

# CDDRL

## WORKING PAPERS

### *Governance Failures and Alternatives to Sovereignty*

Stephen D. Krasner

Center on Democracy, Development, and The Rule of Law  
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Center on Democracy, Development,  
and The Rule of Law  
Stanford Institute of International Studies  
Stanford University  
Encina Hall  
Stanford, CA 94305  
Phone: 650-724-7197  
Fax: 650-724-2996  
<http://cddrl.stanford.edu/>

### **About the Center on Democracy, Development and the Rule of Law (CDDRL)**

CDDRL was founded by a generous grant from the Bill and Flora Hewlett Foundation in October in 2002 as part of the Stanford Institute for International Studies at Stanford University. The Center supports analytic studies, policy relevant research, training and outreach activities to assist developing countries in the design and implementation of policies to foster growth, democracy, and the rule of law.

### **About the Author**

Stephen Krasner is the director of CDDRL, deputy director of SIIS, an SIIS senior fellow, and the Graham H. Stuart Professor of International Relations at Stanford University. His work has dealt primarily with sovereignty, American foreign policy, and the political determinants of international economic relations. His major publications include *Defending the National Interest: Raw Materials Investment and American Foreign Policy* (1978), *Structural Conflict: The Third World Against Global Liberalism* (1985), and *Sovereignty: Organized Hypocrisy* (1999). Publications he has edited include *International Regimes* (1983), *Exploration and Contestation in the Study of World Politics* (co-editor, 1999), and *Problematic Sovereignty: Contested Rules and Political Possibilities* (2001).

SHARING SOVEREIGNTY: NEW INSTITUTIONS FOR COLLAPSED AND FAILING  
STATES

Stephen D. Krasner is Graham H. Stuart Professor of International Relations at Stanford University.

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Abstract: Bad governance in weak states threatens not only the well-being of citizens within these states but also the material interests of more powerful countries. The policy instruments currently available to repair deteriorated or collapsed domestic authority structures are inadequate for both failed and failing states and those that have been militarily occupied. The problems generated by inadequate governance cannot be adequately addressed within the confines of conventional sovereignty which stipulates that all states should enjoy both autonomy and international recognition. Alternative institutional arrangements, need to be developed including de facto if not de jure trusteeships and shared sovereignty arrangements that engage external actors in specific aspects of domestic governance on a quasi -permanent basis.

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Conventional sovereignty assumes a world of autonomous, internationally recognized, and well-governed states. The fundamental rules of conventional sovereignty – recognition of juridically independent territorial entities and non-intervention in the internal affairs of other states -- although frequently violated in practice, have rarely been challenged in principle. But these rules no longer work, and their inadequacies have had deleterious consequences for the strong as well as the weak. The policy tools that powerful and well-governed states have available to fix states that are badly governed or have collapsed either because of internal strife or external invasion -- principally governance assistance and transitional administration (whether formally authorized by the United Nations or engaged in by a coalition of the willing led by the United States -- are inadequate. In the future better domestic governance in badly governed, failed, or occupied polities will require the transcendence of accepted rules including the creation of shared sovereignty in specific issue areas. In some cases decent governance may require some new form of trusteeship, almost certainly *de facto* rather than *de jure*.<sup>1</sup>

Many countries suffer under failed, weak, incompetent, or abusive national authority structures. The best that people living in such countries can hope for is marginal improvement in their material well-being, limited access to social services including health care and education, and a moderate degree of individual physical security. At worst they will confront endemic violence, exploitative political leaders, falling life expectancy, declining per capita income, and even state-sponsored genocide. In the Democratic Republic of Congo (formerly Zaire), for example, civil wars that have persisted for more than two decades have resulted in millions of deaths. In Zimbabwe the policies of president Robert Mugabe, who was determined to stay in office regardless of the consequences for his country's citizens, led to an economic debacle after 2000 with falling per capita income, inflation above 500 percent, and the threat of mass

starvation. In Colombia much of the territory is controlled by the Revolutionary Armed Forces of Colombia, a Marxist rebel group, deriving most of its income from drug trafficking. In Rwanda more than 700,000 people were slaughtered in a matter of weeks in 1994 as a result of a government organized genocide.

The consequences of failed and inadequate governance have not been limited to the societies directly affected. Poorly governed societies can generate conflicts that spill across international borders. Transnational criminal and terrorist networks can operate in territories that are not controlled by the internationally recognized government. Humanitarian disasters not only prick the conscience of political leaders in advanced democratic societies but also leave them with no good electoral choices.

Challenges related to creating better governance also arise where national authority structures have collapsed because of external invasion and occupation rather than internal conflict. The availability of weapons of mass destruction and the presence of transnational terrorism have created a historically unprecedented situation in which polities with very limited material capability can threaten the security of much more powerful states. These polities can be conquered and occupied with relative ease, leaving the occupying power with the more challenging task of establishing an acceptable domestic governing structure. Contemporary Afghanistan and Iraq are the obvious cases in point.

Left to their own devices, collapsed and badly governed states will not fix themselves, because they have limited administrative capacity, not least with regard to maintaining internal security.<sup>2</sup> Occupying powers cannot escape choices about what new governance structures will be created and sustained. To reduce international threats and improve the prospects for individuals in such polities alternative institutional arrangements supported by external actors, such as de facto trusteeships and shared sovereignty, should be added to the list of policy

options.

The current menu of policy instruments is paltry, consisting primarily of transitional administration and foreign assistance to improve governance, both of which assume that in more or less short order, targeted states can function effectively on their own. Nation-building or state-building efforts are almost always described in terms of empowering local authorities to assume the responsibilities of conventional sovereignty. The role of external actors is understood to be limited with regard to time, if not, in the case of transitional administration exercising full executive authority, scope. Even as the rules of conventional sovereignty are de facto violated if not de jure challenged, and it is evident that in many cases effective autonomous national government is far in the future, the language of diplomacy, the media, and the street envisions nothing other than a world of fully sovereign states.

The next section of this paper describes the basic elements that constitute our conventional understanding of sovereignty and provides a taxonomy of alternative institutional forms. It is followed by a discussion of the ways in which conventional sovereignty has failed in some states threatening the well being of their own citizens and others. The inadequacy of the current repertoire of policy options for dealing with collapsed, occupied, and badly governed states – governance assistance and transitional administration – is demonstrated. The possibilities for new institutional forms – notably shared sovereignty and some de facto form of trusteeship – are examined including a discussion of why such arrangements might be accepted by political leaders in target as well as intervening states.

### *Conventional Sovereignty and Some Alternatives*

Conventional sovereignty has three elements: international legal sovereignty, Westphalian/Vattelien sovereignty<sup>3</sup>, and domestic sovereignty.

The basic rule of international legal sovereignty is to recognize juridically independent

territorial entities. These entities then have the right to freely decide which agreements or treaties they will enter into. In practice, this rule has been widely but not universally honored. Some entities that are not juridically independent have been recognized (e.g., Byelorussia and the Ukraine during the Cold War), and some entities that are juridically independent have not been recognized (e.g., the People's Republic of China from 1949 to the 1970s).

The basic rule of Westphalian/Vattelien sovereignty is to refrain from intervening in the internal affairs of other states. Each state has the right to determine its own domestic authority structures. In practice, Westphalian/Vattelien sovereignty has frequently been violated.

Domestic sovereignty does not involve a norm or a rule but is rather a description of the nature of domestic authority structures and the extent to which they are able to control activities within a state's boundaries. Ideally, authority structures would ensure a society that is peaceful, protects human rights, has a consultative mechanism, and honors a rule of law based on a shared understanding of justice.

In the ideal sovereign state system, international legal sovereignty, Westphalian/Vattelien sovereignty, and domestic sovereignty are mutually supportive. Recognized authorities within territorial entities regulate behavior, enjoy independence from outside interference, and enter into mutually beneficial contractual relations (treaties) with other recognized entities. This is the conventional world of international politics in which state-to-state relations are what count. One of the most striking aspects of the contemporary world is the extent to which domestic sovereignty has faltered so badly in states that still enjoy international legal, and sometimes even Westphalian/Vattelien sovereignty. Somalia, for instance, is still an internationally recognized entity, even though it barely has any national institutions at all; and external actors have not, in recent years, tried to do much about Somalia's domestic sovereignty, or the lack thereof.

Conventional sovereignty was not always the hegemonic structure for ordering political



life. Obviously, the basic rules of medieval Europe or the pre-nineteenth-century Sinocentric world were very different. But even in the nineteenth century, by which time conventional sovereignty had become a well-recognized structure, there were also legitimated and accepted alternatives. Protectorates were one alternative to conventional sovereignty; the rulers of a protectorate relinquished control over foreign policy to a more powerful state but retained authority over domestic affairs. For instance, in 1899 the ruler of Kuwait signed an agreement that gave Britain control of most elements of his country's foreign policy because he needed external support against threats from Iraq and from members of his own family.<sup>4</sup> In nineteenth century China, the major powers established treaty ports where British, French, German, and Japanese authorities regulated commerce and exercised extraterritorial authority over their own citizens and sometimes Chinese as well.<sup>5</sup> Within the British Empire, Canada, Australia, and South Africa became dominions that enjoyed almost complete control over their domestic affairs, recognized the British ruler as the head of state, but to some extent deferred to Britain in matters of foreign policy. Finally, colonization was a legitimated practice in the nineteenth century that allowed powerful states to assume international legal sovereignty and regulate the domestic authority structures of far-flung territories.

Conventional sovereignty is currently the only fully legitimated institutional form but, unfortunately, conventional sovereignty does not always work. Honoring Westphalian/Vattelien sovereignty, and sometimes international legal sovereignty as well, makes it impossible to secure decent and effective domestic sovereignty because the autochthonous political incentives facing political leaders in many failed, failing, or occupied states are perverse. These leaders are better able to enhance their own power and wealth by making exclusionist ethnic appeals or undermining even the limited legal routinized administrative capacity that might otherwise be available.

