family. These rights were to apply to all regardless of sex, race, color, language, religion, or minority status. The republics were to respect the rights of national and ethnic minorities elaborated in conventions adopted by the United Nations and the CSCE, including the then proposed United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious, and Linguistic Minorities, and the proposed Convention for the Protection of Minorities of the European Commission. The republics were to protect the cultural rights of minorities, guarantee equal participation in public affairs, and assure that each individual could choose his or her ethnic identity. Members of minority groups were to be given the right to participate in the "government of the Republics concerning their affairs." In local areas where members of a minority formed a majority of the population they were to be given special status including a national emblem, an educational system that "respects the values and needs of that group," a legislative body, a regional police force, and a judiciary that reflect the composition of the population.[54] 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.[55]

The republics were to agree to a permanent international body that would monitor these special areas. Disputes were to be taken to a newly established Court of Human Rights, which would consist of one member nominated by each of the Yugoslavian republics and an equal number plus one of nationals from European states who would be nominated by the Member States of the European Community. The members of the court "must either possess the qualifications required for appointment to high judicial office or be juriconsults of recognised competence."[56] No two members were to be from the same republic or European state. Court decisions were to be taken by majority vote.

In January of 1992, after the European 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.[57] Croatia, after being pressured by the EC, also promised that it would fulfill the conditions. In May 1992, Croatia passed the Constitutional Law of Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities in the Republic of Croatia. Many of the provisions of the law repeat word for word the text of the Carrington report. The law endorsed UN human rights accords,

[54] European Community 1991, chap. II, Articles 4 and 5c.
[55] Crawford 1996, 497.
[56] European Community 1991, chap. IV, Article 7.a.1.
[57] Woodward 1995, 190–91.

the final act of the CSCE, the Paris Charter on a New Europe, and other CSCE documents related to minority and human rights. Article 4 committed Croatia to assist national and ethnic minorities to establish relations with their parent country. According to Article 49, special status districts were designated where minorities were to be educated in their own language using a curriculum adequate to "present their history, culture and science if such a wish is expressed." Representatives from 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. Issues regarding minority and human rights were to be decided by the Court of Human Rights, which would be established by all of the states created out of the territory of the former Yugoslavia. In the interim a provisional Court of Human Rights was established consisting of a president and four members "who must possess the qualifications required for the appointment to high judicial office or be juriconsult of recognized competence," a verbatim appropriation of the language of the Carrington report. The president and two members were to be nominated by the European Community from citizens of its Members States and the other two members would be Croatian nationals nominated by Croatia.[58]

The commitment to protect the rights of ethnic minorities was hardly visible in the actual behavior of the former Yugoslav republics in the first years of their existence. Atrocities in Bosnia were brought to a halt only after the intervention of NATO forces, and the negotiation of a settlement under American auspices at an isolated Air Force base in Dayton, Ohio. Annex 6 of the Dayton accords signed in December 1995 related to human rights and committed the signatories—the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska—to honor the provisions of fifteen international and European human rights accords. It provided for the creation of an ombudsman for human rights who would have diplomatic immunity, would not be a citizen of any parts of the former Yugoslavia, and would initially be appointed to a five-year term by the Organization for Security and Cooperation in Europe, as well as a fourteen-member Chamber of Human Rights, four of whose members would be appointed by Bosnia and Herzegovina, two by the Republic of Srpska, and the other eight, none of whom would be citizens of the states that had been part of Yugoslavia, by the Committee of Ministers of the Council of Europe. Individuals could bring complaints to the chamber, whose decisions, taken by a majority vote, would be bind-

[58] Republic of Croatia 1992, Articles 4, 49, 18, and 60. Also see Crawford 1996, 497.

ing on the signatories. Nongovernmental organizations and international organizations were to be invited to Bosnia to monitor the implementation of the terms of the annex. After five years the chamber and the office of the ombudsman would pass to the control of Bosnia and Herzegovina, if all of the parties agreed.[59]

Serbia was recognized by the member states of the European Union in April 1996. As a condition of recognition, Belgrade agreed to the continuation of a working group on minority rights that was established at the London Conference of December 1995, which followed the Dayton Peace Agreement. The German foreign minister also stated that the level of international financial assistance for Serbia as well as cooperation with the European Union would depend on Serbia's policies regarding human and minority rights, the return of refugees, and the establishment of greater autonomy for the Albanian minority in Kosovo.[60]

The minority rights provisions for the former republics of Yugoslavia were adopted as a result of coercion. The would-be rulers of these new states did not want to be encumbered by such international obligations. They did not invite in external authority; they yielded to intervention. The commitments, which were a condition of recognition by the European Community in 1992, had limited domestic support but elaborate protection for minorities including the creation of special-status districts and the establishment of a Human Rights Court, the majority of whose judges were to come from Member States of the European Community. The Dayton accords in effect established an international court (the Chamber of Human Rights) in Bosnia that could make binding judgments on the signatory states. The Westphalian principle of nonintervention was hardly in evidence. The major powers wanted a resolution of the conflict in the former Yugoslavia and they were more than prepared to invent new institutional arrangements to accomplish this end. The results, as had been the case for earlier examples of coercion and imposition, were discouraging.

The rediscovery of minorities in the 1990s reflects changes in the distribution of power and interests. The cold war repressed minority rights. Neither the Soviet Union nor the United States was prepared to acknowledge minority rights issues in their own spheres of influence or challenge their rival. The collapse of the USSR contributed to the outbreak of ethnic hostility in the former Yugoslavia, Nagoro Karabakh, Rwanda, and elsewhere because the superpowers, or the only superpower that was left, the United States, was, in the absence of a Soviet threat, not willing to intervene to maintain a level of domestic stability that would discourage external intervention. In their attempts to manage ethnic conflict for both humanitarian and security reasons, the major powers invoked international guarantees of minority rights as an alternative to the principle of autonomy so central to the Westphalian model. Both the agreements reached in the context of the CSCE and the United Nations Declaration were conventions. Rulers have been willing, in the case of the CSCE perhaps even anxious, to make pledges to protect the rights of minorities. Their behavior, however, has not been contingent on that of other parties. The minority provisions associated with the recognition of Croatia and Slovenia, and Annex 6 of the Dayton accords, were examples of coercion. The would-be rulers of these new states would have preferred autonomy in the treatment of groups within their own territory but the major European powers insisted on minority protection as a condition of recognition.

[59] United States, Department of State 1995.

[60] *Frankfurter Allgemeine Zeitung*, April 18, 1996, 1, 7.

Conclusions

International efforts to regulate relations between rulers and minority populations residing within the territory of their state have been an enduring aspect of international politics. Many major international agreements from Augsburg in 1555 to Dayton in 1995 have included provisions related to minority rights. Often these same agreements endorsed principles resonant of Westphalian sovereignty. Mutually inconsistent principles along with imperfect implementation, decoupling, are the hallmarks of organized hypocrisy.

