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**THE WESTPHALIAN MODEL AND MINORITY-RIGHTS  
GUARANTEES IN EUROPE**

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## 1. Introduction

Many see concerns with minority rights and all human rights as a revolutionary development in international politics (Damrosch 1993: 93). One scholar avers that “the international law of human rights is revolutionary because it contradicts the notion of national sovereignty that is, that a state can do as it pleases in its own jurisdiction” (Forsythe 1983: 4). Another observes that international law has indeed “broken through the armour of sovereignty” (Hailbronner 1992: 117).

We argue that this perspective is myopic both empirically and analytically. Empirically, the view that international concerns for minority rights represent an important change in the international system ignores the historical persistence of international involvement in the treatment of minorities within states. Relations between rulers and ruled have been an enduring concern across borders as well as within them. Every major peace treaty from Westphalia to Versailles contained provisions for the protection of minorities, defined in terms of religious affiliation and later linguistic and ethnic identity. With the end of the Cold War international concerns with minority rights have again become a focus of international concern after having been displaced by human rights in the post second world war period.

Analytically, those who see a fundamental change in the international system misconstrue the extent to which the Westphalian model, which stipulates that states have exclusive authority within their own territory, fails to provide an adequate ontological construct or explanation for the behavior of rulers. In an anarchic environment rulers always have the option of compromising their own autonomy or intervening in the internal affairs of other states. The principle of non-intervention, which along with territoriality defines the Westphalian model, has persistently been challenged by alternative principles, including the international protection of minority or human rights. Power and interest, not just principled beliefs have determined actual outcomes.

The success of international efforts to protect minority rights has varied. Imposition or coercion, which involves situations in which rulers in stronger states force rulers in weaker ones to accept provisions for the acceptance of minority rights have failed. Contracts and conventions, in which rulers enter into international agreements designed to reinforce domestic commitments to the protection of minority rights, have been more successful. International efforts can succeed but only if they strengthen the position of domestic actors within target states who are themselves committed, for reasons of interest or principle, to the protection of minority rights.

## 1.1 The Westphalian Model

The Westphalian model posits an order based on territory and in which relations between rulers and ruled are not subject to any external authority. Actors within the territorial boundaries of a state can structure their own relationships independent of outside forces. They may enshrine civil liberties in their constitutional practices or ignore them; they may recognize rights for minority cultures or suppress them; they may provide symmetrical treatment regardless of gender or treat men and women in fundamentally different ways; they may legitimate slavery or prohibit it.

The Westphalian model does not provide an accurate description of the relationship between rulers and ruled in many polities. External actors have been concerned about the treatment of groups and individuals. Rulers within a state have sought external support for their domestic policies.

Compared with many domestic polities the international system is weakly institutionalized. A variety of often mutually inconsistent principles have been used to legitimate policy. There has been no enduring consensus on how to balance minority rights concerns against demands for sovereign autonomy. There has been no authority that could prevent rulers from signing agreements, by choice or duress, which alter their relationship with their own subjects. The mechanisms that can reinforce institutional arrangements in well established domestic polities such as socialization, path dependence, and some pressures for institutional isomorphism have only the most feeble effect at the international level. (Such processes for embedding institutions have only the most limited impact in weak and fragmented domestic polities, Zaire for example, as well.)

The Westphalian model has been compromised through four different modalities: conventions, contracts, coercion, and imposition.

Conventions are international agreements in which rulers commit themselves to certain practices with regard to their own subjects, such as ethnic minorities, but their behavior is not contingent on what other signatories do. International and regional human-rights conventions are the most obvious example.

Contracts are agreements in which rulers commit themselves to certain domestic policies contingent on the behavior of other rulers. Rulers have often honored minority-rights guarantees because they feared that violations would lead other rulers to harm co-ethnics or co-religionists resident within the borders of the other state. Both conventions and contracts are Pareto-improving. Rulers only enter into them if they benefit from them in some way. The status quo ante remains an option. Conventions and contracts are both consistent with the international law conception of sovereignty which simply stipulates that a state is recognized and that its rulers have the right to enter into international agreements. Both conventions and contracts, however, can

compromise the Westphalian model of sovereignty by limiting the domestic autonomy of signatory states by creating authority structures that are outside the territorial boundaries of the state.

Coercion involves situations in which the rulers in one state threaten those in others. The rulers of the target state are worse off. The status quo ante is no longer available. They have the option of either complying with the preferences of the initiator or suffering the consequences of sanctions. The sanctions imposed on South Africa to induce its rulers to end apartheid are an example of coercion.

Finally, imposition occurs when the rulers or would-be rulers of a state have no option but to accept the preferences of more powerful states. The minority-rights treaties imposed on a number of the newly created states after the first world war are an example of imposition. The prospective rulers had no choice: they could not rule without accepting the conditions imposed on them. Imposition against already established states violates not only the Westphalian conception of sovereignty but the traditional international law conceptions as well because rulers cannot make independent judgments about whether or not they should enter into an agreement.

Minority rights involve specific commitments by rulers or governments concerning the treatment of minority groups and/or individuals who belong to such groups. Minorities have been defined in many different ways, although religion and ethnicity have been the most prominent; the common thread is that the individual's identity is linked to group membership and is distinct from the identity embraced by other individuals within a given polity.

Extensive minority-rights guarantees have most often been coerced or imposed. Rulers in more powerful states have threatened or forced rulers or would-be rulers in weaker ones to treat minorities in specific ways for a variety of reasons including concerns about international stability, the balance of power, nationalism, and conceptions of appropriate state behavior. In some cases minority-rights guarantees have been the result of contracting. This has occurred where two states have had symmetrical interests in the treatment of minorities within their borders. There are also a few examples of minority rights agreements that are conventions which rulers have entered into because they wanted international reinforcement of their domestic preferences.

Efforts to redefine relations between rulers and ruled have had limited success. Coercion and imposition have frequently failed because of asymmetries in the timing of the deployment of different resources. Targets accept minority rights at a particular moment in time because they are pressured by more powerful states. The promise of international recognition, in particular, has been used to encourage the would-be rulers of new states to accept provisions for minority rights. The problem is that once recognition is extended it is difficult to withdraw. If threats to impose sanctions or even

destroy the target state lose their credibility over time, the rulers of the target state will abandon their minority rights commitments.

Minority-rights contracting among rulers has been more successful because such arrangements have typically involved commitments by one state to respect the rights of its minorities provided that the other party makes corresponding concessions. If one state violates its guarantees then the other will do the same and, because both parties know this, they are more likely to honor their contractual obligations.

The success of conventions in influencing relations between rulers and ruled in signatory states has depended primarily on the way in which such arrangements alter or reinforce domestic attitudes (Moravcsik 1994). Conventions have been most consequential when they have been reinforced by domestic actors whose position can, in turn, be strengthened by the convention. Rulers may make international commitments to treat individuals or groups in specific ways because these commitments conform with their own preferences. They anticipate that a convention will reinforce these preferences by constraining the behavior of their successors because repudiating the commitment would send a costly signal. Conventions can also support minority rights by legitimating protests from other signatories or transnational groups, providing monitoring provisions that would make it more difficult for subsequent rulers to surreptitiously violate guarantees, and establishing judicial procedures which give non-state actors, including individuals, standing to bring complaints against their own government.

## **1.2 Christians in the Ottoman Empire**

Attempts to influence the treatment of minority groups in other realms have been an enduring characteristic of international relations. For Western Christendom, the first target of such efforts was the Ottoman (Osmanli) Empire. European rulers made unilateral pledges to protect Christians as early as the 13th century. Numerous treaties were concluded between the Ottoman Porte and European states beginning in the 16th century.

A number of European powers made unilateral commitments to protect Christians in parts of the Islamic world. Pledges by French monarchs dating back as far as the 13th century were reaffirmed for instance by Louis XIV in the 17th century. In 1535 Suleiman the Magnificent signed a treaty with Francis I of France which provided that foreigners were to be judged by the laws of their home countries in consular courts, that foreigners were not subject to Ottoman taxation, and that customs duties on foreign goods would be limited. These treaties were not the result of coercion; the Ottoman Empire was at the height of its power. Rather, they were conventions that were consistent with the organization of political life within the Ottoman Empire where the millet system gave religious communities considerable control over their own affairs.