To secure decent domestic governance in failed, failing, and occupied states new institutional forms are needed that compromise Westphalian/Vattelien sovereignty for an indefinite period. Shared sovereignty, arrangements under which individuals chosen by international organizations, powerful states, or ad hoc entities would share authority with nationals over some aspects of domestic sovereignty would be a useful addition to the policy repertoire. Ideally, shared sovereignty would be legitimated by a contract between national authorities and an external agent. In other cases external interveners may conclude that the most attractive option would be to establish a de facto trusteeship or protectorate. Under such an arrangement the Westphalian/Vattelien sovereignty of the target polity would be violated, executive authority would be vested primarily with external actors, and international legal sovereignty would be suspended. There will not, however, be any effort to formalize through an international convention or treaty a general set of principles for such an option.<sup>6</sup>

For a summary of these different institutional possibilities see Table 1.

(Insert Table 1 about here)

### *Failures of Conventional Sovereignty*

Failed, inadequate, incompetent, or abusive national authority structures have sabotaged the economic well-being, violated the basic human rights, and undermined the physical security of their populations. In some cases, state authority has collapsed altogether for an extended period, although such instances are rare. Afghanistan in the early 1990s before the Taliban consolidated power, Liberia for much of the 1990s, and the Democratic Republic of Congo and Sierra Leone in the late 1990s offer three examples. Governance challenges have also arisen in Afghanistan and Iraq where authority structures collapsed as a result of external invasion rather

than internal conflict. The occupying powers, most obviously the United States, were then confronted with the challenge of fashioning decent governance structures in both countries.

In some parts of the world, disorder including civil war has become endemic. For the period 1955 to 1998, the State Failure Task Force identified 136 occurrences of state-failure in countries with populations above 500,000. The task force operationalized state failure as one of four kinds of internal political crisis: revolutionary war, ethnic war, “adverse” regime change, and genocide. In 1955 fewer than 6 percent of the countries were in failure. In the early 1990s the figure had risen to almost 30 percent, falling to about 20 percent in 1998, the last year of the study. Adverse regime change was the most common form of state failure, followed by ethnic war, revolutionary war, and genocide.<sup>7</sup> The task force identified partial democracy, trade closure, and low levels of economic well-being as indicated by high infant mortality rates as the primary causes of state failure.<sup>8</sup> James Fearon and David Laitin show that internal strife is more likely in countries suffering from poverty, recent decolonization, high population, and mountainous terrain. These conditions allow even relatively small guerrilla bands to operate effectively, because recognized governments do not have the administrative competence to engage in effective rural policing and counter insurgency operations.<sup>9</sup>

States that experience failure or poor governance more generally are beset by many problems. In such states, infrastructure deteriorates; corruption is widespread; borders are unregulated; gross domestic product is declining or stagnant; crime is rampant; and the national currency is not widely accepted. Armed groups operate within the state’s boundaries but outside the control of the government. The writ of the central government, the entity that exercises the prerogatives of international legal sovereignty e.g., signing treaties and sending delegates to international meetings, may not extend to the whole country; in some cases, it may not extend beyond the capital. Authority may be exercised by local entities in other parts of the country, or

by no one at all.

Political leaders operating in an environment in which material and institutional resources are limited have often chosen policies that make things worse. For some leaders, disorder and uncertainty are more attractive than order and stability because they are better able to extract resources from a disorderly society. Decisions affecting the distribution of wealth are based on personal connections rather than bureaucratic regulations or the rule of law. Leaders create multiple armed units that they can be play-off against each other. They find it more advantageous to take a bigger piece of a shrinking pie than a smaller piece of a growing pie.

The largest number of poorly governed states are found on the continent of Africa. Since the mid-1950s about a third of African states have been in failure according to the State Failure Task Force.<sup>10</sup> In constant 1995 U.S. dollars, gross domestic product per capita for all of sub-Saharan Africa fell from \$660 in 1980 to \$587 in 1990 to \$563 in 2000. Out of the sub-Saharan states for which data are available from the World Bank, eighteen had increases in their per capita gross domestic product from 1990 to 2000, seven had decreases of less than 5 percent, and seventeen decreases of more than 5 percent. With the exception of the former Soviet Union, no other area of the world fared so badly with regard to economic performance.<sup>11</sup>

Sierra Leone offers one example of state collapse. Government revenue declined from \$250 million in the mid 1970s to \$10 million in 1999. Most television service ended in 1987 when the Minister of education sold the country's broadcasting tower. During the 1990s civil strife resulted in at least 50,000 deaths and many more injuries and maiming. There was a military coup in 1992, an election in 1996, and another coup in 1997. A Nigerian led west African peacekeeping force intervened in 1998, and restored the elected president to power but was unable to control rebel violence. A 1999 peace agreement brought Sankoh Foday, leader of the Revolutionary United Front (RUF), into the government as vice president and minister of mines. The RUF was infamous for cutting off the limbs of its victims. This agreement collapsed after 500 UN peacekeepers were kidnapped when they entered the diamond area. Charles

<sup>12</sup> supported rebel groups in 2000 and 2001 because he wanted access to the country's diamond mines. Order was finally restored in 2002 after the United Nations authorized a force which grew to 17,000 men. British units made a substantial contribution to finally defeating and disarming rebel forces.<sup>13</sup> Describing Sierra Leone in the 1990s, William Reno writes, "the country's rulers intentionally made life for their subjects less secure and more materially poor. They became personally wealthy as a consequence of this disorder, and then sold chances to profit from disorder to those who could pay for them by providing services -- as experts in violence, for example -- and to those local and expatriate businessmen who traded their access to commercial networks."<sup>14</sup>

Thus, for many countries domestic sovereignty is not working. And the situation is not improving in any clear way. Although the number and percentage of countries suffering from civil war declined during the 1990s, the per capita gross national income in current US dollars of the least developed countries continued to worsen, falling by nine percent from 1990 to 2000, a period of robust growth for the world as a whole.<sup>15</sup>

### *Why Sovereignty Failures Matter*

In the contemporary world, powerful states have not been able to ignore governance failures. Politics where domestic authority has collapsed or been inadequate have threatened the material interests of the powerful, both economic and security. Humanitarian crises have engaged electorates in advanced democracies and created no-win situations for political leaders who are damned if they intervene and damned if they do not. And, most obviously, when a state has been invaded, the occupiers are confronted with the problem of establishing effective domestic sovereignty.

The availability of weapons of mass destruction, ease of movement across borders, and terrorist networks have attenuated the relationship between the underlying capabilities of actors and the ability to kill large numbers of people. In the past, state and nonstate actors with limited

resources could not threaten the security of states with substantial resources. The killing power of a nation's military depended on the underlying wealth of the country. Nonstate actors such as anarchist groups in the nineteenth century could throw bombs that might kill fifty or even several hundred people, but not more. This is no longer true. States with limited means can procure chemical and biological weapons. Nuclear weapons demand more resources, but they are not out of reach of even a dimly poor country such as North Korea. Weapons of mass destruction can be delivered in myriad ways, not only missiles but also commercial ships, trucks, planes, and even envelopes. Failed or weak states may provide terrorists with territory in which they can operate freely.

Moreover, political leaders, who have effective control within their borders but limited resources to defend or deter an invasion, present a tempting target if they adopt policies that threaten the core security interests of powerful states. For instance, throughout his rule Saddam Hussein sought and sometimes used weapons of mass destruction, and even when faced with invasion failed to fully cooperate with the UN inspectors. In Afghanistan, the Taliban supported al Qaeda which clearly demonstrated that it could attack core targets in the United States. Neither Iraq nor Afghanistan could defend itself against, nor deter, an American attack. When the threat is high and invasion is easy, then powerful states are likely to use military force to bring down a regime that is menacing them. When, however, the old regime has collapsed, the occupiers are confronted with the challenge of creating effective and decent domestic sovereignty.

Sovereignty failures may also present problems in the area of transnational criminality. Drug trafficking is difficult to control under any circumstances; but such activities are more likely to flourish where domestic sovereignty is inadequate. About 95 percent of illicit drug production takes place in areas of civil strife. Colombia, where the FARC control a large part of

the territory, has been one of the major sources of such drugs for the United States. In the late 1990s Afghanistan produced seventy-five percent of the world's opium poppy and, despite a ban by the Taliban at the end of its rule, production revived after the regime was overthrown because the new government in Kabul had limited control over much of the country.<sup>16</sup> Transnational trafficking in persons is more likely, although not limited to, countries where domestic authority and control are weak or ineffective. The State Department's 2004 *Trafficking Persons Report* lists ten countries -- Bangladesh, Ecuador, North Korea, Venezuela, Burma, Equatorial Guinea, Sierra Leone, Cuba, Guyana, and Sudan -- which have not met minimum efforts to control trafficking in persons. Most of the ten are failed or badly governed states.<sup>17</sup> In addition, it is more difficult to trace and punish the perpetrators of transnational financial fraud in countries where the police and judiciary do not function well.

Finally, gross violations of human rights present unpleasant political choices for democratic leaders in powerful states. There have been a number of humanitarian catastrophes in recent years, with the killings in Rwanda in the mid-1990s being one of the most appalling and most widely reported. Millions of people have died in other countries as well at the hands of their own government or rival political groups. These and other humanitarian disasters have engaged attentive elites. The Canadian Ministry of Foreign Affairs, for instance, organized the International Commission on Intervention and State Sovereignty in 2000 in response to Kofi Annan's appeal for a new consensus on the right of humanitarian intervention. The Commission, composed of twelve eminent persons produced a widely circulated report entitled *The Responsibility to Protect*. The report defends the principle of humanitarian intervention when governments abuse or fail to protect their own citizens. Samantha Power's book, *A Problem from Hell: America and the Age of Genocide*, which describes the failure of the United States to act to prevent or mitigate a number of genocides throughout the twentieth century, won a Pulitzer

Prize in 2003.<sup>18</sup>

From an electoral perspective American leaders cannot simply ignore humanitarian crises. Jon Krosnick and his colleagues have shown that the electorate is made up of a number of distinct issue publics. Individuals in each of these publics are knowledgeable about their specific issue, including where presidential aspirants stand. Krosnick and his colleagues asked a random sample of the electorate questions about foreign policy before the 2000 elections such as, should the United States be “Helping poor countries provide food, clothing, and housing for their people? Helping resolve disputes between two other countries? Preventing governments of other countries from hurting own citizens? Preventing people in other countries from killing each other?” On these five questions between 7.3 and 9.6 of the electorate indicated that these issues were extremely important to them. These percentages are low compared to some other issues (33.5 percent indicated that defending the United States against missile attack was very important) but the responses do indicate that there is a significant part of the U.S. electorate concerned with humanitarian issues in poorer countries.<sup>19</sup>

Humanitarian crises, then, present decisionmakers in democratic countries with a no-win situation. If they fail to intervene and a humanitarian disaster occurs, they may lose the votes of citizens who are attentive to and care about the fate of particular countries, regions, ethnic groups, or principled issues in general. On the other hand, if a political leader does intervene the costs in terms of soldiers killed will be readily apparent, but the number of lives saved can never be demonstrated with certainty.

