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sovereignty have actually functioned. Both are examples of organized hypocrisy. Their defining rules have endured and been widely recognized and endorsed but, at the same time, sometimes compromised—in the case of Westphalian sovereignty, frequently compromised.

Institutions have become a talisman for political scientists and economists as well as sociologists. Moving beyond purely actor-based analyses has shed new insights on many problems. The impact of institutions in the international system should, however, be approached with caution. The mechanisms that reinforce institutions, especially those that explain why particular institutional forms might become embedded, are much less salient in the international system than in stable domestic politics. In an environment characterized by multiple norms, power asymmetries, and the absence of authoritative structures that could resolve conflict, rulers can select among strategies that deploy normative as well as material resources in different and sometimes original ways. In the international system, no institutional arrangement, including international legal and Westphalian sovereignty, can be taken for granted. A logic of consequences can always prevail over a logic of appropriateness.

CHAPTER 3

Rulers and Ruled: Minority Rights

ACCORDING TO the Westphalian model relations between rulers and ruled ought not to be subject to any external actors. Rulers and their subjects or citizens can structure their own relationships independent of outside forces. They may enshrine individual human rights in their constitutional practices or ignore them; they may recognize that ethnic or religious minorities have specific rights or deny that such groups exist; they may provide symmetrical treatment regardless of gender or treat men and women differently; they may designate or reject indigenous peoples as a distinct category; they may legitimate slavery or prohibit it.

Empirically the Westphalian model has not provided an accurate description of the relationship between rulers and ruled that has existed in many states. By entering into contracts and conventions, rulers have extended invitations that engage external authority structures with their own politics. Through coercion and imposition, rulers in more powerful states have intervened in the internal affairs of their weaker counterparts.

This chapter examines one particular but pervasive issue where the Westphalian model provides limited understanding of actual practice, minority rights. Minority rights involve specific commitments by rulers or governments about the treatment of minority groups or specific individuals as a result of their membership in such groups. Minority groups have been defined in many different ways, although religion and ethnicity have been the most prominent; what they all have in common is some sense that the identity of the individual is associated with membership in a group and is distinct from the group identity embraced by other individuals within a given polity.

Internationally legitimated minority rights have most frequently been imposed or coerced. The exceptions being contractual arrangements for religious toleration in Europe beginning in the seventeenth century and a small number of cases involving ethnic groups in the twentieth century. Rulers in more powerful states have intervened to coerce or impose legal protections for minorities in weaker polities. Challenges to autonomy have always been grounded and justified by alternative principles. The Peace of Westphalia and a number of other sixteenth- and seventeenth-century treaties contained explicit provisions for religious toleration because the signatories wanted to contain the religious strife that threatened the stability of western Europe. Similar motivations informed the actions of the

major European powers during the nineteenth century when they made the acceptance of religious toleration a condition of international recognition for all of the successor states of the Ottoman Empire. The provisions for the protection of minorities associated with the settlement of the First World War were, with a few exceptions, imposed on the states of central and eastern Europe, because the allied powers regarded such protections as essential for the establishment of stable democracies, which were in turn understood to be the underpinning for collective security and international peace. Likewise, protections for minorities were imposed on the successor states of Yugoslavia in the 1990s because the United States and the major powers of western Europe believed that this would promote stability in the Balkans and prevent the spread of ethnic violence to other countries in the Balkans and beyond.

In an environment that is as weakly institutionalized as the international system, there have always been a variety of often mutually inconsistent principles that have been used to legitimate policy. Even Vattel, the eighteenth-century jurist, who was one of the first to articulate fully the principle of nonintervention, also wrote that if the unjust rule of a sovereign led to internal revolt, external powers would have the right to intervene on the side of the just party when disorder reached the stage of civil war.¹ There has been no authority that could prevent rulers from offering invitations that legitimate external authorities in their own polity through conventions and contracts, or intervening through coercion and imposition with regard to the relationship between rulers and ruled in other polities. There has been no consensus on how the principles of autonomy and minority rights should be balanced against each other. Rulers in different states have had different conceptions about how minority rights should be defined, or whether they should exist at all, and how these rights should be weighed against the principle of autonomy.

The actual effect of external efforts to define relations between rulers and ruled in the area of minority rights has, however, been limited. Coercion and imposition have frequently failed: target rulers have accepted conditions regarding the treatment of minorities at moments when they have been most vulnerable, but then reneged when they became more powerful. The most commonly used method of coercion has been to condition recognition on the acceptance of specific stipulations about relations between rulers and ruled in the target state. Once, however, recognition is granted, it is not easily withdrawn; rulers in the target state can then rescind the promises they have made about the treatment of their own subjects. Intervention through coercion and imposition can work if

¹ Vattel 1852, book II, chap. IV, sec. 56.

Not all states accept that minority rights should exist.

the initiator can maintain pressure by, for instance, stationing military forces in the target state, or maintaining a credible threat to impose economic sanctions, but such sustained efforts have been unusual.

The few cases in which rulers have invited the influence of external authority through contracting have been more successful because such arrangements have involved commitments by one state to respect the rights of its minorities provided that the other party does the same. There is no problem of bridging time. 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, which have primarily been associated with human as opposed to minority rights, in influencing relations between rulers and ruled has depended primarily on the way in which such arrangements alter domestic attitudes.² 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 and they anticipate that ratifying a convention will constrain their successors. A convention could legitimate at least verbal protests from other signatories, which could reinforce the position of domestic groups. A convention could provide for monitoring provisions that would make it more difficult for subordinate rulers to violate surreptitiously guarantees regarding the treatment of individuals or groups. It could, as in the case of the European human rights regime, establish judicial procedures that would give nonstate actors, including individuals, standing to bring complaints against their own government, again making it more difficult for future rulers to violate covertly the terms of a convention.

In sum, the Westphalian model notwithstanding, rulers have not always enjoyed autonomy over their relations with those they rule. Minority rights is one issue area where violations of the Westphalian model have been pervasive, including violations in the Peace of Westphalia itself. Other actors, especially rulers in the most powerful states, have intervened through coercion and imposition primarily because of their concerns that ruler-ruled interactions in weaker states could cause international instability. Rulers have also offered invitations to external authority structures by entering into contracts and conventions sometimes with the expectation of constraining the behavior of their successors. Many conventions, however, especially those with limited domestic support in signatory countries have had little impact on behavior.

² Moravcsik 1994.