As the Ottoman Empire weakened, however, the major European powers used coercion to secure rights for resident Christians. Several treaties were designed to force the Sultan to act in conformity with Ottoman law and the millet system. In 1673 France secured concessions for the Jesuits and Capuchins. The Treaty of Karlowitz of 1699 gave the Polish ambassador the power to raise issues concerning the treatment of Catholics with the Sultan, and gave Austria the right to intervene on behalf of Catholics, a right that was renewed in 1718, 1739, and 1791. The Treaty of Kutchuk-Kainardju (1774) gave the Russian ambassador standing to represent all Christians. European monarchs used these powers cynically, protecting their co religionists only when it served other political purposes. The pretense for intervention which these treaties gave the European powers increased instability in the Ottoman Empire (Macartney 1934: 161-163; Laponce 1960: 25; Blaisdell 1929: 24; Mansfield 1991: 80).

In dealing with the Ottoman Empire, the rulers of the major European powers never accepted the principle of autonomy. Initially, when Europe was weak and the Ottoman Empire strong, they could do little more than offer often empty pledges to protect their co-religionists. Later, they signed conventions that validated Ottoman law. As the Porte weakened, however, the European powers engaged in coercion, securing treaties which affirmed their right to protect Christians within the Empire.

## **2. Religious Toleration in Early Modern Europe**

Every major peace treaty in Europe from Westphalia in 1648 (and even Augsburg in 1555) to the Congress of Vienna contained provisions for the treatment of religious minorities. These settlements among the major powers were contracts. They violated the principle of autonomy to reinforce domestic and international stability.

The development of religious toleration and later religious freedom was a triumph of European civilization which evolved out of both principled arguments about the illegitimacy of coerced beliefs and a recognition that religious strife could lead to an Hobbesian state of nature. Although the extent of repression varied, the persecution of religious minorities or heretics had been a part of Christianity.<sup>1</sup>

The civil strife of the 16th and 17th centuries led some European rulers to accept religious toleration. The Reformation ended any hope for unity in the Christian Church.

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<sup>1</sup> The persecution of non-Christians and heretics characterized Christianity from its adoption by Constantine as a universal state religion through the early modern period. The Roman emperor Theodosius imposed the death penalty on a heretic in the fourth century. Saint Augustine endorsed persecution designed to open the mind of those who had embraced error though he rejected the death penalty. Catholic intolerance included the persecution of Jews, heretics, and accused witches. Protestant state churches became intolerant as well: Luther and Calvin were interested in truth not tolerance, and Calvin banished those who did not subscribe to his beliefs from Geneva. (Bainton 1951, 26, 38-53; Jordan 1932, 31).

By 1600 it was evident from experiences in France and the Netherlands that heretical beliefs could not easily be suppressed by the sword; the alternatives for rulers were civil strife or some toleration. France was wracked by religious wars in the 16th century. The English Civil war destroyed the Stuart dynasty and even, for a time, monarchical rule. Germany was devastated by the Thirty Years War which resulted in as much as a loss of 40 percent of the rural population and 30 percent of the urban (Beller 1970: 345-46, 357; Jordan 1932: 19-25, 38).

Principled beliefs reinforced the sorry lessons derived from religious wars. It had long been an accepted tenet of Christian thought that true belief could not be coerced although what constituted coercion (including what level of torture) had always been contested. Even before the outbreak of the religious wars in France, the first of which began in 1562, many educated Frenchmen had concluded that religious toleration was necessary not simply for political reasons but also for moral ones as well. At the beginning of the 16th century Postel had argued that all the major religions of the world were based on a common universal truth. Bodin endorsed religious toleration in the Six Book of the Commonwealth published in 1576. Locke stated in his 1689 Letter Concerning Toleration that “neither Pagan nor Mahometan, nor Jew, ought to be excluded from the civil rights of the commonwealth because of his religion.” (Jordan 1932: 42; Skinner 1978: 244-54; Lewis 1992: 49).

Religious toleration involved international agreements as well as changes in domestic policy. The Peace of Augsburg of 1555 endorsed the principle that the prince could set the religion of his territory (cuius regio, eius religio), hardly an endorsement of toleration for religious minorities but an explicit break with the medieval world which presumed a unified Christendom. Augsburg meant international acceptance for Catholic, Lutheran, and later Calvinist rulers. Augsburg reflected the view that domestic religious unity was necessary for the state but that state religions might differ. Cuius regio, eius religio is entirely consistent with the Westphalian model.

The Augsburg settlement also, however, made some provisions for religious toleration, contradicting the principle of territorial autonomy. Rulers did not have unlimited rights over religious practices: at a minimum dissenters were not to be executed but rather were to be allowed to emigrate. While the state could regulate public worship, it could not generally intervene in private practices. In eight imperial cities of the Holy Roman Empire inhabited by both Lutherans and Catholics both faiths were given the right to co-exist. The rulers of ecclesiastical states could not change the religion of their domains. The Habsburg ruler Ferdinand I also promised, in a secret agreement not formally part of the Peace, that Lutheran nobles and townspeople living in ecclesiastical territories could continue to practice their faith. Augsburg, however, failed to secure religious peace and political stability in Europe (Scribner 1990: 195-97; Gagliardo 1991: 16-21; Jordan 1932: 36-37; Little 1993: 324-5).

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The Peace of Westphalia had more extensive provisions for religious toleration. In this, and in other ways, the Peace of Westphalian (which consisted of the separate treaties of Münster and Osnabrück) violated the Westphalian model; it did not endorse the principle of domestic autonomy. While rhetorically embracing *cuius religio eius religio* many specific articles provided for religious toleration if not religious freedom in Germany. Catholic orders were to stay Catholic; Lutheran orders were to stay Lutheran (T. of Osnabrück V.11-V.23). Catholics who lived in Lutheran states or Lutherans who lived in Catholic states were to be given the right to practice their religions in the privacy of their homes, to educate their children at home or to send them to foreign schools. Subjects were not to be excluded from the “Community of Merchants, Artizans or Companies, nor deprived of Successions, Legacies, Hospitals, Lazar-Houses, or Alms-Houses, and other Privileges or Rights...” because of their religion. Subjects were not to be denied the right of burial nor were they to be charged an amount for burial different from that levied on those of the state religion (T. of Osnabrück, V. 28). Dissenters (Catholic or Lutheran) who did not have any rights of religious practice in 1624 and who sought or were ordered to move were to have the freedom to do so and were given five years to sell their goods (T. of Osnabrück, V. 29-30).

Catholics and Lutherans in specific mixed cities (Augsburg, Duncckelspiel, Biberach, Ravensburg, Kauffbeur) were to have freedom of religious practices (T. of Osnabrück, V. 25). In the first four of these cities, offices were to be divided equally between Catholics and Lutherans (T. of Osnabrück, V. 7) Members of the Silesian nobility who were Lutherans were granted by the Emperor the right to continue to practice their religion provided that they “do not disturb the public Peace and Tranquillity,…” They were also given the right to build three churches. (T. of Osnabrück, V. 31). Magistrates of either religion were admonished to forbid any person from criticizing or impugning the religious settlement contained in the agreement and in the earlier Treaty of Passau (T. of Osnabrück, V.41).

Catholics and Lutherans were to be equally represented in imperial assemblies, and religious issues were to be decided by consensus (T. of Osnabrück, V. 42). Representatives to the imperial courts were to be divided by religion. If the judges of the two religions voted uniformly against each other in a case, the case could be appealed to the Diet. If there were cross-cutting cleavages with respect to religion then a case could not be appealed (T. of Osnabrück, V. 45). Rights given to Lutherans and Catholics were extended to Calvinists (T. of Osnabrück, VII).