The Peace of Augsburg originated the fully Westphalian *cuius regio, eius religio*, but even Augsburg included some provisions for religious toleration. The Peace of Westphalia endorsed the principle of Augsburg, but at the same time mandated religious toleration in the Holy Roman Empire, including provisions for consociational decision making with regard to religious issues in the imperial Diet and courts. The Vienna agreements at the end of the Napoleonic Wars included terms for the protection of Catholic minority rights in the Netherlands and Geneva and for the recognition of Polish institutions in Russia, Austria, and Prussia. The Versailles treaty and other arrangements associated with the conclusion of the First World War and the creation of the League of Nations established a regime for minorities that included the specification of minority rights in national constitutions, monitoring by the League Secretariat, the right of individual appeal to the league, and adjudication by the International Court of Justice. The 1995 Dayton accords provided for the creation of a tribunal, the Bosnian Human Rights Chamber, a majority of whose members would initially come from outside of Bosnia and other states of the former Yugoslavia, which could make binding decisions regarding the treatment of minorities.

Contracts, mutually contingent Pareto-improving arrangements, have been effective in protecting minority rights. Rulers have been motivated to sign such agreements by political necessity rather than principled commitment. (If they were committed to toleration in the first place, it is not likely that they would need to enter into contracts, although they might endorse conventions.) The Peace of Westphalia and subsequent arrangements among the major powers of Europe were designed to prevent sectarian strife that could lead to revolution, war, and chaos—not an attractive prospect for rulers who were more interested in keeping their corporeal heads than in preserving their incorporeal souls by repressing those they regarded as blasphemers. In these contractual arrangements, rulers invited external supervision of their domestic authority structures because this enhanced the likelihood of a politically stable outcome.

Minority rights protections achieved through coercion and imposition were less successful. The Versailles arrangements proved futile; nothing could more clearly demonstrate their failure than the Holocaust. Interventions to secure minority rights in the Balkans at Berlin in 1878, after the First World War, and following the breakup of Yugoslavia in 1991, all failed. The rulers or would-be rulers of the Balkan states accepted limitation on their Westphalian autonomy because they were faced with credible threats by more powerful states. At Berlin and Versailles, the major source of leverage available to the great powers of Europe was international recognition. Recognition was critical because it could enhance the international and domestic legitimacy of rulers and make it easier to enter into contracts that would provide financial and military resources. Likewise, the European Community made minority guarantees a condition of recognition for successor states of the former Yugoslavia. Once extended, however, recognition could not easily be withdrawn. With the exception of NATO intervention in the mid-1990s, the major powers were not willing to use military force. International guarantees of minority rights can be effective but only if they are self-enforcing, and they will only be self-enforcing if rulers are committed to such rights in the first place (in which case they might enter into conventions) or if they fear that the violation of minority rights would lead to retaliation against their own coreligionists or coethnics in other countries (the situation in post 1648 Europe), in which case they could enter into contracts.

Since the sixteenth century and even before, the principle of autonomy has been challenged by alternatives including minority rights. Westphalian sovereignty has been endorsed and ignored. Organized hypocrisy, not embeddedness or taken-for-grantedness, has characterized the Westphalian model.

CHAPTER 4

Rulers and Ruled: Human Rights

UNTIL THE CONCLUSION of the Second World War, human rights, which stipulated the rights of human beings in their status as individuals or as part of class that was not a source of basic identity (such as refugees), were less salient than minority rights. Before this time only the abolition of slavery and the slave trade in the nineteenth century and some International Labour Organization agreements in the interwar period emphasized human, as opposed to, minority rights. There are now, however, more than twenty United Nations human rights agreements as well as accords associated with specialized international organizations and with regional groups.

A number of observers have suggested that contemporary concerns with human rights are a revolutionary development in the international system. One writer maintains that there are two clusters of values at play in the contemporary environment—state autonomy and human rights—which can be in conflict. Another avers that human rights law is "revolutionary because it contradicts the notion of national sovereignty—that is, that a state can do as it pleases in its own jurisdiction."[1]

These observations are correct with regard to their emphasis on human rights as a relatively new development but incorrect in their disregard of the extent to which relations between rulers and ruled in one state have been an enduring concern of actors in others. The League of Nations regime for minority rights gave status to individuals as well as groups; it was not just the state, the traditional subject of international law, that could act. After the Second World War the focus on minority rights was supplanted by an emphasis on human rights, a reflection both of the failure of the interwar minorities regime and of the preferences of the leaders of the United States, the most powerful state in the postwar world and of western Europe as well. In the last decade of the twentieth century questions of minority rights again became more prominent because of changing configurations of power in the international system associated with the end of the cold war and turmoil resulting from ethnic and religious conflicts.

With the exception of the abolition of the slave trade in the nineteenth century, which was in part the result of coercion by Great Britain, and of

[1] Damrosch 1993, 93; Forsythe 1983, 4.

the use of economic sanctions, especially against South Africa, human rights have been associated with conventions. These engagements have been voluntary, the status quo ante has remained available, and behavior has not been contingent on the actions taken by other signatories. Conventions never violate a basic tenet of international legal sovereignty, which is that juridically independent territorial entities should not be subject to coercion.

Conventions can but do not necessarily compromise Westphalian sovereignty. By signing conventions rulers have extended invitations that have the potential for insinuating external authority within their own polities. Rulers could voluntarily enter into such accords with the full understanding that in so doing they might limit their own autonomy by altering domestic views about legitimate behavior, authorizing external monitoring of internal practices, or creating third-party adjudication procedures that give individual citizens, not just states, legal standing. Participation in conventions might also have unanticipated consequences in civil society and within the government; what were thought to be empty pledges might actually change domestic authority structures. Conventions might, however, have no impact on domestic autonomy; invitations might be simply pro forma. An international pledge, for instance, to eschew torture might change neither the behavior of rulers nor the attitudes of groups in civil societies. Whether a convention affects Westphalian sovereignty at all is an empirical question.

In the postwar world rulers signed human rights accords for a variety of different reasons. In some instances rulers endorsed human rights conventions not because they had the intention or even ability to implement their precepts, but because such agreements were part of a cognitive script that defined appropriate behavior for a modern state in the late twentieth century. Signing, however, was decoupled from actual practice. In other cases rulers wanted to increase the probability that their commitment to human rights within their own polity would not be reversed by their successors. This was true for the policy makers who initiated and sustained the European human rights regime. In the case of the Soviet bloc, rulers might have seen participation as a ploy that could be used to increase support in third countries.

Slavery and the Slave Trade

Slavery is a practice that has become universally unacceptable, yet into the nineteenth century it was routinely practiced in many different parts of the globe. The abolition of slavery and the slave trade was the result both of conventions among like-minded rulers who wanted an end to the practice of human servitude and contracts and coercion in which rulers in

more powerful states, especially Britain, acted to alter the treatment of individuals in other states. For largely ideational rather than material reasons, Britain in the nineteenth century committed itself to end the practice of slavery. Britain enforced and monitored the international regime, which it had itself created through a series of international treaties. Ending slavery was more important than honoring the principle of autonomy and nonintervention.