Do HR Conventions show respect for DHS

MINORITY RIGHTS

International attempts to influence the relationship between rulers and minority groups within their own country have been an enduring characteristic of international relations. For the European states, the first target of such efforts was the Ottoman Empire. European rulers made unilateral pledges to protect Christians as early as the thirteenth century. Numerous treaties were concluded between the Ottoman Empire and European states beginning in the sixteenth century. Every major peace treaty from Westphalia to Versailles contained some provisions for the protection of minorities, initially defined in terms of religious affiliation and later ethnic or linguistic identity. Most of these efforts involved intervention through coercion or imposition and most were unsuccessful because the more powerful states could not sustain their leverage over time; when pressure was relaxed, targets often abrogated their earlier commitments to minority rights. The major success story is the development of religious toleration in Europe. Religious toleration was a prominent feature of the Peace of Westphalia, a contractual agreement reluctantly accepted by rulers who, after the religious wars of the sixteenth and seventeenth centuries, recognized that they were more likely to keep their crowns, and their heads, if they acquiesced to religious differences rather than suppressing them.

Madhu V. Anand

The Ottoman Empire

After the Crusades the rulers of Christian Europe persistently asserted their right to protect Christians within the Ottoman Empire. These assertions continued after the Westphalian principle of nonintervention was widely recognized, and after the Ottoman Empire was explicitly accepted as a member of the community of states following the Crimean War. These pledges, which date back as far as the thirteenth century, were reaffirmed, for instance by Louis XIV in the seventeenth 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. At the time these commitments were made, the Ottoman Empire was at the height of its power; the treaty was not an example of coercion. Treating foreigners differently was consistent with organization of political life within the Ottoman Empire, where the millet system gave religious communities considerable control over their own affairs.

perhaps Millet system was not compulsory voluntary

As Ottoman power declined after the sixteenth century, the major European powers increasingly used coercion to secure rights for Christians.³ In 1615 Austria and the Porte signed a treaty that guaranteed to Catholics the right to practice and build churches. In 1673 France secured concessions for the Jesuits and Capuchins. The Treaty of Karlowitz of 1699 gave the Polish ambassador the right to raise issues regarding the treatment of Catholics within the Ottoman Empire, 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. The European powers used these grants selectively when they served other political purposes. The pretense for intervention that these treaties gave the European powers increased instability in the empire.⁴

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 coreligionists. Later, they signed treaties that validated Ottoman law. As the position of the Sultan weakened still further, they engaged in coercion, securing concessions that affirmed their right to protect Christians within the empire.

Religious Minorities in Europe

Every major peace treaty signed in Europe from Westphalia in 1648 (and even Augsburg in 1555) to Vienna contained provisions for the treatment of religious minorities. These arrangements were contracts, invitations, that provided for external scrutiny of domestic policies and practices. They violated the Westphalian principle of autonomy but they contributed to civic peace in Europe.

³ Traditionally, Islamic politics divided the world into Dar-al-Islam, the House of Islam or the civilized world, and Dar-al-Harb, the House of War inhabited by infidels. The first treaty in which the Ottoman Empire described a European power as a coequal was the Treaty of Sitvatorok (1606) between the Holy Roman Emperor and the sultan, which followed the Ottoman military defeat at the second siege of Vienna. In the Turkish text the emperor was given the same title that was used for the sultan. When Ottoman power had been at its height, a century before, there were no such treaties. The Ottomans had not regarded any Christian power as a juridical equal. See Lewis 1995, 120, 273. As the balance of power changed, Ottoman institutional arrangements changed as well; the logic of consequences dominated the logic of appropriateness. In 1987 a museum exhibition of rare prints and manuscripts dealing with Suleiman the Magnificent at the National Gallery in Washington, D.C., which was sponsored by the Turkish government, depicted the Ottoman Empire as another European power, a position that Suleiman himself would have found quixotic. See Rogers and Ward 1988.

⁴ Macartney 1934, 161-63; Laponce 1960, 25; Blaisdell 1929, 24; Mansfield 1991, 80.

when did Millet the begin? Was it a Concessi to the power of King

The development of religious toleration and later religious freedom was a triumph of European civilization that evolved out of both principled arguments about the illegitimacy of coerced beliefs and a recognition that religious strife could destroy political stability. Although the extent of repression varied, the persecution of religious minorities or heretics was characteristic of Christianity. After Constantine, the security and authority of the state in Europe were reinforced by Christianity. The Roman emperor Theodosius imposed the death penalty on a heretic in the fourth century. Saint Augustine endorsed persecution that was designed to open the minds of those who had embraced error, even though he rejected the death penalty. Catholic intolerance reached its peak at the end of the fifteenth century in Spain with the Inquisition. Although Luther started with a relatively accepting attitude once he began to build his own church, he became more prosecutorial. Calvin banished from Geneva those who did not subscribe to his doctrines. Luther and Calvin were interested in truth, not tolerance.⁵

The civil strife of the sixteenth and seventeenth centuries set Europe on the path to religious toleration. The Reformation ended any hope for unity in the Christian Church. By 1600 it was evident from experiences in France and the Netherlands that heretical beliefs could not be suppressed by the sword; the alternatives for rulers were political instability and even disintegration or some degree of toleration. The English Civil War destroyed the Stuart dynasty and even, for a time, monarchical rule. No conflict in Europe was more costly than the Thirty Years' War, which was exacerbated by religious conflict. Germany was devastated. The rural population might have declined by 40 percent, the urban by 33 percent.⁶

Practical experience was reinforced by a long-standing Christian view that true religious beliefs could not be coerced. Renaissance thinkers did not attack religious intolerance directly but they distinguished between the world of reason and the world of faith. In his *Utopia* written in 1516, Thomas More depicted a tolerant society, albeit one still grounded in religious belief. (More became much less tolerant of dissent after witnessing the initial consequences of the Reformation.) 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 moral ones as well. Support for toleration was also offered in France on practical political grounds. De l'Hopital, who was chancellor in the early 1560s, argued that while religious uniformity was preferable, efforts to repress Protestantism would tear the country apart. Bodin made similar

⁵ Bainton 1951, 26, 38-53; Jordan 1932, 31.

⁶ Beller 1970, 345-46, 357; Jordan 1932, 19-25, 38.

arguments in the *Six Books of the Commonwealth* published in 1576. Locke stated in his "Letter Concerning Toleration" published in 1689 that "neither Pagan nor Mahometan, nor Jew, ought to be excluded from the civil rights of the commonwealth because of his religion."⁷

Religious toleration was reflected in 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*). *Cuius regio, eius religio* did not mean that rulers could do anything that they wanted regarding their subjects' religious practices. At a minimum dissenters were to be allowed to emigrate; they were not to be executed. There was a general view that, while the state could regulate public worship, it would not intervene in private practices. *Cuius regio, eius religio* was a break with the medieval world, which presumed a unified Christendom. This principle provided for equal international acceptance for Catholic, Lutheran, and later Calvinist rulers. Augsburg endorsed the view that one religion was necessary for the state but that it did not have to be the same religion for every state. Understood as the right of the ruler to set the religion of his territory, *cuius regio, eius religio* is entirely consistent with the Westphalian model; in fact Augsburg was more consistent with Westphalian principles than the Peace of Westphalia itself.