*The Existing Institutional Repertoire: Governance Assistance and Transitional Administration*

Political leaders in powerful and weak states have been reluctant to challenge the conventional norms of sovereignty. The policy options currently available to repair occupied or badly governed states -- foreign assistance and transitional administration -- are consistent with



these norms. They have made some limited contribution to improving governance in badly governed and collapsed states, but policymakers would be better served if they had a wider repertoire of policy choices. This section, which discusses conventional options, is followed by an examination of de facto trusteeships and shared sovereignty, options that violate conventional sovereignty norms.

## GOVERNANCE ASSISTANCE

For the last decade international organizations, the United States, and other donor countries have devoted substantial resources to promoting better governance. U.S. foreign aid has been given to train judges, rewrite criminal codes, increase fiscal transparency, professionalize the police, encourage an open media, strengthen political parties, and monitor elections. In 2004 the Bush administration launched a new foreign aid initiative, the Millennium Challenge Account (MCA), which, if fully funded, will increase U.S. foreign assistance by 50 percent and provide these resources to a relatively small number of poor countries that have demonstrated good governance in the areas of promoting economic freedom, governing justly, and investing in people.<sup>20</sup>

Since the 1950s, international financial institutions have been involved in questions of policy and sometimes institutional reform in borrowing countries. The conditions attached to lending by the World Bank and the International Monetary Fund have covered a wide range of issues such as aggregate credit expansion, subsidies, the number of government employees, the indexation of salaries, tariffs, tax rates, and institution building. International financial institutions have placed their own personnel in key bureaus.<sup>21</sup> In the mid-1990s the managing director of the IMF

and the president of the World Bank committed themselves to a more aggressive attack on corruption in developing states.<sup>22</sup> In 1997 the World Bank's World Development Report was subtitled *The State in a Changing World*. The Report declares that the "clamor for greater government effectiveness has reached crisis proportions in many developing countries where the state has failed to deliver even such fundamental public

goods as property rights, roads, and basic health and education.”<sup>23</sup> Further, it lists basic tasks for the state, including establishing a foundation of law, protecting the environment, and shielding the vulnerable; chastises governments for spending too much on rich and middle class students in universities while neglecting primary education; and urges them to manage ethnic and social differences.<sup>24</sup> Finally, and most ambitiously, the 1991 Agreement Establishing the European Bank for Reconstruction and Development created explicitly includes a commitment to democracy as a condition of membership.<sup>25</sup>

Foreign assistance to improve governance in weak states does not usually contradict the rules of conventional sovereignty. Governments contract with external agencies (countries, multilateral organizations, nongovernmental organizations) to provide training in various areas. Such contracting is a manifestation of international legal sovereignty and is consistent with Westphalian/Vattelien sovereignty so long as the influence of external actors on domestic authority structures is limited to specific policies or improving the capabilities of government employees. When bargaining power is highly asymmetric, as may be the case in some conditionality agreements between international financial institutions and borrowing countries, Westphalian/Vattelien sovereignty can be compromised. External actors can influence not just policies but also institutional arrangements in target states. The borrowing country is better off with the agreement, conditions or no, than it would have been without it; otherwise it would not have signed. Nevertheless, political leaders may accept undesired and intrusive engagement from external actors because the alternative is loss of access to international capital markets.

The effectiveness of governance assistance will always be limited. Some leaders will find exploitation of their own populations more advantageous than the introduction of reforms. The leverage of external actors will usually be constrained. International financial institutions are in the business of lending money; they cannot put too stringent restrictions on their loans lest their customers disappear. Many IMF agreements are renegotiated, sometimes several times. Small social democratic European countries, have been committed, because of the views of their electorates to assisting the poor; they will be loath to allow their assistance levels to drop below the generally recognized target of 0.7 percent of national income.<sup>26</sup> The wealthier countries also routinely provide humanitarian assistance regardless of the quality of governance in a particular country.

Moreover, those providing governance assistance are likely to adopt formulas that reflect their own domestic experience and that may be ill suited to the environments of particular target states. The United States, for instance, has emphasized elections and independent legislatures.

Interest groups have been regarded as independent of the state, whereas, in European social democratic countries, they are legitimated by and sometimes created by the state.<sup>27</sup> TRANSITIONAL

#### ADMINISTRATION

Transitional administration is the one recognized named alternative to conventional sovereignty that exists in the present international environment, but it is explicitly not meant as a challenge to the basic norms of sovereignty. The scope of transitional administration or peacekeeping and peacebuilding operations has ranged from the full assertion of executive authority by the UN for some period of time, East Timor being an example, to more modest efforts involving monitoring the implementation of peace agreements, as was the case in Guatemala in the 1990s. Transitional administration, usually authorized by the UN Security Council, has always been seen as a temporary, a transitional, measure designed to create the conditions under which conventional sovereignty can be restored. The U.S. occupation of Iraq has followed the same script, albeit without any UN endorsement of the occupation itself, although the Security Council did validate the restoration of international legal sovereignty in June 2004. Westphalian/Vattelian and sometimes international legal sovereignty are violated in the short term so that they can be restored in the longer term; at least that is the story.

The record of peace building efforts since World War II has been mixed. One recent study identified 124 cases of peace building by the international community. Of these, 43 percent were judged to be successful based on the absence of hostilities. If some democracy is added as a measure of success, only 35 percent were successful.<sup>28</sup>

More extensive peacekeeping operations, those that might really be called transitional administration because they involve the assertion of wide ranging or full executive authority by the UN (or the U.S.) are difficult: the demands are high; advance planning, which must prejudge outcomes, is complicated, especially for the UN; and resources -- economic, institutional, and military -- are often limited. UN missions have run monetary systems, enforced laws, appointed officials, created central banks, decided property claims, regulated businesses, and operated public utilities. The resources to undertake these tasks have rarely been adequate. Each operation has been ad hoc; no cadres of bureaucrats, police, soldiers, or judges permanently committed to transitional administration exists; and there is a tension between devolving

authority to local actors and having international actors assume responsibility for everything because, at least at the outset, this latter course is seen as being more efficient.<sup>29</sup>

Transitional administration is particularly problematic in situations where local actors disagree about basic objectives among themselves and with external actors. Under these circumstances, as opposed to situations in which local actors agree on goals but need external monitoring to provide reassurances about the behavior of their compatriots, the inherently temporary character of transitional administration increases the difficulty of creating stable institutions. If indigenous groups disagree about the distribution of power and the constitutional structure of the new state, then the optimal strategy for their political leaders is to strengthen their own position in anticipation of the departure of external actors. They do so by maximizing support among their own followers rather than backing effective national institutions. Alternatively, local leaders who become dependent on external actors during a transitional administration, but who lack support within their own country, do not have an incentive to invest in the development of new institutional arrangements that would allow their external benefactors to leave at an earlier date.<sup>30</sup>

Multiple external actors with varying interests and little reason to coordinate their activities have exacerbated the problems associated transitional administration. The bureaucratic and financial interests of international organizations are not necessarily complementary. NGOs need to raise money and make a mark. The command structures for security and civilian activities have been separated. The permanent members of the Security Council, to whom UN peacekeeping authorities are ultimately responsible, have not always had the same interests.<sup>31</sup>

Bosnia and Kosovo, two of the most well known peacekeeping endeavors, illustrate these problems. Neither Bosnia nor Kosovo looks to be a great success despite the extensive involvement of not only UN organizations but also the major Western powers. The 1995 Dayton

agreement created a complicated and possibly unworkable political structure. Because of antagonisms among the groups in Bosnia, the high representative, who has always been a west European, has made many decisions, large and small. For instance, in 1998 the high representative Carlos Westendorp, mandated a license plate design that did not indicate where the driver was from. Had he not done this, many Bosnians would have been reluctant to leave their local districts.<sup>32</sup> In 2004, Paddy Ashdown, who had become the high representative two years earlier, dismissed 60 Bosnian Serb political leaders, including the interior minister and the speaker of the parliament for failing to arrest Radovan Karadzic, twice indicted by the Hague war crimes tribunal.<sup>33</sup>

External actors, however, have not established a coherent administrative structure. The high representative for Bosnia and Herzegovina is appointed by the Security Council on the basis of a recommendation from the fifty-five-member Peace Implementation Council.<sup>34</sup> The high representative, however, has no authority over SFOR, the Stabilization Force. The commander of SFOR reports to NATO's commander in Europe, an American.<sup>35</sup> Nor has there been fully effective coordination among the many nonmilitary organizations operating in Bosnia and Herzegovina. The OSCE has been charged with human rights, rule of law, security cooperation and education reform. The European Union has provided, among other things, a special police organization whose members are working side by side with local officials. The UN High Commissioner for Refugees is the lead agent for refugees and internally displaced persons. The United Nations Development Programme has administered more than \$100 million in reconstruction funds. The World Bank took the initial lead in economic reconstruction. The International Committee of the Red Cross has dealt with missing persons. The policies of these different agencies have sometimes been at loggerheads. For instance, EU efforts to condition aid to Mostar, the largest city in Herzegovina, on cooperation between Croats and Serbs were

frustrated by a World Bank loan for the reconstruction of a hydroelectric plant which was granted without concern for political factors.<sup>36</sup>

The results of heavy-duty external engagement have not been pretty. The economy has been kept afloat through external assistance, amounting to 25 percent of Bosnia's GNP in 2001. Over time the high representative has assumed more authority but without an accountability mechanism that systematically engages local actors. Trafficking in drugs and persons has been common. Corruption is a constant problem. Unemployment is high. External investors have been cautious. The resettlement of refugees and internally displaced persons has been sporadic. Property laws have not been enforced. The legal system has not functioned well.<sup>37</sup>

Attempts by the Office of the High Representative to support moderate political voices have been ineffective. In some cases, external authorities have limited electoral statements in ways that have strained democratic principles by, for instance, prohibiting competing parties from advocating a separate status for one of the entities. Supporting specific moderate candidates has sometimes backfired because voters have resented what they view as interference.<sup>38</sup>

The transitional administration in Bosnia is not likely to work because it is not in the interest of Bosnian political leaders to make it work. These leaders are committed to their ethnic constituents. A successful transition to a multiethnic democratic state would leave nationalist leaders with no base of support. Bosnia's indigenous leaders are acting on the assumption that at some point in the not too distant future SFOR, the high representative, and others will depart, leaving an environment in which they can be the winners.<sup>39</sup>

The situation in Kosovo is even more problematic. Whereas Bosnia ideally could become a wellfunctioning conventional sovereign entity, or at least a well functioning member of the European Union, the final status of Kosovo remains unclear. At present Kosovo is a de facto

trusteeship; it has neither international legal nor Westphalian/Vattelien sovereignty. UN Security Council resolution 1244, which established the transitional administration, reaffirms “the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region,” and at the same time, calls for “substantial autonomy and meaningful self-administration for Kosovo.”<sup>40</sup> Neighboring countries do not want an independent Kosovo or unification with Albania. The Kosovars do not want to be closely integrated with the Federal Republic of Yugoslavia.