Britain outlawed slavery for its own flag vessels in 1807. During the Napoleonic Wars, slave ships from enemy states were captured. Slaves on these ships were set free, usually in Sierra Leone. By 1815 Britain, Russia, Austria, Prussia, France, the Netherlands, Sweden, and the United States had agreed to prohibit the transatlantic slave trade. In 1817 Spain also agreed to abolish the slave trade north of the equator and in 1820 to abolish it completely. These were conventions that reflected the preferences of rulers in the signatory states.[2]

Despite these commitments, the slave trade was so lucrative that large numbers of Africans continued to be transported across the Atlantic. The major effort to enforce the ban on slaving was undertaken by Britain. Between 1818 and 1820 Britain signed treaties with a number of European countries that gave British warships the right to search and seize vessels suspected of engaging in the slave trade.[3]

Brazil and Portugal were the most recalcitrant slave-trading countries. Brazilian agriculture was heavily dependent on slave labor. Immediately after abolishing the slave trade for British shipping in 1807, Britain began to put pressure on Portugal, whose colonies in Africa and South America were both a major source of and point of sale for slaves. Portugal at first rejected British initiatives. However, when France invaded Portugal in late 1807, the Portuguese royal family was forced to flee to Brazil under British protection. In 1810 Portugal signed a commercial treaty with Britain that provided in part that Portugal would cooperate in gradually abolishing the slave trade. Britain conceded to Portugal the right to continue slave trading within its African territories. In 1815 Portugal signed an agreement with Britain agreeing to stop slave trading north of the equator, a commitment of limited consequence since most of Portugal's trade between Africa and Brazil was south of the equator.

In 1839 Britain unilaterally authorized its navy to board and seize suspected slavers that were flying the Portuguese flag. This came after long and unsuccessful efforts to sign a bilateral treaty with Portugal authorizing such seizures. The slaves were to be released in the nearest British port, the disposition of the ships was to be decided by British admiralty

[2] Ray 1989, 409; Bethell 1970, 10, 11–15, 20.
[3] Bethell 1970, 20, 26.

courts, and the crews of such ships were to be returned to their own countries for trial.[4]

Britain focused its attention on Brazil after its independence in 1822. In exchange for recognition by Britain in 1826, Brazil agreed to abolish the slave trade by 1830 despite strong opposition from many members of its parliament. The treaty stipulated that the slave trade would be treated as piracy after that date, providing Britain with legal grounds for seizing slave-trading ships on the high seas. Despite the agreement, slave trading continued between Brazil and Africa, even growing in the 1830s beyond what it had been before the treaty was signed.[5]

Confronted with the continuation of the slave trade some twenty years after it should have been abolished under the 1826 treaty, Britain acted unilaterally. Slaving had already been declared piracy, giving British ships the right to board and seize suspected vessels on the high seas. In 1850, British warships entered Brazilian ports and seized and burned a number of ships that were suspected of engaging in the transport of slaves. During these operations the British were fired upon from Brazilian forts. It is difficult to imagine a less ambiguous violation of the norm of nonintervention.[6]

These pressures were effective. Confronted with British naval power and the antipathy of other advanced states, Brazil passed and enforced legislation to end the slave trade. One Brazilian leader speaking to the Brazilian Chamber of Deputies in 1850 recognized that Brazil was the only country actively resisting the antislave regime and stated that "With the whole of the civilised world now opposed to the slave trade, and with a powerful nation like Britain intent on ending it once and for all, Can we resist the torrent? I think not."[7]

The abolition of the slave trade was a triumph for human rights and freedom made possible in large measure by the commitment and power of Great Britain. Britain took the lead in initiating a series of international treaties in the early part of the nineteenth century that committed states to abolishing the slave trade. Brazil was the most important defector from this system, failing to enforce its own treaty obligations. Britain used naval power, including entry into Brazilian territorial waters and the destruction of Brazilian ships, to compel Brazil to change its policies. Britain's commitment to ending international commerce in human beings triumphed over nonintervention.

[4] Ibid., 7–9, 13, 164.
[5] Ibid., 60–61 and chap. 3.
[6] Ibid., chap. 12.
[7] Quoted in Bethell 1970, 338.

Unlike issues related to religious toleration or the treatment of minorities, Britain's behavior cannot be explained in terms of specific economic, political, or security interests. The economic consequences of the abolition of slavery for Britain and its colonies were ambivalent at best, because British plantations in the Caribbean were heavily dependent on slave labor. Rather, British action was strongly motivated by the values and commitments of important parts of its domestic population. The British government was pressured by antislavery groups that based their opposition on religious doctrine, not economic self-interests or national security.

Slavery did not, however, disappear in the nineteenth century. Slavery was an issue for both the League of Nations and the United Nations. A 1926 league convention outlawed slavery and the slave trade and provided that disputes between states were to be referred to the International Court of Justice or, if the parties were not signatories to the Statute of the Court, to a mutually acceptable arbitration body as specified under the 1907 Convention for the Pacific Settlement of International Disputes. States could, however, declare that some of their territories were not subject to the convention. The 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, endorsed by more than one hundred countries, obligated the signatories to end debt bondage and serfdom, to eliminate the practice of allowing a parent to give a child under eighteen for labor service, and to prohibit marriage arrangements in which a woman is given without choice in exchange for material payments or is inherited by another person if her husband dies. Signatories could not choose to exclude some of the territories under their control. Disputes were to be referred to the International Court of Justice.[8] These agreements, like other human rights accords that will be discussed here, were conventions that did not involve contingent behavior. Their efficacy depended critically on the support that they received from domestic groups and institutions.

The Twentieth Century

The focus on individual human rights is a phenomenon of the twentieth century. International human rights agreements have proliferated since the Second World War. These agreements have usually taken the form of conventions in which rulers make commitments regarding their relations with their subjects (individuals within their territorial jurisdiction) that are not contingent on the behavior of other signatories. Signatories have extended invitations, sometimes empty, that can implicate external au-

[8] Texts in Brownlie 1992, 52–63.

thority in domestic institutional structures. The monitoring and enforcement provisions of human rights conventions have varied widely from what amount to nothing more than pledges that do not have the status of a formal treaty, such as the Universal Declaration on Human Rights, to arrangements that include third-party monitoring and judicial review that can be initiated by private parties, notably the European human rights regime.

At the international level, human rights were first recognized in various conventions of the International Labour Organization (ILO), which was established after the First World War in response to the fear that domestic social upheaval could lead to international disorder. Individual member states can, but are not obligated, to endorse these conventions. The objective of the ILO was to promote labor relations that would enhance domestic political stability. Most ILO conventions deal with work-related issues including health and safety standards, the right to organize, the abolition of forced labor, and nondiscrimination. In recent years ILO conventions have sometimes gone further afield. In 1989, for instance, the Convention Concerning Indigenous and Tribal Peoples in Independent Countries was opened for signature. It provides for equal rights for indigenous peoples, respect and promotion of their cultural rights, nondiscrimination, the right to decide their own spiritual, cultural, social, and economic priorities, and consideration by national courts of indigenous penal practices. This convention had, however, only been ratified by a small number of states by the early 1990s.