In a few specific areas, however, even the Peace of Augsburg violated state autonomy. In eight imperial cities of the Holy Roman Empire inhabited by both Protestants and Catholics, the emperor committed himself to accepting the existence of both faiths. In addition, the rulers of ecclesiastical states were prohibited from changing the religion of their domains, in effect contravening *cuius regio, eius religio*. 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 did not, however, provide for a satisfactory resolution of religious issues in the Holy Roman Empire. Populations were still intermingled. The position of ecclesiastical states, and Protestants within them, remained a bone of contention. Both Catholic and Protestant rulers violated the terms of the Augsburg settlement.⁸

While endorsing the principle of Augsburg, specific articles of the Peace of Westphalia (which consisted of two treaties: Osnabrück, between the empire and the Protestant states, and Münster, between the empire and the Catholic states) contravened the notion that the ruler could set the religion of his state. Territories were to retain the religious affiliation that

⁷ Jordan 1932, 42; Skinner 1978, 244-54; Lewis 1992, 49.

⁸ Scribner 1990, 195-97; Gagliardo 1991, 16-21; Jordan 1932, 36-37; Little 1993, 324-25.

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they had on January 1, 1624, regardless of the desires of their ruler. Catholic orders were to stay Catholic; Lutheran orders were to stay Lutheran. 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 and 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 depriv'd of Successions, Legacies, Hospitals, Lazar-Houses, or Alms-Houses, and other Privileges or Rights" because of their religion. They 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 religion of the state. Dissenters (Catholic or Lutheran) who did not have any rights of religious practice in 1624 and who wanted to move or were ordered to move were to have the freedom to do so and were given five years to sell their goods.⁹

Cities with mixed Lutheran and Catholic populations (Augsburg, Duncelspiel, Biberach, Ravensburg, Kauffbeur) were to have freedom of religious practices for Catholics and Lutherans. In the first four of these cities, offices were to be divided equally between Catholics and Lutherans. Members of the Silesian nobility who were Lutherans were granted by the emperor the right to build three churches and to continue to practice their religion provided that they "do not disturb the publick Peace and Tranquillity." 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.¹⁰

The treaty provided that Catholics and Lutherans should be equally represented in the assemblies of the empire where religious issues were to be decided by consensus. 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. Rights given to Lutherans and Catholics were also extended to Calvinists.¹¹

In the case of a situation in which the religion of the ruler of a particular territory changed from one Protestant sect to another (for instance, from Lutheran to Calvinist), the new 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." The religious community was

⁹ Treaty of Osnabrück 1648, 219-25, Article V.11-23; 229, Article V.28; and 229, Article V.28-30. Also see, Osiander 1994, 40.

¹⁰ Treaty of Osnabrück 1648, 226, Article V.25; 217, Article V.7; 230-31, Article V.31; and 234, Article V.41.

¹¹ Treaty of Osnabrück 1648, 234, Article V.42; 238, Article V.45; and 239, Article VII.

given the right to name ministers, and the prince was to confirm them "without denial." Religious toleration was, however, limited to Lutherans, Calvinists, and Catholics.¹² The provisions of the peace applied only to the Holy Roman Empire. The king of France was obligated to the Catholic religion and to "abolish all Innovations crept in during the War" in those territories that were ceded to France by the treaty.¹³ Austria, which was not part of the empire although ruled by the Habsburgs who were also the Holy Roman emperors, was also not included.

In sum, the Peace of Westphalia, often seen as the beginning or ratification of the modern state system, included extensive provisions for religious toleration that violated the principle of autonomy. The terms of the peace, which included stipulations regarding basic constitutional practices in the empire, were guaranteed by France and Sweden. The French argued that they were defending the traditional rights of the German princes against the emperor's efforts to establish absolute rule, and the king of Sweden, also a victor in the Thirty Years' War, became a member of the very medieval Diet of the Holy Roman Empire as the newly enfeoffed duke of Werdien.¹⁴ Ferdinand III, the Habsburg monarch and emperor, reluctantly pledged that religious issues would be decided by the principle of consensus within the empire but refused to accept toleration in other areas that he ruled. Westphalia was a contractual arrangement in which the emperor invited French and Swedish oversight of constitutional practices in the empire in exchange for an end to the Thirty Years' War.

After Westphalia, provisions for religious toleration were included in many international agreements. In the seventeenth and eighteenth centuries it was usual for a new sovereign taking over a territory to pledge to respect existing religious rights. The treaties of Oliva (1650), Nijmegen (1678), Breslau (1742), Dresden (1745), Hubertusburg (1763), and Warsaw (1772) all had provisions protecting the position of religious minorities. The Treaty of Utrecht of 1731, 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." A similar provision was included in the Treaty of Paris of 1763 in which the king of Great Britain again agreed that his Catholic subjects in Canada would be entitled to the same rights as those in Britain.¹⁵

Over time the principle of toleration that was implied although not explicitly endorsed by the Peace of Westphalia did come to prevail in west-

¹² Treaty of Osnabrück 1648, 240, 241, Article VII.

¹³ Treaty of Münster 1648, 32, Article LXXVII.

¹⁴ Osiander 1994, 41, 65; Croxton 1998, 15-16.

¹⁵ Laponce 1960, 23-24; Macartney 1934, 158-59. The quotation is from Laponce 1960, 24.

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ern Europe. After 1648, there was a slow but general abatement of religious conflict. The treaties did work in the sense that the ecclesiastical boundaries set in 1648 remained more or less intact until as late as 1945. At first toleration was not regarded as either possible or desirable, but it was accepted in some specific areas as a matter of political necessity because efforts to repress one religious group or another would have precipitated unrest and even war.

In general, those states which (like France) could avert or reject the terms of Westphalia did so. While tolerating Protestants in such outlying areas as Silesia and Hungary, the Habsburgs kicked them out of Styria and Upper Austria—resettling them in Transylvania “for state economic reasons.” The Habsburgs refused to abide by the provisions for the repatriation and restitution of Protestants and those prohibiting the expelling of unprotected dissidents after five years. Similarly, the powerful archbishop of Salzburg expelled Protestants in 1731. Such actions were typically followed by reprisals against Catholics in the Protestant northern states.¹⁶

Hence, one of the reasons for honoring international pledges of religious toleration was that in some cases violations by one ruler could lead to retaliation by others against religious minorities within their own territories. These early treaties, including the Peace of Westphalia itself, were contractual arrangements. The first best outcome for post-Reformation European rulers was the suppression of dissidents, a position embodied in the principle of *cuius regio, eius religio*. But mutual repression would lead to the worst possible outcome of political instability. The provisions of many seventeenth- and eighteenth-century treaties with respect to religious toleration provided a way out of this prisoners’ dilemma, facilitating the development of religious toleration by providing an internationally legitimated focal point that clarified acceptable behavior. These arrangements were self-enforcing because it was evident that violations of religious toleration could lead to retaliation by other rulers, domestic unrest, and international conflict.