In Kosovo a multiplicity of external actors has, as in Bosnia, made coordination difficult. The lead civilian agency is UNMIK, the United Nations Interim Administration Mission in Kosovo, which is headed by the special representative of the secretary-general (SRSG). Many organizations have operated in Kosovo, and the SRSG does not have full authority over them. As in Bosnia the external security presence, in this case KFOR (Kosovo Force), has a separate command structure reporting to NATO. The UNHCR has been charged with overseeing humanitarian aid; the OSCE with building institutions; the EU with economic reconstruction; and the UN with many administrative tasks. International organizations involved in Kosovo have included The United Nations Children's Fund, the World Food Programme, the IMF, the World Bank, and the International Labour Organization. In addition to these official organizations, there are several hundred NGOs operating in the country.<sup>41</sup>

The outcome in Kosovo has, not surprisingly, been mixed. Neither official organizations nor NGOs have been able to cooperate to develop a common set of operational goals and strategies. When coordination has taken place, it has been at the tactical level. Actors concerned primarily with human rights have not seen eye to eye with those focused on security. The application of justice has been problematic: there are almost no Serb judges. Serbs have been dealt with harshly while Albanians have been treated more leniently even when they have

committed serious crimes well documented by UNMIK police. The SRSG decided in 2000 to introduce foreign judges even at the district level, but the threat of violence has constrained even international personnel.<sup>42</sup>

Transitional administration has been most effective when the level of violence in a country has been low, where there has been involvement by major powers, and where the contending parties within the country have reached a mutually acceptable agreement. The key role for the transitional administration is then to monitor the implementation of the agreement. For instance, in Namibia the contact group comprising Canada, Germany, France, Great Britain, and the United States was involved in UN discussions about the constitutional structure for an independent Namibia beginning in 1978. All of the major contending parties consented to the UN peacekeeping mission (UNTAG) which was sent in 1989 allowing the lightly armed mission to play a neutral role between South Africa and Namibia. The strength of the major potential spoilers, hardline whites, was undermined by developments in South Africa. The major responsibility of UNTAG was to supervise the elections for the government that assumed power when Namibia secured international legal sovereignty.<sup>43</sup>

There were also successful missions in Central America in the 1990s. In both Guatemala and Nicaragua government and rebel groups had reached a mutually acceptable settlement. Peacekeeping missions contributed to stability by supervising elections, helping to demobilize combatants, and training police.<sup>44</sup>

In sum, transitional administration has worked best for the easiest cases, those where the key actors have already reached a mutually acceptable agreement. In these situations the transitional administration plays a monitoring role. It can be truly neutral among the contending parties. The mission does not have to be heavily armed. Transitional administration, however, is much more difficult in cases such as Bosnia, Kosovo, Iraq, and Afghanistan where local leaders



have not reached agreement on what the ultimate outcome for their polity should be and where they must think about positioning themselves to win support from parochial constituencies when transitional administration, along with its large foreign military force comes to an end.

*New Institutional Options: De Facto Trusteeships and Shared Sovereignty*

Given the limitations of governance assistance and transitional administration other options for dealing with countries where international legal sovereignty and Westphalian/Vattelien are inconsistent with effective and responsible domestic sovereignty need to be explored. At least two such arrangements would add to the available tool kit of policy options. The first would be to revive the idea of trusteeship or protectorate probably de facto rather than de jure. The second would be to explore possibilities for shared sovereignty in which national rulers would use their international legal sovereignty to legitimate institutions within their states in which authority was shared between internal and external actors.

#### TRUSTEESHIPS

In a prescient article published in 1993, Gerald Helman and Steven Ratner argued that in extreme cases of state failure the establishment of trusteeships under the auspices of the United Nations Security Council would be necessary. By the end of the 1990s, such suggestions had become more common. Analysts have noted that de facto trusteeships have become a fact of international life. In a monograph published by the London Institute for Strategic Studies in 2002 Richard Caplan argues that "An idea that once enjoyed limited academic currency at best -- international trusteeship for failed states and contested territories -- has become a reality in all but name." Martin Indyk, an assistant secretary of state during the Clinton administration has argued that the most attractive path to permanent peace in the Middle East would be to establish a protectorate in Palestine legitimated by the United Nations with the United States playing a key

role in security and other areas. Even if final status talks were completed, the trusteeship would remain in place until a responsible Palestinian government was established.<sup>45</sup>

Despite these recent observations developing an explicit alternative to conventional sovereignty, one that explicitly recognizes that international legal sovereignty will be withdrawn and that external actors will control many aspects of domestic sovereignty for an indefinite period of time, will not be easy. To date there has been no effort, for instance, to produce a treaty or convention that would define and embody in international law a new form of trusteeship. Just the opposite. The rhetorical commitment of all significant actors, including the United States, has been to restore authority to local actors at the soonest possible moment, a stance exemplified by the decision to give what American officials insisted was full sovereignty to Iraq in June 2004.<sup>46</sup>

Codifying a general set of principles and rules for some new kind of trusteeship or protectorate would involve deciding who would appoint the authority and oversee its activities: the United Nations Security Council? A regional organization like the European Union? A coalition of the willing? A single state? A treaty or convention would have to define the possible scope of authority of the governing entity: all activities of the state including security and international affairs? Only matters related to the provision of public goods such as roads, but not those related to the private sphere such as marriage? Given that there would be no fixed date for ending a trusteeship or protectorate how would the appropriate moment for transferring authority to local authorities be determined? What intermediate steps would be taken? Could a trusteeship, for instance, be granted international legal recognition and sovereignty, while some aspects of domestic governance remained under the control of the trustee or conservator?<sup>47</sup>

The most substantial barrier to a general international treaty codifying a new form of trusteeship or protectorate is that it will not receive support from either the powerful, who would

have to implement it or the weak who might be subject to it. There is widespread sentiment for the proposition that Westphalian/Vattelian sovereignty is not absolute and can be breached in cases of massive human rights violations. UN Secretary-General Kofi Annan expressed this view in 1999 to widespread international acclaim.<sup>48</sup> But arguing that Westphalian/Vattelian sovereignty is not absolute is quite different from codifying an explicit alternative that would deprive states of their international legal sovereignty as well as control over their domestic affairs.

An explicit, named, and legitimated alternative to sovereignty would require at a minimum, agreement among the major powers. Even better if a new arrangement would be supported by leading states that are not members of the OECD such as Brazil, Nigeria, South Africa, India, China, and Indonesia. Best, if it is endorsed by the Security Council and the General Assembly. There is no indication that such widespread support would be forthcoming. None of the actors has a clear interest in doing so. The major powers, those with the capacity to create a trusteeship, want to be able to pick and choose not only where they intervene but the policies which they would follow if they do intervene. The endorsement of a new institutional arrangement would provide a new option, a new choice on the menu, but this option might make it difficult to engage in ad hoc arrangements better suited to specific circumstances. For states in the third world any successor to the mandate system of the League of Nations, or the trusteeship system of the UN, would smell if not look too much like colonialism.<sup>49</sup>

## SHARED SOVEREIGNTY

Shared sovereignty would involve the engagement of external actors in some of the domestic authority structures of the target state for an indefinite period of time.<sup>50</sup> Such arrangements would be legitimated by agreements signed by recognized national authorities.

National actors would use their international legal sovereignty to enter into agreements that would compromise their Westphalian/Vattelien sovereignty with the goal of improving domestic sovereignty. One core element of sovereignty --voluntary agreements -- would be preserved, while another core element -- the principle of autonomy -- would be violated.

Shared sovereignty could be put in place through either treaties or unilateral commitments by national leaders. To be effective, such arrangements would have to create self enforcing equilibria involving either domestic players alone or some combination of domestic and international actors. Political elites in the target state would have to believe that they would be worse off if the shared sovereignty arrangement were violated.

For policy purposes, it would be best to refer to shared sovereignty as partnerships. This would more easily let policymakers engage in organized hypocrisy, saying one thing and doing another. Shared sovereignty or partnerships would allow political leaders to embrace sovereignty, since these arrangements would be legitimated by the target state's international legal sovereignty, while at the same time violating autonomy, the core principle of Westphalian/Vattelien sovereignty. Organized hypocrisy is not surprising in an environment such as the international system where there are competing norms (e.g., human rights vs. Westphalian/Vattelien sovereignty), power differentials that allow strong actors to pursue policies that are inconsistent with recognized rules, and exceptional complexity that makes it impossible to write any set of rules that could provide optimal outcomes under all conditions. Shared sovereignty or partnerships would make no claim to being an explicit alternative to conventional sovereignty. It would allow actors to obfuscate the fact that their behavior would be inconsistent with their principles.

#### HISTORICAL EXAMPLES OF SHARED SOVEREIGNTY.

Shared sovereignty agreements have been used in the past. There are several late

nineteenth century shared sovereignty arrangements in which external actors assumed control over part of the revenue-generating stream of a state that had defaulted on its debt. The state wanted renewed access to international capital markets. The lenders wanted assurance that they would be repaid. Direct control over the collection of specific taxes provided greater confidence than other available measures.