The ILO has modest monitoring provisions. Each signatory to a convention is obliged to submit a report to the ILO's Committee of Experts on the Application of Conventions and Recommendations. These experts can offer comments. More significantly, under the tripartite structure of the ILO (government, labor, management) both workers' and employers' organizations can bring a complaint to the ILO Governing Body. By signing ILO conventions, rulers might or might not be altering their domestic authority structures depending on whether participation changed domestic attitudes or policies.[9]

During the first part of the twentieth century, however, the ILO was exceptional in the attention that it paid to human rights. Only after 1945 did human rights become a more salient issue. The minority rights regime of the interwar period was regarded as a failure, which had even been exploited by the Nazi regime (for instance, in its demands at Munich) to promote its own racist agenda. The dominant power in the postwar world,

[9] Brownlie 1992, 246–316, for the texts of ILO conventions.

the United States, was committed to individual rights.[10] The modal American solution for ethnic conflict was the melting pot, not the legitimation of separate political group identities. American leaders opposed including minority rights in the Charter of the United Nations and the Universal Declaration of Human Rights.[11]

Accords concerned with the rights of individuals or classes of individuals have proliferated since 1945. As of 1993 the United Nations listed twenty-five such instruments. Another compendium records forty-seven compacts including those associated with regional organizations and specialized agencies.[12] These conventions cover a wide range of issues including genocide, torture, slavery, refugees, stateless persons, women's rights, racial discrimination, children's rights, and forced labor. In some instances, human rights agreements specify general principles, but in others they are very precise.

There are several broad agreements that dignify human rights. The preamble to the Charter of the United Nations reaffirms fundamental human rights, the dignity of the individual, and the equality of men and women. The Universal Declaration of Human Rights was adopted by the UN General Assembly in 1948 after three years of debate. The declaration specifies personal rights such as protection against racial, sexual, or religious discrimination; legal rights such as the presumption of innocence and equality before the law; civil liberties such as freedom of religion, opinion, movement, association, and residence including the right to leave any country and "to seek and enjoy in other countries asylum from persecution"; family rights including the right to marriage, equal rights for both spouses in marriage, and full consent to marriage; subsistence rights such as the right to food; economic rights such as the right to own property, to work, to enjoy "periodic holidays with pay," and to social security; social and cultural rights such as the right to an education including the admonition that "elementary education shall be compulsory," and that "higher education shall be equally accessible to all on the basis of merit"; and political rights such as universal suffrage. The declaration was designed to provide substance for Article 55 of the charter which states in part that the United Nations shall promote "universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."[13]

Two covenants dealing with social and economic, and civil and political rights were passed in 1966. While these generally endorsed and elaborated

[10] Hartz 1955, 54.
[11] Sigler 1983, 67–77; Donnelly 1989, 21.
[12] United Nations 1994; Brownlie 1992.
[13] United Nations 1948, Articles 14, 24, 25, and 55.

the Universal Declaration, there were exceptions such as the absence of any mention of the right to private property and the addition of the right of self-determination.[14]

Human rights conventions on specific issues can be detailed and ambitious. For instance, the 1953 Convention on the Political Rights of Women, which has been ratified by more than 100 countries, provides for equal voting rights for women and equal rights to hold office.[15] The 1979 Convention on the Elimination of All Forms of Discrimination against Women, which has been ratified by more than 120 states, obligates parties to take all legal measures necessary to assure the equality of men and women, to "modify the social and cultural patterns of conduct of men and women," to provide equal access to education, to take measures to assure "the same opportunities to participate actively in sports and physical education," to assure equal work opportunities including promotion and job security, to introduce paid maternity leave, and to offer adequate prenatal and postnatal care including "free services where necessary."[16] The 1951 Convention Relating to the Status of Refugees, endorsed by more than 120 states, provides that each signatory will not discriminate among refugees on the basis of race, religion, or country of origin; will provide freedom of religion equal to that provided for nationals; and will allow refugees access to its legal system.

The enforcement and monitoring mechanisms for these agreements vary enormously. Some, such as the Universal Declaration of Human Rights, the 1960 United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples, the 1981 Declaration on All Forms of Intolerance and Discrimination based on Religion or Belief, have no monitoring or enforcement provisions. At best, such conventions can specify salient objectives and express good intentions. The only mechanism through which such conventions could infringe on autonomy would be to alter the conceptions of legitimate practices that were held by groups within a state.

Other conventions—for example, those on slavery, the status of refugees, political rights of women, the prevention and punishment of the crime of genocide—provide that disputes can be referred to the International Court of Justice but only by one of the signatories. Such referrals would violate the Westphalian model since the court would constitute an external source of authority, but they would be perfectly consistent with international legal conceptions of sovereignty since cases could only

[14] Forsythe 1983, 8–9.

[15] Brownlie 1992, 106–8; United Nations 1994, 10.

[16] See Brownlie 1992, 106–8, for Convention on the Elimination of All Forms of Discrimination against Women, Articles 5.a, 10.f, and 13.2.

be heard by the International Court if the contending states had agreed to its jurisdiction. No human rights cases have, however, been referred to the court.

A number of conventions, such as those on racial discrimination, apartheid, torture and other degrading forms of punishment, and the rights of the child provide for the creation of expert committees to which signatories are obligated to make regular reports. In addition some committees can undertake investigations unless a state explicitly excludes such actions when it ratifies the convention. The state must, however, usually be informed and given the opportunity to participate in any inquiry. In some conventions signatories have the option of authorizing the expert committee to hear complaints from individuals.

Aside from specific United Nations conventions, the United Nations Commission on Human Rights was authorized by a 1970 resolution of the Economic and Social Committee to investigate reliable complaints about gross violations of human rights. The members of the commission are instructed by state delegates, not independent experts. There are, however, stringent restrictions on what the commission can do. It cannot investigate specific violations. Its activities must be confidential until they are concluded. For much of its history the commission only examined the behavior of pariah states, including South Africa, Israel, and Chile under Pinochet. The commission also reviews the reports that parties to the International Covenant on Civil and Political Rights are obligated to submit every two years, but it does not formally evaluate them, and some of the reports have been superficial.[17]

None of the United Nations human rights accords violate the international legal concept of sovereignty. They are all conventions that are entered into voluntarily and in which the behavior of one signatory is not contingent on that of others. The accords can, but do not necessarily, compromise Westphalian sovereignty by providing external legitimation for certain domestic practices involving relations between rulers and ruled.

The European Convention for the Protection of Human Rights and Fundamental Freedoms, which was signed in 1950 and entered into force in 1953, and its subsequent protocols, provides the most far-reaching example of infringements on the Westphalian model. Signatories commit themselves to the rule of law, the abolition of torture, slavery, and forced labor, the assumption of innocence in criminal cases, the right to counsel, to freedom of religion, to freedom of expression, to nondiscrimination, to emigrate, free elections by secret ballot, and the abolition of the death penalty except for acts committed in time or threat of war.