The Peace of Westphalia was a break point with the past but it is not the one understood by most students of international relations and international law. Westphalia did mark the transition from Christendom to reason of state and balance of power as the basic cognitive conceptualization in forming the actual behavior of European rulers. But it accomplished this by violating the principle of autonomy. It was precisely the fact that rulers extended invitations, accepted internationally legitimated restraints on their own right to act as they pleased within their own territory, that made it possible to escape the state of nature resulting from sectarian warfare.

¹⁶ Gagliardo 1991, 83–85, 178; Hughes 1992, 134–36; Holborn 1959, 370–71. The quotation is from Gagliardo 1991, 178.

Religious toleration continued to be a subject of concern even in the nineteenth century. The settlement of the Napoleonic Wars included provisions for the protection of religious minorities in parts of Belgium assigned to the Netherlands and in areas of Savoy ceded to Geneva. The agreement of July 21, 1814, with the Netherlands provided that Catholics in Belgium, which did not become independent until 1830, would 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.

Article 3 of the protocol of May 29, 1815, ceded parts of Savoy, which had been ruled by the king of Sardinia, to Geneva. Savoy was Catholic; Geneva was Calvinist. 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, and no Protestant “temple”¹⁷ would be established except in the town of Carrouge, where only one could be built. 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.¹⁸

The Vienna settlement also included for the first time explicit protection for an ethnic as opposed to a religious group. At Vienna, Castlereagh argued that the rights of the Poles ought to be guaranteed by the great powers within the three states that had participated in the partition of Poland (Prussia, Russia, and Austria). Efforts to make the Poles, he averred, “forget their existence and even language as a people has been sufficiently tried and failed.”¹⁹ Institutions had to reflect the desires of the population; otherwise, it would be impossible to maintain stability. The final act of the Congress of Vienna affirmed the rights of the Poles to preserve their nationality. Article 12 stated that there should be “institutions that assured to the Poles the preservation of their nationality.”²⁰

¹⁷ Quoted in Laponce 1960, 26.

¹⁸ Laponce 1960, 26–27, 39; Macartney 1934, 158–59.

¹⁹ Quoted in Macartney 1934, 159–60.

²⁰ Quoted in Fouques-Duparc 1922, 122, translated by author.

These pledges had only a limited impact on actual policy. Austria strictly forbade any manifestations of political nationalism. Russia did establish distinct institutions for Poland, including a separate constitution and a parliament, after Vienna, but the 1830 revolt of Polish army cadets caused Nicholas I to end local autonomy. The French government protested. The British, however, anxious to avoid enmity with Russia, refused to take any significant action. The 1863 Warsaw Uprising precipitated more repression and more intense assimilative measures by Alexander II. Prussia engaged in Germanization campaigns after 1830 and 1848, and after 1867 excluded the Polish language altogether and expelled Russian Poles.²¹

In sum, in Europe religious toleration (and at Vienna even respect for an ethnic minority) was embodied in international agreements that prescribed national law and practices. These accords were usually contractual arrangements among the major powers concluded to end wars. These stipulations, including those found in the Peace of Westphalia, violated the Westphalian model. Rulers made international commitments about how they would treat the religious practices of some of 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 in the agreement. These contracts were essentially invitations to compromise the autonomy of signatory states.

The development of religious toleration and later full religious freedom was an extraordinary accomplishment. It emerged out of a mutual recognition that religious disputes were so volatile that they could completely undermine political stability, a recognition driven home by bloody civil wars across western Europe in the sixteenth and seventeenth centuries, and reinforced by the principled argument that true religious belief could not be coerced but had to be voluntarily accepted.

The Balkans in the Nineteenth Century

At the conclusion of the Napoleonic Wars the Balkans were ruled by the Ottoman Empire. By the outbreak of the First World War all of the Balkans comprised states. Every one of the successor states to the Ottoman Empire—Greece, Romania, Serbia, Montenegro, Bulgaria, and Albania—as well as the Ottoman Empire itself, accepted constraints, often inefficacious, on how minorities would be treated. Initially these constraints were formulated in terms of religious affiliation, but later ethnic groups were included as well.

²¹ Austria: Macartney 1934, 112. Russia: Fouques-Duparc 1922, 115, 122–26; Claude 1955, 7; Laponce 1960, 28–29; Pearson 1983, 72–74. Prussia: Pearson 1983, 128–29; Janowski 1945, 25–27.

Unlike the evolution of religious toleration in western Europe, minority rights in the Balkans were the result of intervention through coercion or imposition rather than an invitation to external authority through contracting. Power asymmetries, at least at the point of independence, were high. The rulers or would be rulers of new states would have 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 nondiscrimination. Leaders in Britain, France, Russia, and Austria-Hungary were motivated primarily by concerns about international stability; religious and ethnic strife could destabilize politics in the Balkans and draw other states into conflicts that they would have preferred to avoid. As World War I demonstrated these anxieties were all too prescient. There were other concerns as well, however, including the unwanted migration that could be generated by discriminatory policies.

These efforts to protect minorities were not successful. Monitoring was difficult. International recognition, an important source of leverage, lost its effectiveness once it was actually extended. After independence, the Balkan states secured more material resources. It became more difficult for the major powers to coerce by making credible threats or to compel by using force. Moreover, unlike religious toleration in western Europe, the protection of minorities did not enjoy support from groups within the Balkan politics.

Greece was the first state to become independent from the Ottoman Empire, a status that was secured only because of the intervention of Britain, France, and Russia. 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 then destroyed Mehmet Ali's fleet at the Battle of Navarino and the Ottoman army was then defeated.

Even before their military intervention, the major powers had discussed a number of institutional arrangements for Greece, including the creation of a tributary state within the Ottoman Empire. By 1830, however, they were committed to creating a formally independent state, but there was never any thought that this new Greek entity would be a Westphalian state. The British did not want any arrangement that would provide Russia with greater influence and naval access to the eastern Mediterranean. Russia did not have the military power to impose a settlement on its own. The Greek revolutionaries were themselves divided.²²

²² Schwartzberg 1988, 139, 301, 303; Temperley 1966, 406–8; Anderson 1966, 74–75; Dakin 1973, 289–90, 310–12; Jelavich and Jelavich 1977, 50–52.