For example, a shared sovereignty arrangement between external lenders and the Porte (the government of the Ottoman Empire) was constructed for some parts of the revenue system of the empire during the latter part of the nineteenth century. The empire entered international capital markets in the 1850s to fund military expenditures associated with the Crimean War. By 1875, after receiving more than a dozen new loans, the empire was unable to service its foreign debt. To again secure access to international capital markets, the Ottomans agreed in 1881 to create, through government decree, the Council of the Public Debt. The members of the council -- two from France; one each from Germany, Austria, Italy, and the Ottoman Empire itself; and one from Britain and Holland together -- were selected by foreign creditors. Until the debt was liquidated, the Porte gave control of several major sources of revenue to the Council and authorized it to take initiatives that would increase economic activity. The Council promoted, for instance, the export of salt (the tax on which it controlled) to India and introduced new technologies for the silk and wine industries. It increased the confidence of foreign investors in the empire's railways by collecting revenues that the government had promised to foreign companies. In the decade before the World War I, the Council controlled about one quarter of the Empire's revenue. It was disbanded after the war.<sup>51</sup>

Unlike classic gunboat diplomacy, where the governments of foreign creditors took over control of customs houses to secure repayment of loans, in the case of the Ottoman council the norm of international legal sovereignty was honored, at least in form. The council was

established by an edict issued by the Ottoman Empire at the behest of foreign creditors. International legal sovereignty was honored; Westphalian/Vattelien sovereignty was ignored. This arrangement durable because if the empire had revoked its decree, it would have lost access to international capital markets.

The relationship of the Soviet Union to the satellite states of Eastern Europe during the Cold War is another example of shared sovereignty. For more than forty years, Soviet penetration of domestic regimes, close oversight of officials, and policy direction from Moscow kept communist regimes in power. During the 1950s the Polish secret police, for instance, reported directly to Moscow. The militaries of the satellites were integrated into the Soviet command structure and unable to operate independently. The communist regimes that Moscow had put in place and sustained by violating Westphalian/Vattelien sovereignty dutifully signed off on the security arrangements that their overlord preferred. Except in a few instances, such as the invasion of Czechoslovakia in 1968, Soviet behavior was consistent with international legal sovereignty. The implicit and sometimes explicit use of force, however, was necessary to support these regimes because many of the citizens of the satellite states were alienated from their rulers.

The shared sovereignty arrangements established by the United States after World War II were more successful. Germany is the prime example. The western allies wanted to internationally legitimate the Federal Republic of Germany (FRG or West Germany) but at the same time constrain its freedom of action. The Bonn Agreements, signed in 1952 by the FRG, the United States, the United Kingdom, and France and revised in Paris in 1954, gave West Germany full authority over its internal and external affairs but with key exceptions in the security area. Not only did the FRG renounce its right to produce chemical, biological, or nuclear weapons, it also signed a status of forces agreement that gave the allies expansive

powers. These included exclusive jurisdiction over the members of their armed forces and the right to patrol public areas including roads, railways, and restaurants. Allied forces could take any measures necessary to ensure order and discipline.<sup>52</sup> West Germany's military was fully integrated into NATO. Article 5(2) of the Convention on Relations gave the Western powers the right to declare a state of emergency until FRG officials obtained adequate powers enabling them to take effective action to protect the security of the foreign forces.<sup>53</sup> Without a clear definition of these adequate powers, the Western powers formally retained the right to resume occupancy of the Federal Republic until 1990, when the Bonn Agreements were terminated by the 1990 Treaty on the Final Settlement with Respect to Germany.

The United States succeeded in the West German case because most Germans supported democracy, a market economy, and constraints on Germany's security policies. Obviously the strength of this support reflected many factors including the long-term economic success of the West relative to the Soviet bloc. Shared sovereignty arrangements for security in the FRG contributed to effective domestic governance by taking a potentially explosive issue off the table both within, and more important, without West Germany. Security dilemmas that might have strengthened undemocratic forces in the FRG never occurred because the Bonn government did not have exclusive control of its own defense.

#### THE CHAD-CAMEROON PIPELINE AND SHARED SOVEREIGNTY.

One recent arrangement, that includes elements of shared sovereignty, albeit in watered down form, is the program associated with the development of oil resources in Chad and the pipeline that carries this oil through Cameroon to the Atlantic. Both Chad and Cameroon have been badly governed. In the 1990s, an oil company consortium led by Exxon wanted to develop Chad's oil but feared not only that the Chad and Cameroon governments might void any contract but also that they would be subject to public criticism and court action by human rights and

environmental groups. Because of these fears, the oil companies insisted on the involvement of the World Bank as a minority partner, an involvement that they hoped would lessen any chances of unilateral contract revisions and provide cover for, perhaps even improve, human rights and environmental performance.<sup>54</sup> The World Bank in turn insisted on a modest, in the end quite modest, degree of shared sovereignty.

Under pressure from World Bank officials, Chad enacted the Revenue Management Law in 1998. The law divides oil revenues into two categories: direct (dividends and royalties) and indirect (taxes, charges, and customs duties). Direct revenues are placed in a foreign escrow account, 10 percent of which is committed to future generations. Of the remaining 90 percent, 80 percent is to be used for social services including health and education, 15 percent for current government expenses, and 5 percent for the oil exporting region. The law provided for the creation of the Oil Revenues Control and Monitoring Board, which is responsible for authorizing and monitoring disbursements from the escrow account. The board includes members from Chad's judiciary, civil society, and trade unions.<sup>55</sup>

In addition, in February 2001 the World Bank created an independent body known as the International Advisory Group whose members it would appoint in consultation with national authorities. The group, which visits the area at least twice a year and has access to relevant information and officials, advises the governments of Chad and Cameroon and the World Bank about the misallocation or misuse of public funds, involvement of civil society, institution building, and governance more generally. The chair of the five-member group, which includes a former deputy minister in the Canadian government, a Dutch agricultural specialist, an American anthropologist, and an African NGO leader, is Mamaou Lamine Loum, a former Senegalese prime minister.<sup>56</sup>



The potential leverage of international actors before the project was put in place was significant. The project would provide Chad with a 50 percent increase in revenue. Chad and Cameroon could not have completed the project without the oil companies, and the companies would not have invested without the involvement of the World Bank. The bank, unlike the companies, had legitimacy, which allowed it to negotiate conditions related to Chad's domestic institutional structures.<sup>57</sup>

Nevertheless, despite the leverage enjoyed by the World Bank and the oil companies, the extent to which external actors have intruded on Chad's domestic governance is modest. The International Advisory Group is just advisory. Most of the members of the Chadian oversight committee are closely associated with the government. The allocation of funds to social services is not specified with regard to areas. If anything, the lesson of the Chad-Cameroon pipeline is that creating potent shared sovereignty institutions in weak states in the contemporary environment is difficult. More robust World Bank proposals for the project were dropped because of objections from some members of the bank's executive board including those representing African states. In the case of the Chad-Cameroon oil development and pipeline project, adequate domestic governance would have been better assured by more intrusive engagement by external actors including for instance, a number of international representatives on the oversight committee, which must approve transfers from the escrow account.

In sum, like virtually every other institutional arrangement that can be imagined, shared sovereignty has been tried before. There were specific configurations of power and interest that led stronger actors to introduce shared sovereignty arrangements, and weaker ones to accept them. In the late nineteenth century, lenders wanted assurance from defaulting states that if they provided new capital they would be repaid. After World War II, both the United States and the Soviet Union used shared sovereignty to undergird their preferred domestic regimes in Western

and Eastern Europe. Chad accepted some constraints on its use of oil revenues because complete rejection of the World Bank's recommendations might have entirely scuttled the project.

#### INCENTIVES FOR SHARED SOVEREIGNTY.

Shared sovereignty arrangements can work only if they create a self enforcing equilibrium, which might include external as well as domestic players. There are at least four circumstances that might make shared sovereignty arrangements attractive for political decisionmakers, those who hold international legal sovereignty, in target states: avarice, occupation, desperation, and elections.

Avarice:

Rulers salivate at the wealth and power that natural resources, most notably oil, can bring to them. Their bargaining position, however, depends on the acceptance of the precepts of conventional sovereignty: the state owns the oil and has the right to sign contracts and set rules governing its exploitation. Neither companies, consuming states, nor international organizations have challenged the property rights of the state. No one, at least no one in a position of authority, has suggested, for instance, that oil in badly governed states ought to be declared part of the common heritage of mankind and placed under the control of perhaps the World Bank.

For poorly governed countries, however, natural resources, especially oil, have been a curse that has feathered the nests of rulers and undermined democracy and economic growth. Oil concentrates resources in the hands of the state. The road to wealth and power for any ambitious individual leads through the offices of the central government, not through individual enterprise or productive economic activity. Oil wealth makes it possible for the state to buy off dissenters, and to build military machines that can be used to repress those who cannot be bought off.<sup>58</sup>

Shared sovereignty arrangements for extractive industries would offer an alternative to conventional practices that would provide better governance in oil-extracting states, more benefits for their people, and fewer incentives for corruption and conflict. Such arrangements would depend on the willingness of wealthier democratic states to constrain the options available to political leaders in poorly governed resource rich states. Conventional sovereignty would not be challenged in principle but would be compromised in practice. Political leaders in host countries would then be confronted with a choice between nothing and something, although much less than they might have at their private disposal under conventional practices.

A shared sovereignty arrangement for natural resources could work in the following way. An agreement between the host country and, say, the World Bank would create a trust. The trust would be domiciled in an advanced industrialized country with effective rule of law. All funds generated by the natural resources project would be placed in an international escrow account controlled by the trust. All disbursements from the account would have to be approved by a majority of the directors of the trust. Half of the board of directors of the trust would be appointed by the host government, the other half by the World Bank; the bank could appoint directors from any country but would not designate its own employees. Directors would have to believe that their success depended on the success of the trust.

The trust agreement would stipulate that a large part of these funds would be used for social welfare programs, although specific allocations for, say, health as opposed to education would be left to the host government. The trust would refuse to dispense funds that did not conform with these commitments. The trust might even be charged with implementing programs using the resources of the escrow account if the government failed to act expeditiously.

The laws of the advanced democracy in which the trust was incorporated would hold accountable the directors of the trust. Legislation enacted by the country in which the trust was

domiciled would back the firms' responsibility to pay revenues into the escrow account, and only the escrow account.