Where the religion of a ruler changed from one Protestant sect to another (e.g., from Lutheran to Calvinist), the ruler was to have the right of worship of his own religion, but he was prohibited from attempting to change the religion of his subjects or churches, hospitals, schools, and revenues. The new ruler was enjoined from giving “any trouble or molestation to the Religion of others directly or indirectly” (T. of Osnabrück, VII,240). The community was given the right to name ministers, and the Prince was to confirm them “without denial” (T. of Osnabrück, VII, 240).

The terms of toleration were shaped by the interests of the rulers of the major powers, the Habsburgs, the King of France, and the King of Sweden. The Holy Roman Emperor, Ferdinand III, endorsed religious toleration within Germany as part of a general settlement of a devastating war, but refused to accept it in other Habsburg lands. Austria, ruled by the Habsburgs but not part of the Empire, was not included. Toleration was limited to Lutherans, Calvinists, and Catholics (T. of Osnabrück, VII). The rulers of France refused to accept any provisions for religious toleration.

The Peace of Westphalia was a major step in ending religious strife but there were conflicts over implementation and attempts to defect unilaterally. The Westphalia clauses were put into effect beginning in the winter of 1648-49 (Gagliardo 1991: 83-85), but there was tension over their implementation particularly in the free cities (Hughes 1992: 134).<sup>2</sup> Those states which could sidestep the terms of Westphalia did so. While tolerating Protestants in such outlying areas as Silesia and Hungary, the Habsburgs expelled them from Styria and Upper Austria while resettling many in Transylvania “for state economic reasons” (Gagliardo 1991: 178). The Habsburgs refused to abide by some provisions for the repatriation and restitution of Protestants, and expulsion of dissidents whose situation was not explicitly protected (Holborn 1959: 370). The archbishop of Salzburg expelled Protestants in 1731. Such actions were typically followed by reprisals against Catholics in the Protestant Northern states. Calvinists and Lutherans also clashed in such states as Saxony and Brandenburg-Prussia.

Toleration was not generally viewed as a desirable policy. Rather, it was accepted in specific areas as a matter of political necessity. The ecclesiastical boundaries set by the treaty remained more-or-less intact until as late as 1945. After 1648, there was a slow but general abatement of religious conflict. Yet this may have been due primarily to the fact that the states were more homogenous in 1648 than in earlier years and to the relatively few religious conversions of princes after Westphalia (Holborn 1959: 370-371; Gagliardo 1991: 177-188; Hughes 1992: 134-136). Only slowly did the principle of toleration implied in the Peace of Westphalia come to prevail in western Europe.

After 1648, it was customary for a sovereign taking over a territory to pledge respect for existing religious rights within that territory. The treaties of Oliva (1650), Nijmegen (1678), Breslau (1742), Dresden (1745), Hubertusburg (1763), and Warsaw (1772) all had such provisions. The Treaty of Utrecht of 1713, in which France ceded Hudson Bay and Acadia to Britain, provided that the Roman Catholic subjects of these areas were entitled to practice their faith “insofar as the laws of England permit it” (quoted in

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2 The Westphalian simultaneum system, which gave corporate status to two or all three recognized faiths in specific divided areas, was continually challenged and maintained only by a tense balance of threats. For instance, the 1697 Treaty of Ryswick allowed Catholics in the Palatinate to retain the privileges accorded to them by the occupying French, a threat to simultaneum. Intense conflict among the three religions ensued, until in 1718 the Elector of the Palatinate tore down the wall separating the Calvinist section of the Church of the Holy Spirit in Heidelberg and claimed the Church as his own. The Protestant and Catholic German states (and their allies) would have gone to war but for the intervention of the Emperor (story in Hughes 1992, 134-136).

Laponce 1960: 24). A similar provision was included in the Treaty of Paris of 1763 in which the King of Great Britain again agreed that Catholic subjects in Canada would be entitled to the same rights as those in Britain (Laponce 1960: 23-24; Macartney 1934: 158-159).

The settlement of the Napoleonic Wars included provisions for the protection of religious minorities in parts of Belgium assigned to Holland and in areas of Savoy ceded to Geneva. Belgian Catholics were to have liberty of conscience, equal access to administrative positions, and representation in political bodies. These provisions were to be written into the Dutch constitution and could not be changed by the people of Holland. Detailed measures for religious coexistence were also made for parts of Catholic Savoy ceded by the King of Sardinia to Calvinist Geneva.<sup>3</sup>

The 1815 Vienna settlement included, for the first time, explicit protection for an ethnolnational minority. Article I of the Congress of Vienna Final Act called on Austria, Prussia, and Russia to provide Poles “a Representation and National Institutions... that each of the Governments to which they belong shall judge expedient and proper to grant them.” This provision reflected in part Castlereagh's view that Polish national sentiment could not be suppressed. The provisions of the Vienna accord related to Poles had only a limited impact.<sup>4</sup>

In sum, religious toleration in Europe (and even at Vienna respect for an ethnic minority) was embodied in international agreements as well as domestic legislation and practices. Stipulations regarding the treatment of religious minorities were part of larger contractual agreements to end wars, particularly where territory was transferred among

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<sup>3</sup> Article 3 of the protocol of May 29, 1815 ceded parts of Savoy, which had been ruled by the King of Sardinia, to Geneva. The protocol stipulated that Catholics in the ceded territory would be able to continue their existing practices. In areas where the Catholic population exceeded the Protestant the schoolmasters would always be Catholic, no Protestant “temple” would ever be established except in the town of Carrouge where only one could be built (quoted in Laponce 1960, 26). The mayor and vice-mayor would always be Catholic. If the Protestant population grew and exceeded the Catholic one, then there would be rotation in office and a Catholic school would always exist even if a Protestant one were built. The new government would continue to provide, at the existing level, support for the maintenance of the clergy and religion. In these areas Protestants could worship privately and could privately hire Protestant schoolmasters. Catholics were to have equal civil and political rights. Catholic children were to be admitted to public education institutions but religious instruction would be conducted separately. The King of Sardinia could bring complaints to the Diet of the Helvetic federation (Laponce 1960, 26-27, 39; Macartney 1934, 158-59).

<sup>4</sup> Austria strictly forbade manifestations of political nationalism among the Polish (Macartney 1934, 112). Russia did establish distinct institutions for ‘Congress Poland’ after 1815, including a separate constitution and parliament, but the 1830 revolt of Polish army cadets caused Nicholas I to end local autonomy. The French government protested, but the British, anxious to avoid enmity with Russia, refused to take any significant action (Fouques-Duparc, 1922, 115, 122-26; Claude, 1955, 7; Laponce 1960, 28-29). The 1863 Warsaw Uprising precipitated more repression and more intense assimilative measures by Alexander II (Pearson 1983, 72-74). Prussia engaged in a Germanization campaigns after 1830 and 1848, and after 1867 excluded the Polish language altogether and expelled Russian Poles (Ibid, 128-129; Janowsky 1945, 25-27).

rulers. Rulers made international commitments about how they would treat the religious practices of some their own subjects. In some cases foreign actors were recognized as having a legitimate right to monitor behavior and protest violations. In others, basic constitutional arrangements were specified. These conditions violated the very Westphalian model of sovereignty which these same treaties are said to have created.

### **3. The Balkans in the 19th Century**

The Ottoman Empire unravelled during the 19th century and of the successor states - Greece, Romania, Serbia, Montenegro, Bulgaria, and Albania as well as the Ottoman Empire itself, accepted constraints on how minorities would be treated. Initially these constraints were formulated in terms of religious affiliation, but later ethnic groups were included as well.

Unlike religious toleration in western Europe, minority protection in the Balkans was the result of coercion and imposition by the great powers. Power asymmetries, at least at the point of independence, were high. The rulers or would-be rulers of new states preferred complete autonomy with respect to the treatment of groups within their own borders. The rulers of the major powers, however, coerced or compelled them to make commitments regarding non-discrimination. Leaders in Britain, France, Russia, and Austria-Hungary were motivated primarily by concerns about international stability: religious and ethnic strife could destabilize polities in the Balkans and draw other states into conflicts that they would have preferred to avoid (World War I proved these anxieties all too prescient). There were other concerns as well, including the unwanted emigration generated by discriminatory policies.