The Greek polity was a creation of the major powers. Greek independence was recognized in 1832. Greece was established as a monarchy; most of the Greek revolutionaries would have preferred a republic. Otho, 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. (These issues are discussed at greater length in Chapters 5 and 6.) Finally, the rulers of Great Britain, France, and Russia insisted that religious toleration be included in Greek law. The protocol, which they signed in 1830, 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."²³

Beginning with the accords following the Crimean War, the major powers also insisted on provisions for religious toleration in Wallachia and Moldavia, the two Ottoman provinces that were to become Romania. When Moldavia and Wallachia secured their independence in 1856 the Western powers sought to guarantee equal treatment for all, including Jews. The Treaty of Paris of 1858 implied that civil liberty and religious toleration should be granted to Jews, but the Romanian authorities ignored these vaguely worded provisions. The Romanian constitution of 1866 gave only Christians the right to apply for Romanian nationality. 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 issue touched Christian as well as Jews, because, "if the suffering falls on the Jews, the shame falls on the Christians."²⁴ Romania rejected foreign protestations, arguing that the principle of nonintervention ought to be upheld. The British claimed that the Treaty of Paris of 1858 gave the powers the right to enforce Article XLVI which provided for political and economic equality for Jews.²⁴

In the Treaty of Paris of 1856, the European powers recognized Turkey as a completely sovereign state and eschewed interference in its internal affairs to protect the Christian minority, but only after the sultan, under pressure from the major powers, had issued the edict of Hatti-Humayoun, which made commitments both to administrative reform and to religious privileges for Christians. The charter for religious and administrative reform was included in Article IX of the Treaty of Paris of 1856.²⁵

²³ Quoted in Macartney 1934, 164-65.

²⁴ Fouques-Duparc 1922, 98-106. The quotation is from p. 102, translated by author.

²⁵ Blaisdell 1929, 25.

The efforts of the major powers to establish religious toleration in the Balkans reached their apogee at the Congress of Berlin in 1878, which was organized to settle the first Balkan War. Berlin was dominated by the powers of Europe—Britain, France, Russia, Germany, and Austria-Hungary. The Ottoman Empire participated. Even though Bulgaria was the most important issue, no Bulgarian was permitted to speak officially. Representatives from Serbia, Romania, and Montenegro were allowed to address the congress, but not to participate formally in its deliberations. Greece, already recognized as an independent state, did attend but had no influence.²⁶

The major powers at the congress recognized Serbia, Montenegro, and Romania as independent states and a smaller Bulgaria, one without access to the Mediterranean, as a tributary state of the Ottoman Empire. As a condition of international recognition, the major powers insisted that the new states accept minority rights—more precisely, religious equality. For instance, Article XXVII of the Treaty of Berlin of 1878 stated that "In Montenegro the difference of religious creeds and confessions shall not be alleged against any person as a ground for exclusion or incapacity in matters relating to the enjoyment of civil and political rights, admission to public employments, functions, and honours, or the exercise of the various professions and industries in any locality whatsoever. The freedom and outward exercise of all forms of worship shall be assured to all persons belonging to Montenegro, as well as to foreigners, and no hindrance shall be offered either to the hierarchical organization of the different communities, or to their relations with their spiritual chiefs."²⁷ Identical provisions were provided for Romania (Article XLIV), Bulgaria (Article V), and Serbia (Article XXXV).

In addition, the major powers also secured assurances from the Ottoman Empire itself regarding religious toleration. Article LXII provided for the following within the Ottoman Empire:

In no part of the Ottoman Empire shall differences of religion be alleged against any person as a ground for exclusion or incapacity as regards the discharge of civil and political rights, admission to the public employments, functions and honours, or the exercise of the various professions and industries. All persons shall be admitted, without distinction of religion, to give evidence before the tribunals. 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 traveling in Turkey in Europe,

²⁶ Anderson 1966, 210-12.

²⁷ Treaty of Berlin 1878, 985-86, Article XXVII.

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 understood that no alterations can be made in the status quo in the Holy Places.²⁸

The Porte also agreed to implement reforms related to the Armenians and to "guarantee their security against the Circassians and Kurds."²⁹ Turkey was to inform the powers of the steps it had taken and the powers would "superintend their application."³⁰ The Ottomans made this pledge to secure the withdrawal of Russian forces from Armenian territory.²⁹

These provisions of the Treaty of Berlin were entirely consistent with existing European practices even though they were inconsistent with the Westphalian model. The enumeration of rights for religious minorities, especially when territory changed hands, as was the case in the creation of new states out of the Ottoman Empire, had become a routine part of European diplomacy after 1648. What was different about the Congress of Berlin was that the enumeration of minority rights was the result of intervention through coercion and imposition rather than invitation through contracting. The would-be rulers of Romania, Bulgaria, Montenegro, and Serbia were not, themselves, interested in religious toleration. They accepted these arrangements only 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, a clear example of imposition.

The major powers insisted on 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's anxiety about Slavic nationalism prompted its demands for informal control of Bosnia and Herzegovina in 1878 and formal incorporation in 1907. 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.

In addition there were what would now be labeled humanitarian concerns. British public opinion had been agitated by reports of Turkish atrocities against the Bulgarians; Gladstone's popularization of this issue had helped to return him to the position of prime minister. Jewish groups in the United States and Great Britain pressured their governments to protest Romanian treatment of their coreligionists. Later in the century,

²⁸ Treaty of Berlin 1878, 996, Article LXII.

²⁹ Treaty of Berlin 1878, 996, Article LXI; Lewis 1995, 326; Mansfield 1991, 75, 81; Macartney 1934, 167.

when it became evident that the situation for Jews in Romania was not much improved, American officials pressed Romania for reforms with the hope of limiting the flow of new emigrants.³⁰

Imposition was possible only because there were large power asymmetries between the would-be rulers of the Balkan states and the major powers of Europe. Britain, France, Russia, Germany, and Austria-Hungary could extend international recognition and provide material resources and military support. Absent recognition, Balkan leaders could not be certain that they would have any kind of state to rule at all; with international legal sovereignty, albeit not Westphalian sovereignty, they secured both resources and legitimacy.

The efforts to secure minority rights in the Balkans in the nineteenth century failed. The treatment of Jews in Romania was particularly problematic. Articles XLIII and XLIV of the Treaty of Berlin conditioned recognition on acceptance of religious equality, and recognition was only extended in February 1880 after Romanian officials had publicly declared that a Jew could become a citizen. In practice, however, Romanian policy hardly changed. While the letter of the treaty was honored by making it possible for a non-Christian to obtain citizenship, this required an act of parliament for each individual Jew. Of the 269,000 Jews in Romania only 200 attained citizenship. Noncitizens 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 beginning of the twentieth century, almost 90 percent of Romanian emigrants to the United States were Jewish.³¹

The attempt to secure Ottoman protection for the Armenians was also a dismal failure. 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 deprecations continued.³²

Unlike the development of religious liberty in western Europe, the effort to secure minority rights in the Balkans was not undergirded by domestic political support. The Treaty of Berlin was an exercise in coercion and imposition rather than contracting. The would-be rulers of the new Balkan states would have preferred no restrictions on their treatment of religious minorities. Moreover, one major instrument of leverage available to the major powers, international recognition, was difficult to withdraw once it had been extended. Although the major powers did protest Romania's treatment of its Jewish population and Turkish treatment of

³⁰ Macartney 1934, 169, 281; Fouques-Duparc 1922, 112; Pearson 1983, 98.