[17] Forsythe 1983, 46; Donnelly 1989, 208–9.

The European human rights regime has elaborate monitoring and enforcement procedures. The convention created the European Commission on Human Rights and the European Court of Human Rights. The commission is composed of experts who act in their individual capacity. (Each member state nominates three experts, one of whom is then elected from each country by all of the members). The commission can receive complaints from individuals and nongovernmental organizations, if the member has recognized its competence to do so, as well as from states. (Recognizing the standing of individuals is a departure from conventional international legal concepts, but this standing is still the result of voluntary choices by states.) If the commission pursues a complaint, it issues a report. If the issue is not satisfactorily resolved within three months after the report is issued, either the commission or the state involved can refer the issue to the European Court of Human Rights whose decisions are binding on member states. Since 1990 individuals as well as member states and the commission can bring a case directly to the court. Over time almost all of the signatories of the convention have recognized the competence of the commission to receive complaints from nonstate actors and the authority of the court. The commission can also send its recommendation to the Committee of Ministers, which can make binding decisions based on a two-thirds majority vote.[18]

Between 1953 and 1990 the commission received 15,457 petitions, almost all from individuals. About 95 percent were declared inadmissible, but 96 resulted in friendly settlements, 430 led to a commission report, and 251 led to judgments by the court. The number of petitions and court rulings has grown over time, especially since the 1970s. Decisions by the commission and the court including friendly settlements reached before adjudication have involved criminal procedure, penal codes, the treatment of prisoners, vagrancy, the rights of illegitimate children, expropriation policies, the care of the mentally ill, wiretapping, press censorship, interrogatory techniques, and homosexuality. There have been five instances in which states have brought complaints against another state. In four of these the complainants had ethnic ties with the individuals who were allegedly being abused. In the fifth, a number of smaller European states—the Netherlands, Norway, Denmark, and Sweden—filed a petition against the Greek military regime. Confronted with expulsion, Greece withdrew from the Council of Europe after an investigation by the European Human Rights Commission found against the military regime.[19]

[18] See Brownlie 1992, 326–62, for the text of the convention and protocols.

[19] Moravcsik 1994, 45–47; Moravcsik 1998, 20; Sikkink 1993; Forsythe 1983, 52, 57, 59; Donnelly 1992, 82–83; Forsythe 1989, 19.

There are other European human rights accords, although their scope and monitoring and enforcement provisions are less extensive than those associated with the European Human Rights Convention. By the early 1990s fifteen states had ratified the European Convention for the Prevention of Torture. The provisions of the convention parallel those of the UN Convention against Torture but the European document requires that signatories allow visits by the committee established by the convention to any site within their territory where individuals are deprived of their liberty. The committee, which consists of one individual serving in his or her private capacity from each member state, is elected by majority vote of the ministers of the Council of Europe from a list of three submitted by each signatory. The committee must notify a member state of a visit. The committee is, however, free to move anywhere within or without prison facilities and to interview privately anyone believed to have relevant information. Limitations on the committee's visits can only be made on the grounds of national defense, public safety, serious disorders, the medical condition of a person, or the need for an urgent interrogation. The committee first submits a report to the concerned state. If the state does not rectify conditions that violate the convention, the committee may, by a two-thirds vote, make a public statement.[20]

The European Social Charter has been ratified by twenty states. The charter endorses the right to work, to just conditions of work, to fair remuneration, to collective bargaining, to social security, and to protection for mothers and children. The signatories are committed to supporting high levels of employment, free employment services, vocational guidance, minimum two-week vacations with pay, a weekly rest period, higher pay rates for overtime, specialized services for disabled persons, the reunion of families of foreign migrant workers, and limiting employment for those below fifteen years of age. Members are obligated to submit reports every other year. These reports are reviewed by a seven-member Committee of Experts, which is appointed by the Committee of Ministers.[21] For the most part the signatories were already committed to the objectives stipulated in the charter. It could only compromise Westphalian sovereignty by exercising some marginal constraint on the policy choices available to signatory states.

Human rights have also been included in agreements reached within the Conference on Security and Cooperation in Europe (CSCE, now the Organization for Security and Cooperation in Europe, OSCE). The Final Act of the Helsinki Conference on Security and Cooperation in Europe

[20] See Brownlie 1992, 383–90, for Council of Europe, The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987.

[21] Brownlie 1992, 363–82, for Council of Europe, European Social Charter, 1961.

was signed in 1975 by thirty-five states. It was not a legally binding treaty but reflected the view by both the West and the Soviet bloc that the patterns of interaction that characterized the cold war could be stabilized. The rulers of the Soviet Union saw the Helsinki accords as legitimating their dominance of eastern Europe and facilitating technological and economic cooperation. Policy makers in the West, especially those from western Europe, pressed for the inclusion of human rights principles.

The Helsinki accords, like many other international agreements, endorsed principles that both legitimated and undermined Westphalian sovereignty. The agreement was divided into three sections or baskets: Basket I dealt with security issues, Basket II with economic and technological cooperation, and Basket III with human rights. Principle VI of the Declaration on Principles Guiding Relations between Participating States endorsed nonintervention, while Principle VII endorsed human rights including freedom of thought, conscience, and religion. Helsinki also endorsed sovereign equality, inviolability of frontiers, peaceful settlement of disputes, self-determination of peoples, and cooperation among states. There were no provisions for enforcement or monitoring.[22]

There have been a number of CSCE and OSCE conferences since Helsinki that have produced documents endorsing human rights (as well as the minority rights noted in Chapter 3). The accords signed at the conclusion of the Vienna meetings in 1989 included more extensive commitments to human rights such as protection against arbitrary arrest, degrading treatment, harsh detention, and torture. There were detailed stipulations regarding freedom of religion but no consensus on capital punishment, visas, and compulsory military service. The pact reached at Copenhagen in 1990 endorsed the right to a prompt trial, to peaceful assembly, and to participate in nongovernmental organizations committed to human rights, including "unhindered access with similar bodies within and outside their countries and with international organizations." The signatories agreed to bring their national laws into conformity with the provisions of various CSCE pacts. Countries that signed the Optional Protocol assented to provide a response within four weeks to questions raised by another state.[23]

Latin America is the other region that has developed a highly elaborated human rights regime, although one that has been in practice less consequential than its European counterpart. In 1948 the Organization of American States (OAS) approved the American Declaration of the Rights and Duties of Man, which endorsed the right to life, liberty, and security,

[22] Vincent 1986, 66–70; for text of the Helsinki Final Act, see Brownlie 1992, 391–449.