These efforts to protect minorities were not successful. Recognition, once extended, was costly to withdraw because it would have made it more difficult for the major powers to pursue their interests in the Balkans because they would have had no interlocutor with which to interact. After independence, the Balkan states became relatively more powerful. It became more costly for the major powers to coerce by making credible threats or to compel by using force. Monitoring was difficult.

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Greece, the first state to become independent from the Ottoman Empire, a status secured only through the intervention of Britain, France, and Russia.<sup>5</sup> By 1830, these states were committed to creating a formally independent Greek state, but there was never any thought that this entity would be a Westphalian state. The British wanted to avoid granting Russia naval access to the eastern Mediterranean and greater influence. Russian leaders did not have the military power to impose their own settlement. The Greek revolutionaries were themselves divided (Schwartzberg 1988: 139, 301, 303; Temperly 1966: 406-08; Anderson 1966: 74-75; Dakin 1973: 289-90, 310-12; Jelavich / Jelavich 1977: 50-52).

The major powers insisted that religious toleration be included in Greek law. In 1830 they signed a protocol which stated that to preserve Greece from “the calamities which the rivalries of the religions therein professed might excite, agree that all the subjects of the new State, whatever their religion may be, shall be admissible to all public employments, functions and honours, and be treated on a footing of perfect equality, without regard to difference of creed, in their relations, religious, civil or political” (quoted in Macartney 1934: 164-65).

Toleration for minorities was included in all subsequent settlements for the Balkans. In the 1856 Treaty of Paris, which granted independence under Ottoman suzerainty to Wallachia and Moldavia (the two Ottoman provinces that were to become Romania), and a subsequent agreement in 1858, the western powers sought to guarantee equal treatment for all, including Jews. During the late 1860s leaders in both Britain and France protested against the treatment of Jews in Romania. In Britain, Lord Stanley argued that the treatment of Jews in Romania was an affair that touched Christian as well as Jews, because, “if the suffering falls on the Jews, the shame falls on the Christians” (quoted in Fouques-Duparc 1922: 102; translation by author). The British claimed the right to enforce Article 46 of the 1858 Paris treaty providing for political and economic equality for Jews under great power guarantee (Ibid., 98-106). The Romanian constitution of 1866, however, gave only Christians the right to apply for Romanian nationality. Romanian authorities ignored these protests and the vaguely worded treaty provisions.

The Western powers sought in more limited terms to prod the Ottoman Porte towards increased toleration. In the months following the Crimean war, they pressured the Sultan to issue the firman (edict) of Hatti-Humayoun committing the Porte to administrative reform and to religious privileges for Christians (Blaisdell 1929: 25). In

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5 The Greek revolt began in 1821. By 1827, the Ottomans, with the help of a fleet provided by Mehmet Ali (the quasi independent ruler of Egypt), were on the verge of suppressing the rebellion. A joint British, French, and Russian force destroyed Mehmet Ali's fleet at the Battle of Navarino and the Ottoman army was then defeated, giving the Greeks the opportunity for military success. Greek independence was recognized in 1832. Greece was established as a monarchy; whereas most of the Greek revolutionaries would have preferred a republic. Otto, the underage second son of the King of Bavaria, was chosen as monarch because he did not have close ties with any of the major powers. Greece's use of its own revenues was constrained by the terms of a loan from the major powers.

the 1856 Treaty of Paris, the Sultan affirmed this firman “emanating spontaneously from his Sovereign will”; however, in the same article, the European powers eschewed interference in its internal affairs to protect the Christian minority (article IX). Despite external pressure and the traditional millet system, which provided minority communities with some autonomy, the Ottoman Empire never resolved ethnic and religious conflicts in the Balkans.

The efforts of the major powers to establish religious toleration in the Balkans reached their apogee at the Congress of Berlin in 1878, organized to settle the armed conflicts that began with a Christian revolt in Bosnia and to roll back advantages which Russia had secured in the 1878 Treaty of San Stefano which would have created a Bulgarian state dependent on Russia that had access to the Mediterranean.<sup>6</sup> (Langer 1964: 138; Jelavich / Jelavich 1977: 143-153; Anderson 1966: 182). The Congress recognized Serbia, Montenegro, and Romania as independent states and Bulgaria as a tributary state of the Ottoman Empire. Austria-Hungary, with British support, secured the right to occupy and administer Bosnia-Herzegovina and the Sanjak of Novi Bazar although these areas formally remained part of the Ottoman Empire.

As a condition of recognition, the major powers insisted that the new states grant political equality to all faiths. They stipulated that in Bulgaria, Montenegro, Serbia, and Romania, “...the difference of religious creeds and confessions shall not be alleged against any person as a ground for exclusion or incapacity in matters relating to the enjoyment of civil and political rights, admission to public employments, functions, and honours, or the exercise of the various professions and industries in any locality whatsoever. The freedom and outward exercise of all forms of worship shall be assured to all persons belonging to [name of state], as well as to foreigners, and no hindrance shall be offered either to the hierarchical organization of the different communions, or to their relations with their spiritual chiefs” (Articles V, XXVII, XXXV, and XLIV respectively). They secured similar language as a “spontaneous declaration” of the Ottoman Porte, with the additional provisions for the political organization of minority communities and the rights of foreigners: “The freedom and outward exercise of all forms of worship are assured to all, and no hindrance shall be offered either to the hierarchical organization of the various communions or to their relations with their spiritual chiefs. Ecclesiastics, pilgrims, and monks of all nationalities travelling in Turkey in Europe, or in Turkey in Asia, shall enjoy the same rights, advantages, and privileges.... The rights possessed by France are expressly reserved, and it is well

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6 In 1875 Christians in Bosnia and Herzegovina revolted. The Austrian Foreign Minister, Count Andrassy, proposed to Turkey that the Porte grant religious liberty to the two provinces and abolish tax farming. Turkey agreed, but the central government was too weak to implement this accord and unrest continued. A revolt broke out the following year in Bulgaria and was suppressed. Serbia unsuccessfully attacked the Ottoman forces with Russian assistance; in 1877, Russia intervened directly with the hope of creating a Bulgarian state with access to the Mediterranean that would be beholden to Russia, an outcome that was threatening to Britain. With the aid of Russia, the various Slavic groups in the Balkans defeated the Ottomans.



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understood that no alterations can be made in the status quo in the Holy Places” (Article LXII).

The Treaty of Berlin also included guarantees for an ethnic minority: the Porte agreed to implement local reforms in Armenian territories and to guarantee Armenian security against the Circassians and Kurds. Turkey was to inform the Powers of the steps it had taken and the powers would “superintend their application” (Article LXI). The Ottomans made this pledge to secure the withdrawal of Russian forces from Armenian territory (Mansfield 1991: 75, 81; Macartney 1934: 167).

The minority provisions of the Treaty of Berlin were the result of coercion and imposition. The targets were not involved in drafting the Treaty. The would-be rulers of Romania, Bulgaria, Montenegro, and Serbia were not, themselves, interested in religious toleration. They accepted these arrangements because it was the only way that they could secure recognition as independent or, in the case of Bulgaria tributary, states. The Ottoman Empire agreed to protect the Armenians only to secure the removal of Russian troops from its territory, an unambiguous example of compulsion.

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

Humanitarian concerns and interest-group pressure were also influential. British public opinion was agitated by reports of Turkish atrocities against the Bulgarians. Jewish groups in the United States and Great Britain pressured their governments to protest Romanian treatment of Jews. Later in the century, American officials pressed Romania for reforms with the hope of limiting the flow of new Jewish emigrants (Macartney 1934: 169, 281; Fouques-Duparc 1922: 112; Pearson 1983: 98).