³¹ Fouques-Duparc 1922, 98–112; Jelavich and Jelavich 1977, 178; Pearson 1983, 98.

³² Macartney 1934, 167, 170.

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the Armenians, they were unwilling to apply more forceful economic or military pressure.

Although the effort to assure minority rights in the Balkans failed, the exercise was still inconsistent with the Westphalian model. Actors in new states were not left to structure their own relationships between rulers and ruled. Power asymmetries and different preferences made them vulnerable to intervention. They accepted formal restraints on their own domestic autonomy to secure international recognition and the legitimacy and material resources that accompanied it.

The Versailles Settlement

International efforts to secure minority rights culminated at the Versailles meetings that settled the First World War. All of the new states that were created, or the polities that had their boundaries redrawn, signed agreements or made unilateral pledges regarding the protection of religious and ethnic minorities within their own boundaries. In most cases these actions were the result of coercion or imposition, but in a few instances rulers in the new states welcomed international agreements on minority rights. They invited constraints on their own autonomy either because they were committed to such values or because they believed that international accords would either ease their domestic minority problems or improve the condition of their coethnics living in other states. Unlike the Berlin settlements, the Versailles arrangements provided for elaborate monitoring and enforcement through the League of Nations and the International Court of Justice. Like the Berlin settlements, they failed.

The minority rights established after the First World War were set in peace treaties signed 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 of Nations for Albania in 1921, Lithuania in 1922, Latvia and Estonia in 1923, and Iraq in 1932. There were also provisions for the treatment of minorities in the 1920 Convention between Poland and the Free City of Danzig, in the 1921 Convention on the Aaland Islands, in the 1922 Convention between Germany and Poland Relating to Upper Silesia, and in the 1924 Paris Convention Concerning the Territory of Memel.³³

The protections were detailed and elaborate. The treaty with Poland was a model. Article 2 stated that "Poland undertakes to assure full and complete protection of life and liberty to all inhabitants of Poland without

³³ Lerner 1993, 83; Claude 1955, 16; D. Jones 1991, 45.

distinction of birth, nationality, language, race or religion." Poland granted citizenship rights to individuals habitually resident on or borne within its territory of parents habitually resident there, even if they were not presently living in Poland, a provision that reflected concern about Romanian exclusion of Jews from citizenship even after the Treaty of Berlin. Article 2 stipulated that "Difference 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." Article 8 provided that, in areas where there was a considerable number of non-Polish speakers, they should be educated in primary school in their own language, although the teaching of Polish could be obligatory. Article 11 stated that Jews would not be obligated to perform any act that constituted a violation of their sabbath and that "Poland declares her intention to refrain from ordering or permitting elections, whether general or local, to be held on a Saturday."³⁴

The minority treaties were embedded in national law. The treaties signed with Austria, Poland, Bulgaria, and Czechoslovakia made the provisions for minority protections basic constitutional guarantees 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.³⁵

In addition monitoring and enforcement mechanisms were established within the League of Nations. Individuals as well as government representatives, could submit a Minority Petition to the League where it was considered by the Minorities Section of the Secretariat. If the petition was accepted (there were only a few restrictions such as that the petition had to emanate from an authenticated source and could not contain violent language), it was then sent to the state against which the complaint had been lodged. If a state commented on the petition, its observations, along with the original complaint, were sent to the League Council. If the state remained silent, only the petition was forwarded. A state had to indicate within three weeks whether it would comment. The petition was then considered by an ad hoc minority committee of three members, the president of the council and two members appointed by him. The Minorities Secretariat provided information to the committee.

The committee usually tried to deal with cases by informally urging the offending state to change its practices. If a satisfactory resolution was

³⁴ Polish Minorities Treaty, reprinted in Macartney 1934, 502-6; See also A. Sharp 1979, 174; Fouques-Duparc 1922, 112.

³⁵ Bilder 1992, 64; Laponce 1960, 40; Lerner 1993, 85.

achieved, then the results were usually reported to the council. If not, the case was taken formally to the council, which could request further information. If there was no satisfactory response, the issue was submitted to a committee of jurists to decide if the state had violated its international obligations. The committee could ask that Permanent Court of International Justice for an advisory opinion.³⁶

The enforcement procedures were not implemented vigorously, although the League of Nations did act on many complaints. Some victories were Pyrrhic. For instance, in 1921 in one of the few cases to go through the entire procedure, the league was petitioned concerning the Polish treatment of German settlers who had come to what was now Poland under the terms of the German colonization law of 1886, but had failed to secure clear title to their land. The ad hoc minority committee, consisting in this case of representatives from the Netherlands, Italy, and Japan, was unable to secure a settlement. The case was referred to the League Council in 1922. The Poles, ignoring the council's position, expelled the Germans. In September 1922 the case was referred to a Committee of Jurists. The Poles rejected the committee's finding. The council then voted to send the case to the Permanent Court of International Justice for an Advisory Opinion. The court ruled against Poland in September 1923. The council again pressed Poland for a settlement. The Poles agreed to pay compensation of 2.7 million zlotys, but did not allow the settlers to return.³⁷

The provisions for the protection of minorities associated with the Versailles settlement and the League of Nations were justified in terms of both established norms and Woodrow Wilson's new concept of collective security. Clemenceau maintained that the minority provisions of the peace treaties were consistent with diplomatic precedent. In a covering note conveying the treaty to Poland for signature, he noted that:

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 Great 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

³⁶ Janowsky 1945, 117-21; Claude 1955, 20-28. A distinct regime was established for Upper Silesia based on a bilateral agreement between Germany and Poland, the Geneva Convention of May 15, 1922. The enforcement mechanism resided with the signatories, not with third parties. Individuals had standing and could appeal to specific regional institutions but not the League of Nations. See Stone 1933, vii-viii.

³⁷ Janowsky 1945, 121-22, 125 n. 8.

the endeavours and sacrifices of the Powers in whose name I am addressing you that the Polish nation owes the recovery of its independence. It is by their decision that Polish sovereignty is being re-established over the territories in question, and that the inhabitants of these territories are being incorporated in the Polish nation. It is on the support which the resources of these Powers will afford to the League of Nations that the future Poland will to a large extent depend for the possession of these territories. 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.³⁸

At Versailles, Woodrow Wilson championed a second rationale for the international protection of minority rights. Wilson's vision for a new world order in 1918 was collective security: peace-loving states would join together to resist attacks 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 ethnic minorities were inextricably mingled with majority populations. If minorities were ill-treated they could not only cause disorder within their countries of residence but also threaten international peace and undermine collective security. The treaties sought to resolve this issue by providing minorities with security within existing states. Wilson stated at the Paris Peace Conference that "Nothing, I venture to say, is more likely, to disturb the peace of the world than the treatment which might in certain circumstances be meted out to minorities. And therefore, if the great powers are to guarantee the peace of the world in any sense, is it unjust that they should be satisfied that the proper and necessary guarantees have been given?"³⁹

Despite historical precedent, a clearly articulated rationale, and monitoring and enforcement procedures, the Versailles effort failed in most countries. The settlement reflected the preferences of the victors. Because power asymmetries were high, they could intervene, impose their views with regard to minorities on the rulers or would-be rulers of weaker states. The disaffected rulers of target states pointed out from the outset that the regime was asymmetrical. The victors, especially the United States and Britain, accepted no provisions for the protection of minorities within their own societies, such as the Welsh and Irish in Britain, or blacks and Asians in the United States. Italy refused to accept any constraints on its treatment of minorities despite the fact that the peace settlement placed a

³⁸ Quoted in Macartney 1934, 238.