[23] See Brownlie 1992, 454–73, for the text of the Copenhagen Agreement; the quotation is from p. 461, Article II. 10.4. Also see Moravcsik 1994, 48.

to equality before the law, to freedom of religion, to establish a family, to preservation of health through sanitary and social services "to the extent permitted by public and community resources," to work, to leisure, to social security, to peaceful assembly, and to the presumption of innocence until proven guilty. The declaration also specified a list of responsibilities for individuals, including protecting minor children, voting, and obeying the law. The declaration does not provide for any enforcement or monitoring mechanisms.[24]

The American Convention on Human Rights, which has been ratified by more than twenty states has many parallels with the European convention. The convention, signed in 1969, endorses a standard list of rights including the abolition of slavery and torture, the presumption of innocence, the provision of legal counsel, and freedom of religion. In addition it provides that "usury and any other form of exploitation of man by man shall be prohibited by law," and that "Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitement to lawless violence or to any similar illegal action against any person or group of persons . . . shall be considered as offenses punishable by law.[25] The convention also bans any extension of the death penalty to new crimes, although it does not prohibit it outright.

Unlike the Inter-American Declaration, the convention specifies enforcement and monitoring mechanisms. Signatories are committed to introduce any domestic legislation necessary to implement the convention. The convention established the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, each with seven members. Members of the commission, who serve in their individual capacity, are elected by the General Assembly of the OAS from a list of candidates submitted by member states who can nominate three persons, at least one of whom must not be a national of the nominating state. The commission can only pursue a complaint if its competence has been recognized by the signatory state and if domestic remedies have been exhausted. Individuals, groups, and states can bring complaints to the commission provided that the state has recognized the commission's competence. If a friendly settlement between the state and the complainant is not reached, then the commission prepares a report and recommendations which are transmitted to the concerned states. If the matter is not settled within three months, the commission can publish its report. If the commission's procedures are exhausted, the case can be taken to the Inter-American

[24] See Brownlie 1992, 487–94, for the text of American Declaration of the Rights and Duties of Man, 1948. The quotation is from Article XI.

[25] See Brownlie 1992, 495–520, for the American Convention on Human Rights, 1969, Articles 21.3 and 13.5.

Court of Human Rights whose judges are nominated and elected by the signatory states. If a state fails to comply with a ruling of the Court, the court can bring the issue to the Assembly of the OAS.[26]

In 1988 the OAS completed the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, which included commitments to full-employment policies, levels of remuneration that could provide decent living conditions, stability of employment, paid vacations, special facilities for the handicapped and elderly, and the provision of primary health care. States were to submit periodic reports to the OAS. Individuals could petition the Inter-American Human Rights Commission regarding economic, social, and cultural rights, if the commission's competence had been recognized by the relevant state.[27]

In some ways the formal powers of human rights institutions, the commission and the court, are greater than their European counterparts. The human rights regimes in Latin America have, however, been less effective. The commission issued critical reports about violations of human rights in Nicaragua under the Somoza regime and in Chile under Pinochet, which had little or no effect. Rulers in Latin American states endorsed human rights agreements but often failed to abide by them. Domestic factors that made the European human rights regime so effective, including support from groups in civil society and institutional structures, especially the courts, were less consequential in Latin America.[28]

Human Rights Conventions and National Autonomy

The human rights accords endorsed by the members of universal and regional organizations have been conventions, voluntary, Pareto-improving agreements in which behavior in one signatory has not been contingent on that in others. Human rights agreements have never violated international legal sovereignty, which stipulates that juridically independent territorial entities have the right to free choice. The very fact that rulers could freely sign such agreements is an affirmation of their international legal sovereignty, of the fact that they are recognized by other states as competent to enter into international accords.

Some of these compacts have, however, violated the Westphalian model; others have not. By extending invitations to external sources of legitimacy, rulers have sometimes compromised their domestic autonomy. Autonomy has been conceded by creating authoritative supranational institutions

[26] Donnelly 1989, 215; Vincent 1986, 95.
[27] Text of the protocol in Brownlie 1992, 521–30.
[28] Forsythe 1983, 53.

and, more obliquely, by altering conceptions of legitimate behavior among groups within civil society and the state. A human rights accord can violate Westphalian sovereignty if it has enforcement procedures. The European human rights regime is the best, and perhaps only, example. The decisions of the European Court of Human Rights are binding on signatories, although actual enforcement must still rest with police and courts of national states. Individuals can, and have, brought complaints against their own governments, which have led to policy changes. The existence of a transnational judicial body whose decisions are directly applicable in more than twenty states cannot be comprehended in terms of the Westphalian model. By joining the regime, European states have invited external authority structures into their domestic polities.

Human rights conventions may also compromise Westphalian sovereignty by changing relationships of authority and legitimacy within a state. The ability of any ruler, or government, to determine the grounds for domestic legitimacy will depend to some extent on external forces. No government can insulate itself from foreign influence. For instance, international nongovernmental organizations like Amnesty International try to change the practices and policies of governments as does the Catholic Church. Such private actors are not violating Westphalian autonomy; they make no claim to authoritative decision making. When a government, however, invites external legitimation of its own practices and institutions by signing a human rights convention, it might indirectly compromise its autonomy by altering conceptions of appropriate political authority held by actors in civil society, who may then press for the reorganization of domestic structures.

One example of such a phenomenon was the impact of the Helsinki Final Act on the activities of human rights groups in eastern Europe. Daniel Thomas has shown that this agreement, even though it lacked the status of a treaty and had no monitoring or enforcement provisions, changed political behavior in the Soviet bloc countries. Before Helsinki human rights protests in eastern Europe were made by isolated individuals; after Helsinki organized groups, Helsinki watch committees, became much more salient. The most active groups were in Poland and Czechoslovakia. Helsinki watch groups in Poland were later active in Solidarity. In the Soviet Union groups were established in Leningrad, Moscow, Armenia, Georgia, Lithuania, and the Ukraine. The Helsinki watch committees based their protests against government policy in eastern Europe on both their national constitutions and the Helsinki accords.

Why would Helsinki, an agreement that was not even a legally binding treaty, matter? In eastern Europe the accord provided a signal that facilitated organized resistance to Communist repression. Groups could be created more easily because the Helsinki accords provided a focal point.

Links with Western human rights organizations increased. The greater the level of formal organization and the larger the number of activists, the more embarrassing repression would be, and the more it would alienate more passive citizens in the Soviet bloc. Perhaps the most interesting example of the Helsinki agreement as a signal occurred in East Germany, which had no Helsinki watch group, but where 100,000 applied for emigration permits in 1976, justifying their action by referring to Basket III. Hence an international accord altered conceptions of legitimate behavior within the state. Rulers did not have complete autonomy because of international initiatives that they had themselves endorsed, even though they had not expected their invitations to external sources of authority to be consequential.[29]

If human rights conventions have some provisions for monitoring and reporting, they may also affect domestic concepts of legitimacy by mandating procedures that change the attitudes and behavior of both government officials and private citizens. The modal form of monitoring is a national report to a committee of experts. By themselves, such reports do not constitute a violation of the Westphalian model. A repressive regime could submit a pro forma document that would have no impact on domestic autonomy. But if a report mobilizes domestic opinion, either within or without the government, the monitoring functions of an international commitment could be indirectly consequential for national structures of authority. A government, for instance, that has obligated itself to report on the status of women could catalyze the formation of women's rights groups in its own society, and such groups could successfully press for a change in state practices. An international accord could reinforce particular norms, and these could change national concepts of authority and legitimacy.