The treatment of Jews in Romania epitomizes the failure of intermittent major-power attempts to secure minority rights in the Balkans. After Berlin, recognition was only extended in February 1880 after Romanian officials had publicly declared that a Jew could become a citizen; in practice, policy hardly changed. While non-Christians could nominally obtain citizenship, it required an act of parliament for each individual Jew. Of the 269,000 Jews in Romania only 200 attained citizenship. Non-citizens had to pay for primary school and were excluded from professional schools in 1893, and secondary and higher education in 1898. Jews were prohibited from living in rural areas. By the 1900s, almost 90% of Romanian émigrés to the US were Jewish, an indicator of

continued repression (Fouques-Duparc 1922: 98-112; Jelavich / Jelavich 1977: 178; Pearson 1983: 98).

Nor did European states intervene with great vigor or success to prevent Ottoman atrocities against the Armenians. There were a number of massacres, the first of which took place in 1894. Despite protests from the western powers, including in 1909 the dispatch of two British warships to Messina, these depredations continued (Macartney 1934: 167, 170).

Unlike the development of religious liberty in western Europe, the effort to secure minority rights in the Balkans was not founded in domestic political coalitions. The would-be rulers of the new Balkan states would have preferred no restrictions on their treatment of religious minorities. Although the major powers did protest humanitarian catastrophes in the Balkans, they were unwilling to apply more economic or military pressure except where it suited their narrow strategic interests.

#### **4. The Versailles Settlement and Minority Rights**

International efforts to secure minority rights culminated in the Versailles settlement to the first world war. All of the new polities as well as established states whose boundaries were changed signed minority rights treaties or made unilateral pledges regarding minority rights.<sup>7</sup> The rulers or would-be rulers of some states, notably Hungary and Czechoslovakia, regarded the minority rights treaties as pareto improving, but leaders of most of the others, especially those with large internal minorities including Poland, Romania, and Yugoslavia, saw the treaties as a product of external coercion or imposition (Bartsch 1995: 84-85). Unlike earlier settlements, the Versailles arrangements provided for elaborate monitoring and enforcement through the League of Nations and the International Court of Justice. In the end the Versailles settlement failed, and not just because of the triumph of Nazism in Germany.

The minority rights established after the first world war were set in treaties concluded by the Allied powers with Poland, Austria, Czechoslovakia, Yugoslavia, Bulgaria, and Romania in 1919, with Hungary and Greece in 1920, and with Turkey in 1923; in declarations made as a condition for admission to the League for Albania in 1921, Lithuania in 1922, Latvia and Estonia in 1923, and Iraq in 1932; and through League guarantees for the treatment of minorities included in bilateral conventions concerning the Free City of Danzig and Upper Silesia (Poland/Germany, 1920 and 1922), the

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<sup>7</sup> Those states seen as major powers were not compelled to make corresponding treaty guarantees. Italy did not guarantee the rights of Germanspeakers in areas ceded by Austria (South Tyrol / Alto Adige). Germany only agreed to minority protection regimes in Upper Silesia and Danzig.

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Åaland Islands (Sweden/Finland, 1921) and Memel Convention (Lithuania/Germany, 1924) (Lerner 1993: 83; Claude 1955: 16; Jones 1991: 45).<sup>8</sup>

The protections were detailed and elaborate. In the Polish minority treaty, the model (verbatim in most cases) for all the interwar minorities obligations, the Polish government undertook “to assure full and complete protection of life and liberty to all inhabitants of Poland without distinction of birth, nationality, language, race or religion....Differences of religion, creed or confession shall not prejudice any Polish national in matters relating to the enjoyment of civil or political rights, as for instance admission to public employments, functions and honours, or the exercise of professions and industries” (Articles 1 and 7). Poland granted citizenship rights to individuals habitually resident in its territory or borne within its territory of parents habitually resident there (even if not presently in Poland), a provision that reflected concern about the aforementioned exclusion of Romanian Jews in earlier decades (Romania was forced to signed similar provisions after W.W.I). Minority-language schooling would be provided in areas with a considerable number of non-Polish speakers, although the teaching of Polish could be obligatory (Article 8). Jews could decline official duties which would violate the Sabbath and Polish leaders committed “to refrain from ordering or permitting elections, whether general or local, to be held on a Saturday...” (Article 11, reprinted in Macartney 1934: 502-506; see also Sharp 1979: 174; Fouques-Duparc 1922:112).

Unlike earlier minority-rights guarantees, the Versailles arrangements had extensive provisions for monitoring and enforcement. In treaties with Poland, Austria, Bulgaria, and Czechoslovakia, minority protections were made basic constitutional law as well as international obligations. The treaties provided that the laws related to the treatment of minorities would not be changed without the approval of a majority of the League Council (Bilder 1992: 64; Laponce 1960: 40; Lerner 1993: 85).

Monitoring and enforcement mechanisms were established within the League of Nations. Individuals as well as a state could petition the League secretariat. Petitions were considered by an ad hoc Minorities Committee comprised of the president of the Council and two appointed members (Veatch 1983). If the Committee could not resolve a complaint informally, it was placed on the Council's formal agenda and could be considered by a Committee of Jurists to determine if the state had violated its international obligations. The Committee could ask the Permanent Court of International Justice for an advisory opinion. Between 1921 and 1938 the League received 473 petitions. Poland was the most frequent target of complaint (203 petitions)

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<sup>8</sup> The bilateral minority-rights treaties varied in their provisions and the right of petition to the League Council (state-parties could petition in each case). An elaborate regime with regional enforcement machinery and appeal to the League was established for Upper Silesia based on the bilateral Geneva Convention of 15 May 1922 between Germany and Poland. Minority-rights provisions applicable to Danzig were governed by a High Commissioner who could refer cases to the League; the local parliament of the Åaland Islands could direct complaints to the League. See Macartney 1934, chapter 7; Veatch 1983.

followed by Romania with 78 (Janowsky 1945: 117-121; Claude 1955: 20-28; Bartsch 1995: 103-104).

The enforcement procedures were not implemented vigorously. Some specific victories were pyrrhic. For instance, in one of the few cases to go through the entire procedure, the League was petitioned in 1921 concerning challenges to the property rights of some Germans who had settled in what became Poland after the first world war. The three member ad hoc Minorities Committee failed to secure an informal settlement and the case was referred to the League Council in 1922. The Poles rejected the Council's request for restraint as well as the findings of a committee of jurists, and expelled the Germans. The Council referred the issue to the Permanent Court of International Justice which also ruled against Poland. The Poles refused to reverse the evictions but did finally agree to pay compensation of 2.7 million zlotys. In another case brought in 1928 Russian peasants complained that their land was being unjustly taken by Lithuania. No one in the League was anxious to press the issue. The Lithuanian government stalled and the case was dropped a year and a half after it had been initiated (Janowsky 1945: 121-122; 125, n. 8).

The provisions for the protection of minorities associated with the Versailles settlement and the League were justified in terms of established norms. Clemenceau maintained that the minority provisions of the peace treaties were consistent with diplomatic precedent in Europe. It is worth quoting at length from a note he sent conveying the treaty to Poland for signature, because it illustrates that the Westphalian norm of non-intervention was not only not taken for granted but was also contradicted by other norms explicitly articulated by European rulers: "This Treaty does not constitute any fresh departure. It has for long been the established procedure of the public law of Europe that when a State is created, or even when large accessions of territory are made to an established State, the joint and formal recognition of the Major powers should be accompanied by the requirement that such States should, in the form of a binding international Convention, undertake to comply with certain principles of Government.... In this connection I must also recall to your consideration the fact that it is to the endeavours and sacrifices of the Powers in whose name I am addressing you that the Polish nation owes the recovery of its independence.... There, rests, therefore, upon these Powers an obligation, which they cannot evade, to secure in the most permanent and solemn form guarantees for certain essential rights which will afford to the inhabitants the necessary protection, whatever changes may take place in the internal constitution of the Polish State..." (quoted in Macartney 1934: 238).