No doubt the leaders of oil or other natural resource-rich countries would cringe at such arrangements. It would be much more difficult for them to put billions of dollars in foreign bank accounts as did Sani Abacha the late Nigerian military dictator. It would be hard to spend half a billion dollars on a European vacation as did some members of the Saudi royal family in 2002. But if the major democracies passed legislation requiring that any imported oil be governed by a trust arrangement, avarice might induce political leaders in resource-rich countries to accept shared sovereignty, because without shared sovereignty they would get nothing.<sup>59</sup>

Post-Conflict:

Post conflict occupation might also be conducive to creating shared sovereignty arrangements. When there is military intervention and occupation, local leaders have limited choice. In Afghanistan, Bosnia, East Timor, Iraq, and Kosovo, the local leaders have been dependent to some extent on external actors. They have had to accept the presence of nonnationals. Foreigners have been running many of the ministries in Bosnia. In Kosovo joint implementation for administrative structures has been the norm: there are twenty administrative departments and four independent agencies all of which are codirected by a Kosovar and a senior UNMIK staff person.<sup>60</sup> In Afghanistan and Iraq security has been provided in part by foreign forces.

Shared sovereignty contracts would make such arrangements permanent not transitional. The presence of external actors would not be the result of a unilateral decision by an external administrator but rather of a contract between external and domestic actors who would be granted international legal sovereignty. Because the contract would have no termination date, local actors could no longer assume that they could simply wait for the foreigners to leave.

Some local leaders might still decide that acting as a spoiler might maximize their interests, but others would see cooperation as more likely to enhance their long term prospects.

Such arrangements could only be successful in the long run if they were supported by a winning coalition in the host country. Unlike oil trusts it would be difficult to find external enforcement mechanisms. External actors might bolster domestic agents committed to shared sovereignty or threaten to impose sanctions or cut foreign assistance if the agreement were violated, but there could not be an ironclad guarantee of success.

Still, shared sovereignty arrangements would be more promising than constitution writing, which has been the center of attention in recent occupations. The problem with relying on a constitution or any other legal commitments made under pressure at a particular moment in time is that once the occupying power leaves, the incentives for domestic actors to honor their earlier commitments can radically change. Shared sovereignty, in contrast, could generate a self-enforcing equilibrium if it provided benefits to a large enough group of domestic actors.

Monetary policy is one specific area where shared sovereignty might work in a post conflict or even a more benign environment. Controlling inflation can be a daunting problem. A few countries, East Timor being one example, have simply resorted to using the U.S. dollar. Others have tried to engineer credible commitments through domestic institutions, such as independent central banks. Appointment of the governors of the central bank by both government and external actors could enhance the credibility of such arrangements. In this regard the IMF might be the right partner. Nonnational governors could be of any nationality. They would not be IMF employees. The fund would sign a contract with the host country setting up shared sovereignty on a permanent basis or until both parties agreed to end the arrangement. If the national government unilaterally abrogated the agreement, it would be a clear signal to external actors that they were abandoning the path of monetary responsibility.<sup>61</sup> If the central

bank were successful in constraining inflation, the arrangement would generate support from domestic actors. Like oil trusts, one major attraction of such an arrangement is that it would not be costly for the IMF or any other external actor.

Commercial courts might be another area where shared sovereignty could be productive. Again, the opportunities in this area would not be limited to post-conflict situations. In a state where the rule of law has been sketchy, the international legal sovereign would conclude a contract with an external entity, for instance a regional organization such as the EU or the Organization of American States, to establish a separate commercial court system. The judges in these courts would be appointed by both the national government and its external partner. The expectation would be that local business interests would find this court system attractive. It would provide a venue in which they could resolve disagreements more effectively than would be the case within existing national institutions. The presence of such a court system might even attract higher levels of foreign investment. Like oil trusts and central banks, such an arrangement would not involve substantial costs for the external actor. The national government or even to some extent the litigants could fund commercial courts.

### Desperation

Aside from the avarice associated with natural resources and the pressures arising from occupation, desperation for external resources might also motivate national authorities to enter into shared sovereignty arrangements. For countries that have spiraled into the abyss because of civil war or misgovernance, and which do not have easily exploited natural resources, foreign assistance might be a major potential source of revenues. The bargaining leverage of political leaders under such circumstances would be limited. The ability of external actors to negotiate shared sovereignty arrangements would be high.

As in the case of occupation, the most promising spheres for shared sovereignty, such as monetary policy and commercial courts, would not require substantial resources from external actors but would generate adequate domestic support. In collapsed or near-collapsed states, however, external actors would have to provide resources at least for some period of time. This would open additional possibilities for shared sovereignty for activities funded by external donors. A committee composed of national officials and individuals appointed by the education ministries of major donor countries might make, for instance, decisions about educational curriculum. A system of health care facilities administered by external aid workers or NGOs could be created separate from the national ministry of health. Because donors are not likely to be willing to provide aid on a quasi permanent basis, however, such arrangements could only be sustained if a large enough domestic coalition was willing to support them even after foreign funding had been withdrawn.

#### Elections

Finally, in badly governed illiberal democracies elections might provide an incentive for shared sovereignty contracts. Political candidates might make such policies part of their electoral platform. Illiberal democracies are polities that hold competitive elections, but are deficient with regard to rule of law, an active civil society, and a free press.<sup>62</sup> In illiberal democracies, government does not work very well. Public officials are disconnected from the citizenry. Individuals or parties might change, but policies remain more or less the same. Voters become cynical, and even potentially progressive political candidates have no way to make their campaign pledges credible. Shared sovereignty contracts could be an appealing political strategy for a dissident candidate. Such a political platform could win votes by signaling to the electorate that a politician would make a decisive break with the past by engaging external actors in domestic decisionmaking processes.

The long-term credibility of a shared sovereignty arrangement concluded by a successful dissident candidate in an illiberal democracy would depend on the extent to which such practices have been internationally legitimated and on their effectiveness. The more common shared sovereignty agreements are, the easier it would be for any one leader to defend his actions against opponents who might claim that he or she had compromised the state's sovereignty. The greater the improvement in governance associated with shared sovereignty arrangements, the more likely it would be that they would be honored over the long term.

Thus some form of de facto protectorates and, more promising, shared sovereignty are policy tools that could be added to the meager selection that is now available to deal with bad governance or to create effective institutions following military occupations. Legitimacy for shared sovereignty would be provided by the agreement of the those exercising the target state's international legal sovereignty.

### *Conclusion*

During the twentieth century the norms of international legal sovereignty and Westphalian/Vattelien sovereignty became universally accepted. It has often been tacitly assumed that these norms would be accompanied by effective domestic sovereignty; that is, by governance structures that exercised competent and ideally constructive control over their populations and territory. This assumption has proven false. Poor, even malevolent, governance is a widespread problem. Poorly governed states have become a threat to the interests of much more powerful actors: weapons of mass destruction have broken the connection between resources and the ability to do grievous harm; genocides leave political leaders in democratic polities with uncomfortable choices; transnational disease and crime are a persistent challenge.

The policy tools available to external actors – governance assistance and transitional administration – are not adequate. This is true even when foreign powers have militarily



occupied a country. Governance assistance can have positive results in badly governed or occupied states, but the available evidence suggests that the impact is weak. Transitional administration, which aims to restore conventional sovereignty in a relatively short time frame, can be effective only if indigenous political leaders believe that they will be better off allying with external actors not only while these actors are present but also after they leave.

The menu of options could be expanded in at least two ways. First, some form of trusteeship or protectorate could be accepted de facto for specific countries by major states, regional, or international organizations even if there is no general international convention defining such arrangements. In a trusteeship international actors would assume control over local functions for an indefinite period of time. They might also eliminate the international legal sovereignty of the entity or control treaty-making powers in whole or in part (e.g., in specific issue areas like security or trade). There would be no assumption of a withdrawal in the short or medium term.

Second, domestic sovereignty in collapsed or poorly governed states could be improved through shared sovereignty contracts. These contracts would create joint authority structures in specific issue areas. They would not involve a direct assault on sovereignty norms, because they would be formally consistent with international legal sovereignty even though they would violate Westphalian/Vattelien sovereignty. Natural resources trusts, whose directors were appointed by national and nonnational entities, would be one possibility; central banks whose boards of governors comprised citizens and noncitizens would be another.

Political leaders in target states might accept such arrangements to secure external resources, either payments for raw materials' exploitation or foreign assistance, to encourage the departure of occupying forces, or to attract voters. To be durable, shared sovereignty institutions either would require external enforcement, something that would be possible for natural

resources trusts, or would have to create adequate domestic support which would depend on the results delivered.

For external signatories – international organizations, regional organizations, and states – the most attractive shared sovereignty arrangements would be ones that did not require any significant commitment of resources over the long term. Natural resources trusts and central bank administration would meet this condition. In cases of states recovering from collapse, or something near to it, where foreign aid is the incentive for national leaders to accept shared sovereignty, resources commitments by external actors would be unavoidable for the short and medium terms. Over the longer term, though, shared sovereignty institutions could survive only if the services they provided were funded from internal sources of revenue.

De facto trusteeships or protectorates and shared sovereignty hardly exhaust the possibilities for improving domestic sovereignty in poorly governed states. Leaders in some polities have already used private firms to carry out some activities that have traditionally been in the hands of state officials. Indonesia, for instance, used a Swiss firm to collect its customs for more than eleven years.<sup>63</sup> Other governments have hired private military companies (PMCs). Perhaps with stronger accountability mechanisms enforced by advanced industrial states, such as the ability to prosecute PMCs and their employees for abuses, the results might be more consistently salutary.<sup>64</sup>

There is no panacea for domestic sovereignty failures. Even with the best of intentions and substantial resources, external actors cannot quickly eliminate the causes of these failures: poverty, weak indigenous institutions, insecurity, the raw materials curse. But the instruments currently available to policymakers to deal with places such as Congo, Haiti, and Iraq are woefully inadequate. De facto trusteeships and especially shared sovereignty would offer political leaders a better chance of bringing peace and prosperity to the populations of badly

governed states and reduce the threat that such polities present to the wider international community.

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<sup>1</sup>For a discussion of the requirement for successful international engagement which complements many of the points made in this article see James D. Fearon and David D. Laitin, “Neotrusteeship and the Problem of Weak States, *International Security*, Vol. 28, No. 4 (Spring 2004), pp. 5-43.