The extent to which human rights conventions compromise the Westphalian model is critically dependent on the domestic base of support for such values. Andrew Moravcsik has pointed out that both shaming, which alters authority structures by mobilizing public opinion within a state, and co-optation, which alters authority structures by mobilizing ties between domestic and external actors, depend upon the existence of attitudes or organizations that are sympathetic to human rights in the first place. Without such domestic support, a human rights convention can simply be an empty invitation, or even cynical gesture, which has no consequences for the ability of rulers to exclude external authority from their territory.[30]

Interventions by major powers, such as mandating minority rights, always compromise the Westphalian model: domestic authority structures

[29] D. Thomas forthcoming; Moravcsik 1994, 48; J. Sharp 1984, 168; Donnelly 1995, 137.
[30] Moravcsik 1994, 52–55.

are influenced or even dictated by foreign actors. The consequences of invitations, such as endorsing human rights conventions, are more ambiguous. Their impact, if it exists at all, may be indirect. Rulers who endorse internationally legitimated values, especially ones that they do not believe in, may find that what they thought was an empty gesture has altered concepts of legitimacy within their own polities and precipitated changes in domestic authority structures. The extent to which such a process actually occurs is an empirical question. Sometimes an invitation to external sources of legitimation is inconsequential. Sometimes rulers endorse principles in which they and their subjects already believe; a convention does not change domestic sentiments. In some cases, however, conventions, even though they are entered into voluntarily and even though they have no provisions for enforcement, can alter domestic authority structures by introducing external sources of legitimacy.

Motivations

Rulers have signed human rights accords for three reasons: to constrain future governments, to follow the script of modernity, and, in the case of the Soviet bloc, to attract supporters in third countries. First, rulers may want to bind their successors. They may be committed to the values embodied in a human rights convention, but are uncertain about the preferences of those that will rule after them. An international accord can make abrogating human rights commitments more costly by strengthening domestic groups that support the same values, providing links with international nongovernmental organizations that can mobilize officials in other countries, making shaming more effective and, if the regime has enforcement provisions, establishing procedures for legal actions against the state. The clearest example of using an international convention to lock in particular policy preferences occurred in Europe. The governing authorities in Europe in 1950 could not be sure that their commitment to democratic principles and human rights would last. The German experience in the interwar years—Weimar followed by the Third Reich—had shown how vulnerable such values could be. By formulating the European Convention on Human Rights and creating the European Commission on Human Rights and the European Court of Human Rights, the rulers of the early 1950s hoped to reduce the likelihood that their subjects would again be governed by murderous and repressive regimes. The most vigorous supporters of a strong human rights regime, one that would have supranational officials and an independent court that would provide access for individuals and not just states, were those governments that were most anxious to solidify their democratic commitments, notably Austria, Belgium, France, Germany, Iceland, Ireland, and Italy.

Political leaders who were confident about the embeddedness of democracy within their own polities, such as the United Kingdom, or that were not so fully committed to human rights, such as Turkey, were less enthusiastic about a strong regime.[31]

A second motivation for signing human rights conventions is that participation in such accords is part of the script of modernity. Formal endorsement, however, may have little to do with actual behavior. Decoupling is easier if the regime lacks monitoring and enforcement provisions, and if domestic support for human rights is weak. John Meyer and his colleagues have shown astonishing similarities in the formal policies of most countries across a wide range of issue areas including social security, women's rights, and education, despite enormous variation in the socioeconomic characteristics and national value systems, but the actual implementation of national legislation is inconsistent at best.[32]

For most of the postwar period there has not been a tight empirical relation between the number of human rights agreements that a state has signed and its human rights performance. In 1987 the correlation was .11.[33] It is easy to imagine that states with well-developed judicial systems might be more reluctant to sign agreements because they could have a direct impact on decisions in their national court system. Autocratic rulers, in contrast, could sign with less anxiety about domestic consequences. Signing an agreement does not mean that its provisions will be honored. Whatever motivations rulers have had for signing human rights conventions, the actual promotion of human rights does not appear to have been a decisive factor.

The interpretation that some rulers sign human rights accords because they view them as part of the script of modernity is also supported by the existence of regional human rights agreements in Africa and the Arab world, which have had only the most limited impact. The Permanent Arab Commission on Human Rights was established by the League of Arab States in 1968 but there has been no agreement on substantive norms and the commission has been inactive. The Arab Charter of Human Rights of 1971 has been ignored. The African Charter on Human and Peoples' Rights was adopted by the Organization of African Unity (OAU) in June 1981. The charter creates an African Commission on Human and Peoples' rights and even "envisions" complaints from individuals. There are no provisions even for regular reporting much less monitoring or enforcement.[34] Africa's human rights record has been problematic at best.

[31] Moravcsik 1998, 22.

[32] Finnemore 1996b; Meyer et al. 1997.

[33] Figures for human rights record from Freedom House; for ratifications from information in United Nations 1987.

[34] Donnelly 1989, 217–18.

The ratification by the Soviet Union of many human rights conventions cannot be explained so easily from a world culture perspective emphasizing scripts of modernity. For the Soviets, the Helsinki Final Act involved a trade-off in which the West recognized the status quo in eastern Europe, including borders and, less explicitly, regime type, in exchange for an eastern bloc endorsement of liberal human rights. The CSCE agreements did promote the development of human rights groups in eastern Europe. The Soviets had overestimated both the strength of their repressive apparatus and the degree of support that they enjoyed from subject populations. They had issued an invitation but they had not expected that the invitee, liberal conceptions of human rights, would actually show up within their own borders. The West used the Helsinki accord as a device to pressure the Soviet Union on human rights, rejecting the charge that this amounted to interference in the internal affairs of another state on the grounds that human rights were universally recognized and that noninterference referred only to efforts to dictate to other countries.

Aside from Helsinki, the Soviet bloc countries routinely ratified United Nations human rights agreements. As of September 1, 1987, the Soviet Union, Bulgaria, Czechoslovakia, and Romania had all ratified 14 out of the 22 extant United Nations human rights instruments, East Germany 16, and Poland 13. For the industrialized countries there was wide variation. The United States had ratified 6 conventions, Switzerland, 8; Italy and the United Kingdom, 15; France and West Germany, 16; Sweden, 18; and Norway, 19.[35] The Soviet bloc rulers were not following a script of modernity propagated by the West; they had their own script, Marxism-Leninism, with its own claims about universality and scientific validity. For the Soviets, endorsing human rights accords might have been seen as a way to enhance the image of eastern bloc countries among sympathetic populations in the West or as an instrument of propaganda, which Communist rulers thought would have little or no impact within their own countries.