At Versailles, Woodrow Wilson championed a second rationale for the international protection of minority rights. Wilson's vision of the new world order in 1918 was collective security: peace-loving states would join together to resist depredations by any aggressor. Only democratic states would make such commitments. The first guarantee of democracy was self-determination. Self-determination alone, however, could not resolve political tensions because in much of central Europe, ethno-national

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populations were inextricably mingled. The treaties sought to resolve this problem by making minorities loyal citizens of the states in which they happened to live. If minorities were ill-treated, they could not only cause disorder within their countries of residence they could also threaten international peace if a patron state came to their assistance (Macartney 1934: 275, 278, 297). Wilson stated at the Paris Peace Conference that "Nothing, I venture to say, is more likely, to disturb the peace of the world than the treatment which might in certain circumstances be meted out to minorities. And therefore, if the major powers are to guarantee the peace of the world in any sense, is it unjust that they should be satisfied that the proper and necessary guarantees have been given?" (quoted in Sharp 1979: 175). Again, the norms of collective security contradicted the Westphalian norm of non-intervention.

While the minority rights regime of the interwar period ultimately collapsed it was not totally without effect. The rights of minorities were protected in some countries during much of the inter-war period. The Baltic states, Hungary, and Czechoslovakia did conserve most of their minority populations and integrate them into civil society. Hungarian leaders were sympathetic to the minority rights regime because there were large Hungarian minorities outside of Hungary, and minorities comprised only 10 of the Hungarian population. A pacted multiethnic state from the start, Czechoslovak leaders embraced and implemented minority treaty provisions. Czech leaders also hoped that the Treaty would make pan-German appeals less attractive for the large German minority in Czechoslovakia. Public reaction was positive at least initially. Yet even in Czechoslovakia, some minorities did not fare well: commitments for an autonomous Carpathian region or for Slovak autonomy were never fully implemented, and Ruthenian peasants in Carpathia received developmental assistance primarily to undermine Magyar domination of the area. And even representatives of the relatively secure German minority in Bohemia (Sudetenland) did not prevent its representatives from complaining constantly to the League and eventually providing a pretext for the takeover of Czechoslovakia itself (Azcarate 1945: 40-42; Pearson 1983: 155; Bartsch 1995: 81-83; Macartney 1934: 413-415; Robinson et al. 1943: 169).

From the outset, rulers and would-be rulers from Romania, Poland and Yugoslavia protested the minority treaties. These leaders all confronted large minority populations within the borders of their state, while only a small percentage of their co-ethnics lived in other countries. Bratianu, the Romanian leader, argued at the peace conference that the minority treaty violated Romania's sovereignty as well as the principle of sovereign equality, and that the possibility of external intervention undermined internal stability. Disaffected rulers also pointed out that the regime was asymmetrical. The victors, especially the United States and Britain, accepted no standards for the treatment of the Welsh, Irish, African- and Asian-Americans, and other minorities within their own societies. Italy did not have to accept a treaty governing the German minority in newly acquired areas in the South Tyrol. The US along with New Zealand, Canada, and Australia blocked efforts by Japan to introduce a clause endorsing racial equality into the League Covenant (Macartney 1934: 252; Sharp 1979: 181-183; Sharp 1991: 61;

Janowsky 1945: 126-129; Claude 1955: 17, 32-33; Trachtenberg 1993: 27; Bilder 1992: 65-66; Bartsch 1995: 75-76).

Despite historical precedent, a clearly articulated rationale, and monitoring and enforcement procedures minorities did not fare well in the disaffected states. The experience of minority populations in Poland, whose minority treaty was a model for all others, was mixed at best (Gutman 1989:103-105; Pearson 1983: 188-189). The commitment not to schedule national elections on Saturday was honored (law of 28 July 1923); however, many other Sabbath provisions and Jewish school committees were not implemented (Robinson et al. 1943: 237). Anti-Semitic pogroms and campaigns were at a minimum tolerated by public officials; complainants to the League were persecuted (ibid. 176). The emigration rate of Jews was five times that of Poles. The Eastern Slavic minorities, seen as a security threat, experienced some of the worst oppression. The Byelorussians were Polonized after 1924 including closures of schools, societies, and newspapers, and the establishment of a concentration camp at Beresa Kartuska, while Ruthenes (Ukrainians) were brutally attacked by the Polish military in 1930 (ibid., 162-164). The Polish government formally renounced its minority-rights guarantee in September 1934 “pending the introduction of a general and uniform system for the protection of minorities” (quoted in Janowsky 1945: 127 n. 11). Nazi Germany also renounced its obligations in 1934 and the League minorities system soon became defunct.

In sum, the interwar experience of minority-rights guarantees epitomized the difficulty of coercing and even imposing minority-rights provisions upon states where these provisions have uncertain domestic foundations and international support. For intervention to succeed where the target continues to oppose it, the initiator must continue to gauge implementation and credibly threaten sanctions. Instead, the major powers went their separate ways, in particular the US which withdrew from the League, and France which saw its security in terms of alliances with the new East-European states against Germany and opposed efforts by other League Council members to hold these states hostage to their minority policies.

In the inter-war settlement the Westphalian model did not constrain attempts to shape relations between rulers and ruled within territorial units. The victors defended democracy, self-determination, stability and collective security, even if this meant compromising autonomy. Though the Westphalian model was always a reference point, power and interests not principles determined outcomes. The allied powers were able to establish the minorities regime at the conclusion of World War I because they had military, economic and diplomatic resources. If weak states and proto-states wanted international recognition, they had to accept protection for minorities. Over time, however, the major powers were not prepared to commit the military or economic resources necessary to defend minority rights in states where it lacked a domestic political base of support, ultimately dooming the League minorities system to failure.

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## 5. Minority Protection after 1945

In the aftermath of World War II, the international protection of minorities was almost totally abandoned, a position made evident at Potsdam by the tacit acceptance of the uprooting of millions of Germans from eastern Europe especially areas ceded to Poland. These policies reflected the preferences of the superpowers and the general disillusionment with the interwar experience. Only a handful of specific agreements in Europe in the twenty years following W.W.II were concerned with minority rights. Instead, international concerns with relations between rulers and ruled focussed on individual human rights.

There was general disillusionment with the minority protection because of the perceived failure of the League treaties and the discrediting of the national principle. The fascist interlude and the horrors of the Nazi Holocaust which had decimated two perpetual minorities in Europe, Jews and Roma (gypsies), had shown the failure of international monitoring and enforcement. Many thought minority group rights a dangerous principle, since the Nazi regime had used German-speaking minorities as a pretext for expansion (Alcock 1979a: 226-227). Thus the 1947 peace treaties with Bulgaria, Hungary, Italy, and Romania, along with the 1955 Austrian State Treaty, included strong prohibitions of discrimination but no provision for members of aggrieved groups to seek redress.<sup>9</sup>

The US emerged from World War II as the dominant state in the international system, powerful enough to project its values on the post-war order. Minority rights were not part of the American political heritage. A nation of immigrants, American identity was based on political beliefs not ascriptive ties. The governing ideology was grounded in the mutual acceptance of Lockean political values which ennobled the individual and emphasized democracy and capitalism (Hartz, 55). The chief proponent of the Universal Declaration of Human Rights, Eleanor Roosevelt, successfully excluded minority rights (Sigler 1983: 67, 77). Undersecretary of State Sumner Welles argued "...in the kind of world for which we fight, there must cease to exist any need for the use of that accursed term 'racial or religious minority'" (May 1943, quoted in Claude 1955: 74-75).

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9 The Austrian State Treaty of 1955 offered special protections for the Slovene and Croat minorities. In specific areas each was guaranteed elementary school instruction in its own language. Slovene or Croatian would be accepted as an official language along with German. The two groups were to participate in the cultural, administrative, and judicial systems on an equal terms with Austrian nationals (Laponce 1960, 37). Each of the 1947 peace treaties stipulated equal rights for all citizens. Hungary and Romania, during whose fascist interludes the Holocaust had been particularly abominable, were instructed to compensate victims of racial persecution but only if claims were presented within 6 months of the treaty coming into force (articles 27 and 25 respectively). The Eastern European peace treaties, eclipsed by Cold War politics, soon became dead letters.