³⁹ Macartney 1934, 275, 278, 297. The quotation is from A. Sharp 1979, 175.

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large number of German speakers in the South Tyrol within Italy's new borders. An Italian spokesman stated that as a great power Italy could not accept the kind of derogation of sovereignty implied by the minority clauses. The United States along with New Zealand, Canada, and Australia also blocked Japanese efforts to introduce a clause endorsing racial equality into the covenant of the league.⁴⁰

Where minority treaties were the result of imposition or coercion, they faltered. From the outset rulers or would-be rulers from Romania, Yugoslavia, Poland, and elsewhere complained about the terms of the settlement. For instance, at the Versailles meeting, Bratianu, the prime minister of Romania argued that the minority treaty violated Romania's sovereignty as well as the principle of equality among states. He maintained that legitimating external intervention undermined stability in Romania and made reconciliation among groups more difficult. The Allies threatened to break diplomatic relations if Romania refused to sign a minority treaty and Romanian leaders acceded after a change in government, but minority protections were never effective.⁴¹

The experience of minority populations in Poland, whose treaty was a model for all others, was mixed at best. Provisions for separate Jewish schools were, for instance, never implemented. Anti-Semitic pogroms and campaigns were tolerated by public officials, who sought to freeze Jews out of the economic life of Poland. The emigration rate of Jews was five times that of Poles. Poland did, however, schedule national elections for Sunday, a policy consistent with allowing Jews to vote without violating their sabbath. Some of Poland's Slavic minorities were also repressed in part because they were seen as presenting a security threat. The Ruthenes (Ukrainians) were attacked by the Polish military in 1930; Byelorussian schools, societies, and newspapers were suppressed and a concentration camp was established at Beresa Kartuska.⁴²

Only in states where there was domestic support were the minority regimes more successful; invitation was more effective than intervention. Countries with large external minorities and few internal minorities, Hungary being the most important example, were sympathetic to the treaties. Countries with large internal minorities and relatively small external minorities, such as Poland, Yugoslavia, and Romania, were opposed. The exception was Czechoslovakia, which supported the treaties even though it had a large proportion of internal minorities (about 35 percent of the

population), both because of more liberal values and because the Czech leadership believed that minority guarantees would make appeals from Germany less compelling for the German population in the Sudetenland.⁴³

By the mid-1930s the minorities regime was dead. Hitler had come to power in Germany. Poland formally renounced its minority treaty in 1934. The Polish foreign minister stated that "Pending the introduction of a general and uniform system for the protection of minorities, my Government is compelled to refuse, as from today, all cooperation with the international organizations in the matter of the supervision of the application by Poland of the system of minority protection. I need hardly say that the decision of the Polish Government is in no sense directed against the interests of the minorities. These interests are and will remain protected by the fundamental laws of Poland, which secure to minorities of language, race and religion free development and equality of treatment."⁴⁴

In sum, the Versailles regime for minorities was a violation of the Westphalian model, which was achieved in most cases through coercion and imposition rather than contracting or conventions. The necessary condition for successful intervention is that the initiator remains in a position to make threats that are sufficiently credible to lead the rulers of the target state to continue to implement policies that they would otherwise abandon. The extension of recognition, of international legal sovereignty, was a salient resource in the immediate aftermath of the war when boundaries, identity, and leadership were all up for grabs, but it was difficult to withdraw recognition once it had been extended. Moreover, it quickly became evident that minority rights were not a salient issue for their initial supporters. The United States refused to join the League of Nations. By the mid 1920s it was evident that Britain was not anxious to pursue an active policy on the continent. France was more concerned about developing security relations with the smaller states on Germany's eastern and southern borders than with their treatment of their minority populations.

The Versailles regime was informed by principles that were antithetical to the Westphalian model. The victors defended democracy, self-determination, stability, and collective security, even if this meant compromising autonomy. Most of the smaller states of central and eastern Europe endorsed the norm of nonintervention and condemned the treaties as a violation of their sovereignty. Rulers in smaller states that supported the treaties, notably Hungary and Czechoslovakia, did so because the treaties would enhance the stability of their polity or protect their coethnics in

⁴⁰ Macartney 1934, 252; A. Sharp 1979, 181-83; 1991, 61; Janowsky 1945, 126-29; Claude 1955, 17, 32-33; Trachtenberg 1993, 27; Bilder 1992, 65-66.

⁴¹ Bartsch 1995, 75-76; Esman 1995, 24; Garcés 1995.

⁴² Pearson 1983, 162-64, 188-89; Gutman 1989, 103-5.

⁴³ Bartsch 1995, 74-79, 81-82, 84-85; Macartney 1934, 413-15; Robinson et al. 1943, 169.

⁴⁴ Quoted in Janowsky 1945, 127 n. 11.

other countries. Principles were in conflict. Outcomes were the result of power and interests. A logic of consequences dominated a logic of appropriateness and by the mid 1930s, with the rise of German power, only security mattered.

The Postwar World

In the aftermath of World War II efforts to protect minority rights were almost totally abandoned. Minority rights were not mentioned in the United Nations Universal Declaration of Human Rights of 1948 and were noted in only a small number of other UN accords, such as the Covenant on Civil and Political Rights and the Genocide Convention. Postwar regimes sought to protect human rights rather than minority rights. Both minority rights regimes (in which the protection of an individual is based on membership in a group that provides affective self-identity) and human rights regimes (in which protection is accorded because an individual is a human being or because the individual is classified as a member of a group, such as stateless persons, which does not provide affective self-identity) can violate the Westphalian model because the rules governing relations between rulers and ruled within a territory can be subject to external monitoring and even enforcement. (Human rights are discussed in Chapter 4.) The virtual abandonment of minority rights after the Second World War reflected the preferences and power of the United States and the general disillusionment with the interwar experience.

