endanger the conflict settlement as a whole. Yet, as the three case studies above have shown, the degree to which autonomous entities will pursue their own foreign policy depends both on their interest and opportunity structures, on the way in which they prioritize international engagements and on the degree to which the central government actually represents the interests of autonomous entities abroad (specifically, the degree to which the latter can contribute to shaping the central government's foreign policy on specific issues relevant and important to them). Participating in the international arena does not mean that autonomous entities can pursue policies without regard to the broader constitutional framework of which they remain a part. This implies that there need to be proper mechanisms of consultation and coordination between autonomous entities and central governments on matters of international affairs. The broader the foreign policy competence of autonomous entities, the more effective these mechanisms need to be.

The foregoing presumes that both sides—autonomous entity and central government—are committed to maintaining the territorial integrity of their existing state, even if only for a specified interim or transitional period. If this is not the case, that is, if independence remains the firmly established goal of the autonomous entity, allowing it to participate in the international arena is unlikely to change this attitude, nor will denying it international engagement make independence a less feasible option.

The bottom line, therefore, is this: autonomous entities' participation in the international arena is a function of the competencies that they acquire through a specific autonomy arrangement and need to be treated as a logical extension thereof in order to make the overall conflict settlement viable and attractive.

CONCLUSION: PARADIPLOMACY AS A CHALLENGE FOR EXISTING STATES?

Foreign policy is normally one of very few areas, along with defence and monetary and fiscal policy, that is excluded from the devolution of competencies to autonomous entities. Consequently, it is not surprising that existing states and their governments often view with a certain degree of suspicion the participation of autonomous areas in the international arena. They often see this as potentially undermining their sovereignty and at times in conflict with the pursuit of the broader national interest. These concerns are not without justification, especially in situations in which the ultimate aim of the autonomous entity is independent statehood. However, where the borders of existing states are not contested, these fears are often exaggerated and groundless.

Autonomous entities' participation in the international arena in most cases does not contravene national foreign policy objectives; in fact, it often complements them and benefits from them. As international relations are now part and parcel of most individual government portfolios, foreign policy is no longer the exclusive domain of foreign ministries. The three examples of Catalonia, Flanders and Scotland furthermore indicate that, regardless of the degree of foreign policy autonomy enjoyed by an autonomous entity, central governments retain authority over the overall direction of autonomous entities' participation in the international arena, at a minimum by ensuring coherence in foreign policy. At the same time, autonomous entities will avail themselves of opportunities to

participate in the international arena in different ways. The example of Flanders shows the degree to which autonomous entities can make maximum use of opportunities available to them in pursuing their own foreign policy and shaping the foreign policy of their central government. At the other end of the spectrum, the case of Scotland demonstrates how the government of an autonomous entity can limit its participation in the international arena such that it prioritizes certain areas and otherwise relies on its central government to represent its interests abroad.

Above all, the participation of autonomous entities in the international arena indicates that the very notion of sovereignty has fundamentally changed. It can no longer be conceptualized in the exclusive state-only terms of the Westphalian system. For states to enjoy sovereignty to its fullest possible extent and for their populations to benefit from it, states have to share their powers with other players in the international arena. The example of paradiplomacy, however, also clearly indicates that states remain the ultimate bearers of sovereignty: paradiplomacy is, at best, a competence devolved to autonomous entities and hence it is the sovereign state that decides how much of its power it shares.

NOTES

¹ My thanks to Marc Weller for sharing his thoughts on the characteristics of autonomy with me.

² The status of some entities is contested.



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