Soviet leaders eschewed international minority-rights guarantees for different reasons. Presiding over a realm of astonishing ethnic diversity with a history of national demands for autonomy, Moscow had much at risk from granting minority-group leaders a voice on the international stage. Soviet nationalities policy fused socialist internationalism, Leninist self-determination (in which cultural and national groups were granted formal autonomy), and the exigencies of Stalinist centralism. Although many minorities benefited relative to the risks of domination by the local majority, party rule and Soviet military hegemony effectively suppressed ethno-national political movements.

Due in large part to the opposition of the US and Latin-American states, minorities were not mentioned in the UN Charter, and received only limited mention in the Covenant on Civil and Political Rights.<sup>10</sup> Although minority issues gained some attention within specialized UN organs, most notably UNESCO and the ECOSOC Sub-Commission on Prevention of Discrimination and Protection of Minorities, this activity was of limited consequence until the late 1980s. Instead, post-war democratic leaders sought to institutionalize the rights of individuals in regional and international conventions, most notably through the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and the European Court and Commission of Human Rights which enforce it among member states.

Minority rights were the subject of agreements only in a small number of bilateral accords. In 1946 the occupied Italian and Austrian governments reached a bilateral understanding on regional autonomy and minority rights for German-speakers who were a majority in the in the South Tyrol / Alto Adige, a region granted to Italy after W.W.I, and who had been subject to repression by Mussolini's fascist regime. Although autonomy and some language rights were granted in 1948, authority remained in the hands of Rome and the larger Trentino-Bolzano province in which German-speakers were still a minority. Italian-speakers remained overwhelmingly dominant in the industry and administration of areas which were predominantly German-speaking. Only bombing campaigns by minority extremists and renewed pressure from Austrian leaders (having regained formal sovereignty in 1955) led Italian governments to renegotiate autonomy, resulting in a gradual reduction of tensions since the late 1960s (Alcock 1970; Hailbronner 1992: 126-127; Woodward 1995: 475, n. 17).

The London Treaty of October 1954 which divided Trieste (administered as the Free Territory of Trieste from 1947 to 1954) between Italy and Yugoslavia stipulated equality between Italians and Yugoslavs in Trieste. Special schools, which could not be closed without the approval of a mixed Italian-Yugoslav committee, were designated to teach in one of the two languages. In areas where the non-state group constituted more than

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10 The International Covenant on Civil and Political Rights meekly solicits states not to discriminate against "persons belonging to minorities...in those states in which ethnic, religious, or linguistic minorities exist" (article 27). States leaders are free to determine how to implement the clause, or indeed to deny that a minority is has distinct language, culture, or history (as many have done).



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half the population, public documents were to be promulgated in both languages (Laponce 1960: 38). A second agreement concluded between Italy and Yugoslavia at Osimo in 1974 provided that all groups were to have equal political and economic rights; each was entitled to its own schools and to the use of its language in official communications (Hailbronner 1992: 127).

When Britain gave up control of Cyprus, the 1960 Treaty of Guarantee between Cyprus, Greece, Turkey and the UK provided for the protection of the minority Turkish Cypriotes. Each ethnic group had its own chamber in the Parliament. Turkish Cypriotes had to be represented at all levels of government and had veto power in many areas. Key constitutional provisions could not be amended at all and the amendment of some provisions required the approval of Turkey. Enosis or unification with Greece, the preferred outcome of the Greek majority on Cyprus, was in effect prohibited. If there were violations, the signatories were to consult but if an accord was not reached each reserved the right to take action aimed at re-establishing the state of affairs specified by the Treaty. When the Greece asserted control in 1974, Turkey used the Treaty to justify invasion and partition of the island (Bilder 1992: 69-70; Platias 1986: 153-57).

In sum, as a result of the power and preferences of the rulers of the most powerful states, especially the United States, minority rights faded as a matter of international concern during much of the Cold War.

## **6. Minority Rights after the Cold War**

The end of the Cold War accompanied, and in some cases caused, a resurgence of inter-ethnic strife. The new salience of state-minority conflicts 'the New Europe's Old Issue' (Cuthbertson and Leibowitz 1993) led to renewed efforts to promote international stability and by securing minority rights within existing states.

In 1992, the United Nations General Assembly passed the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, the first post second world war convention primary concerning the rights of minorities. At a regional level, minority rights issues have received most attention in Europe. The Conference and later Organization for Security and Cooperation in Europe (CSCE / OSCE), established at Helsinki in 1975, has been the most important venue. The Helsinki Final Act recognized the right of persons belonging to minorities to equality before the law and equal human rights (Principle VII). The CSCE was a contract between the Western and Soviet blocs in which the West recognized the borders of eastern Europe and the East recognized human-rights standards. Initially, minority rights were mentioned only as part of a larger bundle of conflicting principles. There were no provisions for enforcing the Helsinki accord.

Over time minority rights became more prominent especially with the end of the Cold War. The 1990 Copenhagen Document (reprinted in Brownlie, ed., 1992 1990: 454-473) recognized the rights of national minorities, including the free use of their mother tongue in public and private and the incorporation of their history and culture into the school curriculum. Anti-Semitism and discrimination against the Roma were condemned. There were modest provisions for monitoring: signatories agreed to provide within four weeks a written response to inquiries from another member state. The 1991 Charter of Paris for a New Europe had extensive minority rights provisions such as the right of contact with co-ethnics in other countries. The office of the High Commissioner on National Minorities was established at the 1992 Helsinki summit to provide early warning and mediation in state-minority conflicts that could affect peace and stability (Bloed 1993: 95-96; Moravcsik 1994: 48-49). The OSCE has established on-site missions in several states experiencing severe instability, including Estonia, Moldova, ex-Yugoslavia, and most recently Russia (as observers and to some extent mediators in the Russian-Chechnyan conflict).

Minority rights received prominent attention in European diplomacy concerning the break up of Yugoslavia. In December 1991, European Community foreign ministers made acceptance of the Carrington Plan the prerequisite for recognition of former Yugoslav republics. Croatia, Slovenia, Macedonia, and Bosnia formally accepted the Plan. The Carrington Plan stipulated that guarantees for human rights and civil liberties regardless of sex, race, color, language, religion, or minority status (Chapter 2). The Republics were to protect the rights of national and ethnic minorities elaborated in international conventions adopted by the United Nations, CSCE, and Council of Europe, and guarantee the cultural, political, and educational rights of minorities, establishing special regimes where they formed a local majority. A permanent Court of Human Rights would monitor these special areas and resolve disputes among the republics.<sup>11</sup>

In January 1992, after the Community had recognized Croatia and Slovenia, the EC Arbitration Commission (Badinter Commission) ruled that Slovenia and Macedonia had met the conditions specified in the Carrington Plan (Woodward 1995: 190-191). The

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11 Under the Carrington Plan, republics were to guarantee the cultural rights of minorities, equal participation in public affairs, and the right of each individual to choose his or her ethnic identity. Ethnic minorities could participate in the "government of the Republics concerning their affairs." (Chapter 2.4). In areas where members of a minority formed a local majority, they were to be given special status including the right to show their national emblem, an educational system "which respects the values and needs of that group" (Chapter 2.5.c), a legislative body, a regional police force, and a judiciary which reflects the composition of the population. Such special areas were to be permanently demilitarized unless they were on an international border. The rights established in the convention were to be assured through national legislation.

The Carrington Plan's Court of Human Rights was to consist of magistrate nominated by each of the Yugoslav republics and an equal number plus one of nationals from European states who would be nominated by the member states of the EC. No two members were to be from the same republic or European state. Court decisions were to be taken by majority vote (Chapter 4).