Economic Sanctions

Human rights conventions are consistent with the international legal sovereignty, understood as the right of a state to enter into agreements voluntarily, but such accords may violate the Westphalian model if they compromise the domestic autonomy of the state. In contrast, the use of economic sanctions to alter the relationship between rulers and ruled violates both international legal and Westphalian sovereignty because the tar-

[35] Derived from information in United Nations 1987.

get state is being coerced with regard to issues associated with its domestic political structures.

Out of the 106 specific cases of economic sanctions during the twentieth century presented by Hufbauer, Schott, and Elliot, 17 involved efforts to protect human rights. (Sixteen others were attempts to change the character of the domestic regime of the target by either removing the ruler or changing the institutional structure.) Collective sanctions against South Africa to end apartheid, which were first endorsed by the United Nations in 1962, are the most prominent example. Between 1970 and 1990 the United States imposed sanctions against more than a dozen countries for human rights violations.[36] In all of these cases the target, even if it did not comply with the sanctions, was worse off than it had been because it could not, at the same time, both avoid sanctions and maintain its ex ante policies. Either it suffered sanctions, at least for some period of time, or it had to change its policies.

The use of economic and other sanctions to end apartheid in South Africa is a rare example of coercion in the area of human rights that accomplished its objectives. Apartheid had no international defenders. African states opposed South African policies but had little economic leverage.[37] The frontline African states could not make credible threats against the South African economy because the implementation of any such threats, would have been more damaging to the initiators than the target. The OECD countries could make credible threats, although such policies were domestically contentious especially in the United States and Great Britain. In 1977 Europe espoused a Code of Conduct for investors in South Africa designed to normalize relations between firms and black workers, but it was ineffective because implementation was uneven. In 1985 Europe adopted a number of initiatives including limiting some oil sales, an embargo on military exports, the end of military cooperation, and discouraging sporting contacts. Britain and Germany, however, blocked more ambitious trade sanctions.[38]

The United States first pressured South Africa in 1963 when it imposed a voluntary arms embargo and some restrictions in Exim Bank loans. In 1979 the Carter administration extended controls by banning the sale of all goods to the military and police. In 1985 Reagan, responding to pressure from Congress, forbid the import of Krugerrands and ended the export of most nuclear technology. In 1986 Congress overrode a presidential veto and imposed additional sanctions including a prohibition on new investment, loans to the South African government, and the export of

[36] Hufbauer et al. 1990.
[37] Frazer 1994.
[38] Moravcsik 1994, 39.

computers.[39] As a result of both external and internal pressures, the apartheid regime was abandoned by many of its own supporters and Nelson Mandela became the president of South Africa. This transition was an extraordinary accomplishment, and one that took place with little bloodshed. But it was not consistent with Westphalian or international legal sovereignty. The pressure on South Africa was a denial of the right of its rulers to establish a race-based regime within their country.

Conclusions

Many contemporary observers have seen human rights as an issue area in which conventional notions of sovereignty have been compromised. They are right. Some human rights conventions are inconsistent with Westphalian sovereignty. Coercive practices, such as economic sanctions to promote human rights, violate international legal sovereignty as well. Before the last half of the twentieth century human rights had never been a particularly salient international issue.

Seeing human rights developments since the Second World War as a fundamental break with the past is, however, historically misleading. Understood more generally as a problem of the relations between rulers and ruled, human rights are but one more incarnation of a long-standing concern in the international system. From issues of religious toleration that were prominent in the sixteenth and seventeenth centuries (and even earlier with regard to European concerns about Christians in the Ottoman Empire), through minority rights in the nineteenth and early twentieth centuries and human rights in the late twentieth century, national autonomy has been persistently challenged. Rulers have intervened in the internal affairs of other states through coercion and imposition and invited the insinuation of external authority in their own polities through contracting and conventions. The minorities regime established under the League of Nations was more firmly institutionalized than any of the universal human rights regimes that have existed since the Second World War; it included the right of individuals to bring complaints against their own governments, a formal appeals process to the league, and the possibility of rulings by the International Court of Justice.

The issue of human rights, like minority rights and religious toleration, is an example of the fact that Westphalian sovereignty has always been characterized by organized hypocrisy. In some cases, such as religious toleration in Europe and some bilateral minority rights accords in the twentieth century, autonomy has been compromised by contracts. Coercion or imposition has, however, been the more typical modality for trying to es-

[39] Moravcsik 1994, 39; Martin 1995, chap. 4.

tablish minority rights. More powerful states, often concerned primarily with the international instability that could result from minority unrest, have intervened to force rulers in target states to change their domestic authority structures. Absent national support for such regimes, however, they have failed. Human rights accords in the late twentieth century have, in contrast, been conventions. With the exception of the European regime, compliance and enforcement mechanisms have been weak. Nevertheless, some of these conventions have infringed domestic autonomy by inviting external sources of legitimacy that have strengthened the positions of sympathetic national actors and changed domestic conceptions of appropriate policy.

Westphalian sovereignty has never been a foregone conclusion. In western Europe, the area that generated the notion of Westphalian sovereignty, most rulers have never enjoyed full autonomy with regard to the treatment of their own subjects. The issue of human rights is but the latest example of a long-standing tension between autonomy and international attempts to regulate relations between rulers and ruled.

CHAPTER 5

Sovereign Lending

INTERNATIONAL BORROWING by rulers has been a pervasive aspect of the European international system since the Middle Ages and of the global system since the nineteenth century. Rulers, whether of medieval monarchies or modern democracies, have often been unable to fund state expenditures from taxes and domestic borrowing. Indeed, despite all of the recent attention to financial globalization (an element of interdependence sovereignty), sovereign lending was more important in the past, especially prior to the nineteenth century, than it is at present. Rulers have relied on foreign lenders including other states, foreign bankers with varying degrees of closeness to their own governments, and international financial institutions such as the World Bank and the International Monetary Fund. The terms agreed to by sovereign debtors have often involved not just a promise to repay, but also measures that compromise their domestic autonomy. Sovereign lending has almost always been conducted through contracts, Pareto-improving, mutually contingent arrangements, some of which have included invitations that concede Westphalian sovereignty by accepting conditions involving changes in domestic authority structures.

Sovereign borrowing poses unique problems for creditors. In lending between private parties within the same national system, it is possible to appeal to third-party enforcement, usually a court system, if the borrower fails to repay. Lenders can also seek collateral that can be, again with legal authorization, seized if the borrower defaults. Third-party enforcement is more problematic for loans to rulers, both international and domestic.[1] No authoritative judicial system can adjudicate disputes between sovereign borrowers and international lenders. Collateral is hard to come by. A foreign lender can always withhold future funds, but for a ruler confronted with short-term political pressure and the accompanying need for immediately available financial resources, default may be more attractive than honoring foreign obligations.

Lenders are well aware of their limited alternatives should a sovereign borrower default. One approach is to charge high interest rates to compensate for the risks inherent in extending credit to rulers who are not subject

[1] For a discussion of the development of institutional mechanisms that increased the confidence of domestic lenders in England, see North and Weingast 1989. For a more general treatment, see Broz 1998.