<sup>2</sup> See Fearon and Laitin, Neotrusteeship,” especially pp. 36-37.

<sup>3</sup> Although the principle of non intervention is traditionally associated with the Peace of Westphalia of 1648, the doctrine was not explicitly articulated until a century later by the Swiss jurist Emmerich de Vattel in his *The Law of Nations Or Principles of the Law of Nature Applied to the Conduct and Affairs of Nations and Sovereigns*, originally published in French in 1758.

<sup>4</sup>Mary Ann Tetreault, “Autonomy, Necessity, and the Small State: Ruling Kuwait in the Twentieth Century,” *International Organization* vol. 45 (1991), pp. 565-591.

<sup>5</sup> In Shanghai, for instance, the British established a municipal council that regulated the activities of Chinese living within Shanghai as well as non-Chinese. See Jean Chesneaux, Marianne Bastid, and Marie-Claire Bergere, *China from the Opium Wars to the 1911 Revolution* (Hassocks, Sussex: Harvester, 1977), pp. 61-68.

<sup>6</sup> For two very similar analyses, see Robert O. Keohane, "Political Authority after Intervention: Gradations in Sovereignty," in J.L. Holzgrefe and Robert O. Keohane, eds., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge: Cambridge University Press, 2003), pp. 276-277; and Gerald B. Helman and Steven R. Ratner, “Saving Failed States,” *Foreign Policy*, No. 89 (Winter 1993), pp. 3-21. Keohane argues that there should be gradations of sovereignty. Helman and Ratner suggest that there are three forms of what they call

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“guardianship”: governance assistance, the delegation of government authority, and trusteeship.

They also suggest the term “conservatorship” as an alternative to trusteeship.

<sup>7</sup> The State Failure project was commissioned by the Central Intelligence Agency in 1994 and was carried out by a task force made up of individuals from universities and consulting companies. All of the data presented by the project is unclassified and the findings of the project are those of the members of the task force not the American government or any of its agencies. Adverse regime change is defined by the State Failure Task Force as “major, abrupt shifts in patterns of governance, including state collapse, periods of severe elite or regime instability, and shifts away from democracy toward authoritarian rule.” There were less than twenty cases of state failure narrowly defined as the collapse of authority structures for several years. Jack A. Goldstone, Ted Robert Gurr, Barbara Harff, Marc A. Levy, Monty G. Marshall, Robert H. Bates, David L. Epstein, Colin H. Kahl, Pamela T. Surko, John C. Ulfelder, Jr., Alan N. Unger, *State Failure Task Force Report: Phase III Findings* (McLean, Va.: Science Applications International Corporation, September 30, 2000), pp. iv, v, 3-5.

<sup>8</sup> Gary King and Langche Zeng, “Improving Forecasts of State Failure,” *World Politics*, Vol. 53, No. 4 (July 2001), pp. 623-658 criticize the methodology of the State Failure project even though they find that most of its conclusions, especially the empirical link between high infant mortality and partial democracy, are supported.

<sup>9</sup> James D. Fearon and David D. Laitin, “Ethnicity, Insurgency, and Civil War,” *American Political Science Review*, Vol. 97, No. 1 (March 2003), pp. 1-17; Fearon and Laitin, “Neotrusteeships,” pp. 36-37.

<sup>10</sup> Goldstone et. al., *State Failure Task Force Report*, p. 21.

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<sup>11</sup> Derived from data found at WDI Online, <http://devdata.worldbank.org/dataonline/> (accessed April 19, 2003).

<sup>12</sup> The Special Court for Sierra Leone was established in August 2000 by an agreement between the government of Sierra Leone and the United Nations. The Court, which has both national and international judges, is charged with prosecuting those most responsible for the commission of serious crimes against international humanitarian and Sierra Leonean law. For the agreement between the government and the UN see <http://www.sc-sl.org/index.html>.

<sup>13</sup> William Reno, "Sierra Leone: Warfare in a Post-State Society," in Robert I Rotberg, ed., *State Failure and State Weakness in a Time of Terror* (Washington: Brookings Institution Press, 2003), pp. 72-73, 88; Somini Sengupta, "Liberian Leader Sets Date, and New Terms, for Exit?", *New York Times*, Aug. 3, 2003, <http://www.nytimes.com/2003/08/03/international/africa/03LIBE.html?hp=&pagewanted=print&position=> accessed; and <http://www.infoplease.com/ce6/world/A0861084.html>.

<sup>14</sup> Reno, "Sierra Leone," p. 75. For the argument that failed states are created by perverse rulers see Robert I. Rotberg, "Failed States, Collapsed States, Weak States: Causes and Indicators," *State Failure and State Weakness*, p. 14; and Michael Ignatieff, "State Failure and Nation-Building," in Holzgrefe and Keohane, eds., *Humanitarian Intervention*, pp. 301-303.

<sup>15</sup> Per capita income for the world as a whole increased by 28 percent for the period 1990-2000. Figures for per capita gross derived from World Bank, WDI Online at <http://devdata.worldbank.org/dataonline/>. Figures on civil war can be found in Fearon and Laitin, "Ethnicity, Insurgency, and Civil War," p. 77.

<sup>16</sup> For a discussion of poppy policies under the Taliban see United Nations, Office on Drugs and Crime, "Afghanistan Ends Opium Poppy Cultivation, June 2001 at

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[http://www.unodc.org/unodc/en/newsletter\\_2001-06-30\\_1\\_1\\_page002.html](http://www.unodc.org/unodc/en/newsletter_2001-06-30_1_1_page002.html). So much opium was produced in 2004 that prices fell by 60 percent. See David Rhode, "Poppies Flood Afghanistan; Opium Tide May Yet Turn," *New York Times on the Web*, July 1, 2004 at <http://nytimes.com/2004/07/01/international/asia/01POPP.html?pagewanted=all>. For the relationship between civil war and drug production see Paul Collier and Anke Hoeffler, "The Challenge of Reducing the Global Incidence of Civil War," Centre for the Study of African Economies, Department of Economics, Oxford University. Revised, March 26th, 2004, pp. 8-9.

<sup>17</sup> United States, Department of State, *Trafficking in Person Report* (Washington, D.C.: June 2004). The report can be found at <http://www.state.gov/documents/organization/33614.pdf>.

<sup>18</sup> The report, which was published in 2001 can be found at <http://www.dfait-maeci.gc.ca/iciss-ciise/pdf/Commission-Report.pdf>. See also Gareth Evans and Mohamed Sahnoun, "The Responsibility to Protect," *Foreign Affairs*, Vol. 81, No. 6 (November/December 2002), pp. 99-110.

<sup>19</sup> Sowmya Anand and Jon A. Krosnick, "The Impact of Attitudes toward Foreign Policy Goals on Public Preferences among Presidential Candidates: A Study of Issue Publics and the Attentive Public in the 2000 U.S. Presidential Election," *Presidential Studies Q.* Vol. 31 (2003), Tables 2 and 3.

<sup>20</sup> For the White House description of the MCA see United <http://www.whitehouse.gov/infocus/developingnations/millennium.html>. For a list of the first set of countries to receive funding from the MCA see MCA, Press Release, May 6, 2004, *The Millennium Challenge Corporation Names MCA Eligible Countries*, [http://www.usaid.gov/mca/Documents/PR\\_Eligible.pdf](http://www.usaid.gov/mca/Documents/PR_Eligible.pdf). For a discussion of the World Bank's governance assistance programs see <http://www.worldbank.org/wbi/governance/about.html>. See also

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Arthur A. Goldsmith, "Foreign Aid and Statehood in Africa," *International Organization* Vol. 55, No.1 (Winter 2000), pp. 135-136.

<sup>21</sup> International Monetary Fund, Fiscal Affairs Department, *Fund-Supported Programs, Fiscal Policy, and Income Distribution*, Occasional Paper No. 46 (Washington, D.C.: International Monetary Fund, 1986), p. 40; and Robin Broad, *Unequal Alliance: The World Bank, the International Monetary Fund, and the Philippines* (Berkeley: University of California Press, 1988), pp. 51-53, Table 12.

<sup>22</sup> Paul Lewis, "Global Lenders Use Leverage to Combat Corruption," *New York Times – Late Edition*, August 11, 1997, p. 4; and James C. McKinley Jr., "Kenyan Who Charged 4 Officials with Graft Is Suspended," *New York Times - Late Edition*, July 31, 1998, p. 4.

<sup>23</sup> World Bank, *World Development Report, 1997: The State in a Changing World* (Washington, D.C.: World Bank, 1997), p. 2.

<sup>24</sup> *Ibid.*, p. 4.

<sup>25</sup> The first paragraph of the *Agreement Establishing the European Bank for Reconstruction and Development*, signed in Paris on May 29, 1990, states that contracting parties should be "committed to the fundamental principles of multiparty democracy, the rule of law, respect for human rights and market economics." See *Agreement Establishing the European Bank for Reconstruction and Development* at <http://www.ebrd.com/pubs/insti/basic/basic1.htm>.

<sup>26</sup>For a discussion of the ideational motivations for foreign aid see David Lumsdaine *Moral Vision in International Politics: The Foreign Aid Regime 1949-89* (Princeton: Princeton University Press, 1993).

<sup>27</sup> For a critique of U.S. policies see Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve* (Washington, D.C.: Carnegie Endowment for International Peace, 1999).



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<sup>28</sup> Michael W. Doyle and Nicholas Sambanis, "International Peacebuilding: A Theoretical and Quantitative Analysis," *American Political Science Review*, Vol. 94, No. 4 (December 2000), pp. 779-802. For a second study with a different data base but comparable findings, see George Downs and Stephen John Stedman, "Evaluating Issues in Peace Implementation," in Stephen John Stedman, Donald Rothchild, and Elizabeth M. Cousens, eds., *Ending Civil Wars: The Implementation of Peace Agreements* (Boulder, Colo.: Lynne Rienner, 2002), pp. 50-52.

<sup>29</sup> **Error! Main Document Only.** Richard Caplan, *A New Trusteeship?: The International Administration of War-torn Territories* (London: International Institute for Strategic Studies, 2002), pp. 8-9, 50-51; United Nations, *Report of the Panel on United Nations Peace Operations* (Brahimi Report) (New York, United Nations, 2000), pp. 7, 14. In June 2003 Secretary of Defense Donald Rumsfeld discussed the possibility of a standing international peacekeeping force under the leadership of the United States. Ester Schrader, "U.S. Looks at Organizing Global Peacekeeping Force," *Los Angeles Times*, June 27, 2003, p. A1.