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Croatian government, pressured by the EC, also complied: in May 1992, it passed the Constitutional Law of Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities, many of whose provisions were drawn verbatim from the Carrington Report. The law endorses UN human rights accords, the Helsinki Final Act, the Paris Charter on a New Europe, and other CSCE documents related to minority and human rights. Article 4 commits Croatia to assist national and ethnic minorities to establish relations with their parent country. Special districts were designated where minorities were to be educated in their own language using a curriculum adequate to present their history, culture and science if such a wish is expressed (Art. 49). Representatives of minorities totaling more than 8 percent of the population of the whole country were entitled to proportional representation in the Croatian Parliament, government, and supreme judicial bodies. Those with less than 8 percent were entitled to elect five representatives to the House of Representatives of the Croatian Parliament (Article 18). Issues regarding minority and human rights were to be decided by the Court of Human Rights which would be established by all the states created out of the territory of the former Yugoslavia. In the interim a provisional Court was to be established (as of late 1995 this had not taken place) consisting of a President and four members “who must possess the qualifications required for the appointment to high judicial office or be jurisconsults of recognized competence,” a verbatim appropriation of the language of the Carrington Report. The President and two members were to be nominated by the EU from citizens of its Members States and the other two members would be Croatian nationals nominated by Croatia (Art. 60).

These elaborate minority-rights provisions for the former republics of Yugoslavia were adopted as a result of coercion. The would-be rulers of these new states would have preferred not to be encumbered by such international obligations. The commitments had limited domestic support. But their acceptance was a condition of recognition by the European Community. Recognition was an important resource for the rulers of these new states because it enabled them to enter into agreements, even if these agreements were coerced, with other states, international organizations, and private transnational actors.

Finally, the end of the Cold War has also prompted a number of bilateral contractual arrangements. Germany and Denmark made parallel declarations regarding the treatment of ethnic groups within the other country stating that each minority would be given the right to establish schools, would enjoy proportional representation in local government committees, and would be able to maintain religious, cultural and professional ties with its home country (Hailbronner 1992: 128). Hungary has signed agreements with neighboring states with large Hungarian-speaking populations, as has Russia with successor republics of the USSR with Russian-speaking populations.

In a few instances bilateral accords were the result of EU pressure. In the European Stability Pact of 1994, EU member states (led by French Premier Eduard Balladur) conditioned future consideration for EU membership on bilateral agreements to resolve

minority-disputes in Eastern Europe. Since these states (Poland, the Czech and Slovak republics, Hungary, and Slovenia in particular) relied critically on economic and military relations with the West, leaders of these states agreed to reach bilateral agreements to be placed under the guarantee of the OSCE.

The end of the Cold War brought a renewal of international concerns with minority rights because ethnic conflict again threatened international stability and assaulted norms that were deeply embraced by publics particularly in western Europe and North America. Domestic autonomy was compromised. The United Nations Convention on Minorities was a convention. Bilateral agreements in Europe were contracts. The EU arrangements for the recognition of the successor states of Yugoslavia was the result of coercion.

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## 7. Conclusions

The protection of minorities is an old item on the international agenda. The most enduring motivation to protect minority rights has been the fear that internal strife could cause international instability, drawing rulers into conflicts which they would have preferred to avoid. The Thirty Years War in Germany was both a domestic and an international conflict. Ethnic antagonisms in the Balkans in the 19th century inevitably engaged the major powers of Europe because they each feared that their potential rivals would secure influence in the region at their expense. The minority-rights conditions imposed after 1918 were motivated by a broader vision of how stability could be maintained in the international system through democracy, self-determination, and the protection of minorities. The minority-rights provisions of the Cyprus accord were designed to prevent armed conflict between Greece and Turkey, and when the agreement was violated by Cypriote efforts to unite with Greece, Turkish troops did intervene. In recent years, the negative political repercussions of refugee-outflows has added to the interests of many rulers in containing state-minority conflict.

Ethical commitments of rulers and their constituencies, as well as security, has also motivated international efforts to secure minority rights by compromising the domestic autonomy of states. European concern about the fate of Christians in the Ottoman Empire was a manifestation of commitments to co-religionists not always a pretense for expansion and intervention. Accusations of Turkish atrocities against Bulgarians increased British concerns about ethnic conflict in the Balkans in the 1870s. The arrangements concluded at Versailles reflected not so much immediate security threats to the major powers as beliefs about how the world could be more safely organized according to democratic principles. European Union involvement in the former Yugoslavia was motivated by a desire to prevent new economic strife on the continent.

Rulers have also entered into agreements with the expectation or hope of constraining the behavior of their successors who might have different views about how they should treat their own subjects. Many of these commitments, however, especially those with limited domestic support in signatory countries, have done little to alter the harsh treatment of minorities.

Minority-rights agreements have had some success, most notably the development of religious toleration in northwestern Europe from the 16th to the 19th centuries. (The Holocaust, however, painfully demonstrated how incomplete this accomplishment was.) This was largely the result of developments within polities, but these domestic changes were reinforced by international agreements affirming limited toleration. These agreements were Pareto-improving and mutually contingent: rulers in one country adhered to their commitments to religious toleration at least in part because they feared that violations could precipitate retaliation against co-religionists in other countries and, in some cases, war. Where rulers feared the disorder of religious strife more than they desired religious uniformity, international agreements could provide an equilibrium

solution in which all parties adhered because defection would leave everyone worse off.

Efforts to achieve religious toleration and minority rights through coercion and imposition have usually failed. In the Balkans in the 19th century, after the first world war, and in Yugoslavia after 1991, major powers made the acceptance of minority rights a condition of international recognition. In almost all of these cases the rulers or would-be rulers of the target states would have preferred to maintain their own autonomy, but were too weak to resist. Once recognition was accorded, however, the initiators had lost their major source of leverage. Even if the rulers of more powerful states had no compunction about violating the domestic autonomy of their counterparts in weaker states, withdrawing recognition was problematic because local interlocutors, recognized rulers, usually provided the most convenient mechanism through which the powerful could pursue their interests or values. In many cases, such as Treaty of Berlin of 1878, monitoring provisions were limited or non-existent. As rulers forced to accept minority-rights regimes gained resources, they were able to avoid, ignore, or abrogate their commitments.

Principles in the international environment, such as as non-intervention in the internal affairs of other states can serve as reference points, widely available cognitive images of possible modes of human behavior, but are not taken for granted. Rulers have always been able to conceive of alternatives to the Westphalian model and have frequently acted on these conceptions. International principles are not focal points that can resolve collective action problems because powerful actors can ignore or arbitrarily challenge one set of principles by offering alternative, often contradictory ones in their stead. Virtually every major peace settlement has included not just different norms but logically inconsistent ones.

Rules and norms in the international environment are plural, contested, and determined by the material interests, values and power of actors, especially the rulers of the most powerful states. Non-intervention, a defining principle of the Westphalian model, has been persistently challenged by alternatives such as the protection of minorities. There has never been a general consensus among rulers on which principles were to prevail. Weak states have argued for the inviolability of the rule of non-intervention in the internal affairs of other states. Major powers have maintained that international stability, or the need to protect minorities, or the importance of democracy, can trump autonomy. Given that the international environment is anarchic, nothing prevents rulers from voluntarily ceding their future autonomy, or rulers in more powerful states from coercing or imposing their preferences on those in weaker ones.

The status of minorities, and relations between rulers and ruled more generally, are always subject to challenge by external actors motivated by ethnic or other affinity, the goal of international stability, or more broader values such as democracy and religious toleration. If a state is strong enough, as has always been the case for the United

States, it can ignore such challenges. In the case of weak states, as in the Balkans for most of the 19th and 20th centuries, rulers must engage in contracting or submit to coercion. The ability of the strong to coerce or impose successfully, or of rulers within states to bind their successors through international commitments, depends upon domestic political values and commitments. Without a base of domestic support, international efforts to assure minority rights will almost certainly fail because the resources available to the initiators weaken over time. In which cases and to what extent Westphalian toleration can prevail over Westphalian sovereignty will depend less on competing principles of international law than on the interests and capabilities of the actors concerned.

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