The United States emerged from World War II as the dominant power in the international system. Minority rights were not part of the American political heritage. American identity was grounded in the mutual acceptance of Lockean political values, which ennobled the individual and emphasized democracy and capitalism.⁴⁵ Although there has been an ongoing American discussion about how much melting actually takes place in the melting pot, and whether ethnic affiliation should be recognized, American identity has always been based on political beliefs, not ascriptive characteristics. In 1943 Sumner Wells, the under secretary of state, argued that there should not be a need for the term racial or religious minority because the liberty of individuals should be protected under the law. During the UN debate on the drafting of the Universal Declaration of Human Rights, Eleanor Roosevelt, its chief author, argued that the declaration should not mention minorities.⁴⁶

Minority rights were, however, addressed in agreements dealing with South Tyrol in 1946 and 1969, Trieste in 1954 and 1974, Austria in

⁴⁵ Hartz 1955.

⁴⁶ Sigler 1983, 67, 77.

1955, and Cyprus in 1960. After the First World War Italy had been given the South Tyrol, an area with some 250,000 people, 90 percent of whom were German-speaking. When the fascists took power in the early 1920s Mussolini's government systematically denationalized the South Tyrolese. Only Italian could be used as a language of instruction. German family names were Italianized. Immigration from other parts of Italy was encouraged.

After the Second World War Italy and Austria signed an agreement in which Italy agreed to provide a greater degree of autonomy to the South Tyrol and more protection for its German-speaking majority. The province of Bozen was given a special administrative status. German and Italian were given equal standing as languages. Both groups would be proportionately represented in public service, including the judiciary and administration. There would be separate German and Italian schools and parents would decide which their children would attend. This agreement, however, had limited impact because Italy frustrated some of its provisions. Further terms were negotiated in 1969. Border disputes in the area were not finally settled until 1992.⁴⁷

A special statute attached to the London Treaty of October 1954 divided Trieste, which had been administered as the Free Territory of Trieste between 1947 and 1954, between Italy and Yugoslavia. The treaty stipulated that there should be equality between Italians and Yugoslavs in Trieste. Specific 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 some areas public documents and inscriptions were to be promulgated in both languages. A second agreement between Italy and Yugoslavia, the Treaty of Osimo, which was concluded in 1974, reaffirmed commitments regarding political and economic equality, schools, and public documents.⁴⁸

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 equal terms with Austrian nationals.⁴⁹

When Britain gave up control of Cyprus in 1960 the Treaty of Guarantee between Cyprus, Greece, Turkey, and the United Kingdom provided for the protection of the Turkish minority. The United States, which was not a party to the treaty, as well as Britain, was anxious to reassure Turkey,

⁴⁷ Alcock 1979, 189-91; Hailbronner 1992, 126-27; Woodward 1995, 475 n. 17.

⁴⁸ Hailbronner 1992, 127; Laponce 1960, 38.

⁴⁹ Laponce 1960, 37.

Handwritten notes in the left margin: "US identity", "Locke", "melting pot", "not group", "identity".

a member of NATO. The Turkish Cypriotes, who were a minority, had to be represented at all levels of government and had veto power in several issue areas. Key constitutional provisions could not be amended at all and the amendment of some provisions required the approval of Turkey. Enosis, 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 reestablishing the state of affairs specified by the treaty. When Greece's military rulers took control in 1974 and enosis was actively discussed, Turkey used the treaty to justify invasion and division of the island.⁵⁰

In sum, minority rights almost disappeared from the postwar world. Nevertheless, in some specific circumstances—the South Tyrol, Trieste, Austria, and Cyprus—they were invoked. In all of these cases the Westphalian model was compromised. With the exception of Cyprus, these arrangements were contracts and they worked effectively. In Cyprus, the Greek majority accepted constraints in exchange for independence from Britain—a fragile arrangement, which disintegrated when Turkish military power was used to frustrate amalgamation with Greece.

Minority Rights after the Cold War

The end of the cold war was accompanied by, and in some cases caused, a renewal of ethnic strife. For Europe, developments in the former Yugoslavia were the most dismaying example. Almost fifty years after the defeat of Nazi Germany, ethnic cleansing became an acceptable practice for some rulers.

In 1992 the General Assembly passed the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities. It was the first post-World War II convention for which minorities were the primary concern. The declaration, which was passed by consensus in the General Assembly, states in part that the rights of minorities should be protected, that conditions for the promotion of identity should be encouraged, and that minorities have the right to participate in local decision-making procedures that affect them provided that such participation is compatible with national legislation.⁵¹

At a regional level, Europe was the area where minority rights issues received the most attention; the Conference and later Organization for Security and Cooperation in Europe (CSCE then OSCE) was the most important venue. Created at Helsinki in 1975, the CSCE was initially a

contract between the Western and Soviet blocs in which the West recognized the borders of eastern Europe and the East accepted stipulations about human rights. Minority rights were mentioned only in passing. Principle VII of the Final Act of the Helsinki accord recognized the right of persons belonging to minorities to equality before the law and equal human rights. There were no provisions for enforcement.

Over time, however, minority rights became a more prominent item on the agenda of the CSCE, especially with the end of the cold war. The 1990 Copenhagen convention 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 (gypsies) were condemned. There were even some modest provisions for monitoring. The signatories agreed to provide within four weeks a written response to inquiries made by another signatory.⁵² The Charter of Paris for a New Europe concluded by the CSCE heads of state in 1991 contained extensive provisions regarding minority rights. The Office of the High Commissioner on National Minorities was established at the Helsinki summit in 1992, and the first high commissioner took office in January 1993. The high commissioner was given the mandate of providing early warning of minority issues that could affect peace and stability and reporting these concerns to the Council of Foreign Ministers and the Committee of Senior Officials. The office of the commissioner was the first independent high-ranking CSCE official, as opposed to simply being a government representative. The first report of the high commissioner dealt with the Russian minority in the Baltics and the Hungarian minority in Slovakia.⁵³

Minority rights were explicitly included in the conditions for European Community recognition of the successor states of Yugoslavia. When fighting first broke out in Yugoslavia in 1990, the initial European response was to try to hold the country together. By the fall of 1991 this policy was unraveling in part because of Germany's support for the recognition of Slovenia and Croatia. On December 16, 1991, the foreign ministers of the European Community made acceptance of the Carrington Plan, formally the Treaty Provisions for the Convention (with the former republics of Yugoslavia), the prerequisite for recognition. Chapter 2 of the Carrington Plan stipulated that the republics would guarantee the right to life, to be free of torture, to liberty, to public hearings by an impartial tribunal, to freedom of thought, to peaceful assembly, and to marry and form a

⁵² Conference on Security and Co-operation in Europe, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990, in Brownlie 1992, 454-73.

⁵³ Bloed 1993, 95-96; Moravcsik 1994, 48-49.

⁵⁰ Bilder 1992, 69-70; Platias 1986, 153-57.

⁵¹ Thornberry 1993, 16-17, 29-30, 38-40.