<sup>30</sup> James D. Fearon and David D. Laitin, "Neotrusteeship," *International Security* Vol. 28, No. 4 (Spring 2004), p. 37. See also David M. Edelstein, "Occupational Hazards: Why Military Occupations Succeed or Fail," Georgetown University, Draft Paper: January 30, 2004, pp. 27-28.

<sup>31</sup> Ignatieff, "State Failure and Nation Building," p. 27 points to the possibly negative consequences of competition among NGOs.

<sup>32</sup> Elizabeth M. Cousens, "From Missed Opportunities to Overcompensation: Implementing the Dayton Agreement on Bosnia," in Stedman, Rothchild, and Cousens, *Ending Civil Wars*, p. 532; International Crisis Group, *Courting Disaster: The Misrule of Law in Bosnia & Herzegovina*, Balkans Report No. 127 (March 25 2002), p. 155, [HH](http://www.crisisweb.org/library/documents/report_archive/A400592_25032002.pdf)  
[http://www.crisisweb.org/library/documents/report\\_archive/A400592\\_25032002.pdf](http://www.crisisweb.org/library/documents/report_archive/A400592_25032002.pdf); Simon

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Chesterman, “*Kosovo in Limbo: State-Building and “Substantial Autonomy,”*” (New York: International Peace Academy, 2001) p. 1; Caplan, *Trusteeship*, pp. 19, 39.

<sup>33</sup> Nicholas Wood, “60 Bosnian Serbs Dismissed for Aid to War Crimes Figure,” New York Times, July 1, 2004 at

<file:///C:/WP50/ARTICLES/bosnia%20govt%20dismissals%20june%2004%20nytimes.htm>

(accessed July 1, 2004).

<sup>34</sup> The members and observers of the Peace Implementing Council can be found at

<http://www.ohr.int/ohr-info/gen-info/#pic> (accessed April 29, 2003).

<sup>35</sup> <http://www.nato.int/sfor/index.htm> and linked pages (accessed April 29, 2003).

<sup>36</sup> For a description of the activities of different organizations see

<http://www.oscebih.org/mission/mandate.asp>; <http://www.undp.ba/osc.asp?idItem=2>; and

<http://www.unhcr.ba/history/index.htm>; <http://www.ohr.int/HH> Also Cousens, “From Missed Opportunities to Overcompensation,” p. 540; William O’Neill, *Kosovo: An Unfinished Peace* (Boulder, Colo.: Lynne Rienner, 2002), pp. 37-40; International Crisis Group, *Courting Disaster*, p. ii; and Caplan, *Trusteeship*, p. 24.

<sup>37</sup> International Crisis Group, *Courting Disaster*, pp. i-ii, 138-141, 149-151;

Gerald Knaus and Felix Martin, “Travails of the European Raj: Lessons from Bosnia and Herzegovina,” *Journal of Democracy*, Vol. 14, No. 3 (July 2003): pp. 60-74.

<sup>38</sup> Caplan, *Trusteeship*, pp. 55-56.

<sup>39</sup> *Ibid.*, p. 39.

<sup>40</sup> The resolution can be found at <http://www.nato.int/kosovo/docu/u990610a.htm>.

<sup>41</sup> Caplan, *Trusteeship*, p. 22.

<sup>42</sup> O’Neill, *Kosovo*, pp. 84-91.

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<sup>43</sup>For Namibia see Downs and Stedman, "Evaluating Issues in Peace Implementation," pp. 59-61, Roland Paris, *At War's End? Building Peace After Civil Conflict*, manuscript, (2003), Chapter 8. Namibia is

<sup>44</sup> Down and Stedman, "Evaluating Issues in Peace Implementation, pp. 62-63; Paris, *At War's End*, Chapter 7, p. 221.

<sup>45</sup> Helman and Ratner, "Saving Failed States," pp. 3-21; Caplan, *Trusteeship*, p. 7; Ignatieff, "State Failure and Nation Building," p. 308; Martin Indyk, "A Trusteeship for Palestine?" *Foreign Affairs* Vol. 82, No. 3 (May/June 2003), pp. 51-66.

<sup>46</sup> At least one way to interpret the strategy of U.S. decisionmakers is to understand the June transfer as one that will give Iraq international legal sovereignty. With this international legal sovereignty the new Iraqi government will be able to legitimate agreements with external agents. Given the dependence of the new government on the United States for security and revenue, such agreements will allow the United States to continue to pursue its core interests.

<sup>47</sup> For a discussion of these and other issues see, Caplan, *Trusteeship*, p. 9.

<sup>48</sup> Kofi Annan, "The Legitimacy to Intervene: International Action to Uphold Human Rights Requires a New Understanding of State and Individual Sovereignty," *Financial Times*, December 31, 1999.

<sup>49</sup> Fearon and Laitin have suggested that neotrusteeship is the most appropriate term for arrangements that could cope with the post conflict security problems afflicting states suffering from weak administrative capacity, poverty, and rough terrain. Because such states are not likely to be able to conduct effective policing and counter-insurgency operations on their own, maintaining security will require the engagement of external actors for an extended period of

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time. They do not, however, argue that neotrusteeship would involve a loss of international legal sovereignty. See Fearon and Laitin, “Neotrusteeship,” especially pp. 24-41.

<sup>50</sup> Robert Keohane has discussed a similar set of ideas using the concept of gradations of sovereignty. See his “Political Authority,” pp. 276-77.

<sup>51</sup> Donald C. Blaisdell, *European Financial Control in the Ottoman Empire: A Study of the Establishment, Activities, and Significance of the Administration of the Ottoman Public Debt* (New York: Columbia University Press, 1929), pp. 90-120, 124-130; Herbert Feis, *Europe, The World's Banker, 1870-1914: An Account of European Foreign Investment and the Connection of World Finance with Diplomacy before World War I* (New York: W.W. Norton, 1965), pp. 332-341; Bernard Lewis, *The Middle East: A Brief History of the Last 2,000 Years* (New York: Scribner 1995), pp. 298-299; and Roger Owen, *The Middle East in the World Economy, 1800-1914* (Cambridge: Cambridge University Press, 1981), p. 101.

<sup>52</sup> Revised NATO SOFA Supplementary Agreement,” (August 3, 1959), art. 19, 22, 28. The full text of the agreement is available at

<http://www.osc.army.mil/others/gca/Contractor%20on%20the%20Battlefield%20Library/SOFAs/Germany%20SOFA.doc> (accessed July 9, 2003).

<sup>53</sup> “Convention on Relations between the Three Powers and the Federal Republic of Germany,” *The American Journal of International Law*, Vol. 49, No. 3 (July 1955), pp. 57-69. For a detailed examination of the retained rights of the Western powers, see Joseph W. Bishop Jr., “The ‘Contractual Agreements’ with the Federal Republic of Germany,” *American Journal of International Law* Vol. 49, No. 2 (April 1955), pp. 125-147. For a general analysis of Germany’s situation after World War II see Peter J. Katzenstein, *Policy and Politics in West Germany: the Growth of a Semisovereign State* (Philadelphia : Temple University Press, 1987).

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<sup>54</sup> Royal Dutch Shell withdrew from the project in the mid-1990s because it feared being targeted for human rights violation, an accusation that had already been levied against the company because of its operations in Nigeria. See *Los Angeles Times* March 21, 2003, p. 1.

<sup>55</sup> Genoveva Hernandez Uriz, "To Lend or Not to Lend: Oil, Human Rights, and the World Bank's Internal Contradictions," *Harvard Human Rights Journal*, Vol. 14 (Spring 2001), p. 223; and World Bank, IBRD/IDA Project Information Document, Chad–Cameroon Petroleum Development and Pipeline Project, June 23, 1999,

[Hhttp://www.worldbank.org/afr/ccproj/project/td44305.pdfH](http://www.worldbank.org/afr/ccproj/project/td44305.pdf) (accessed July 3, 2003).

<sup>56</sup> World Bank, Chad-Cameroon Pipeline and Related Projects International Advisory Group Terms of Reference, [http://www.worldbank.org/afr/ccproj/project/iag\\_tor\\_en.pdf](http://www.worldbank.org/afr/ccproj/project/iag_tor_en.pdf); and World Bank, International Advisory Group, Chad Cameroon Petroleum Development and Pipeline Project International Advisory Group, <http://www.gic-iag.org/eiag.htm> (accessed June 19, 2003).

<sup>57</sup> Uriz: "To Lend or Not to Lend," p. 198; *Business Week*, November 6, 2000, p. 60.

<sup>58</sup> Michael Lewin Ross, "Does Oil Hinder Democracy?" *World Politics* Vol. 53, No. 3 (April 2001), pp. 325-361.

<sup>59</sup> This proposal assumes that oil could only be exploited by companies domiciled in advanced democratic polities interested in supporting good governance and that these countries cooperate with each other. Absent these conditions the host country could play one oil company off against another and avoid the constraints that would come with a shared sovereignty trust.

<sup>60</sup> Caplan, *Trusteeship*, p. 39.

<sup>61</sup> The logic of this argument follows the case presented for the Bank of England by Douglass C. North and Barry R. Weingast where the creation of the Bank served as a mechanism that provided information about the intentions of the ruler. See North and Weingast, "Constitutions

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and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England,” *Journal of Economic History* Vol. 49, No. 4 (December, 1989), pp. 803-832.

<sup>62</sup> A standard reference is Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: Norton, 2003).

<sup>63</sup> From April 1985 through March 1997 Indonesia relied on a Swiss company, Societe General de Surveillance to collect its customs duties through pre-shipment inspection of imports. The revenues collected were paid directly into government bank accounts circumventing what had become an extremely corrupt and inefficient national customs service. See William E. James, *A Note on Pre-Shipment Inspection of Imports*, USAID, Jan 28, 2002, p. 1 at

[http://www.dec.org/pdf\\_docs/PNACQ680.pdf](http://www.dec.org/pdf_docs/PNACQ680.pdf) accessed March 13, 2004.

<sup>64</sup> For a discussion of private military companies see P.W. Singer, *Corporate Warriors : the Rise of the Privatized Military Industry* (Ithaca : Cornell University Press, 2003).