

## *The Rise and Fall of Westphalia*

The conventional story of modern international law begins with the Peace of Westphalia [1648], in which warring European princes collectively created international order out of the primordial deep. In a large-scale diplomatic conference, these princes ended the Thirty Years' War in the Holy Roman Empire and the Eighty Years' War between Spain and the Netherlands. The series of treaties they concluded provided a framework in which states could agree to disagree, thereby resolving seemingly interminable conflicts over religion that had divided Europe since the Protestant Reformation. Westphalia is usually seen as standing for the principle of sovereignty, in which each prince could choose the religion of his jurisdiction, guaranteeing minority Christian sects the right to practice their own faith.

Westphalia's sovereignty principle has several components. First, *states are formally equal*. Each sovereign is the highest authority in its own jurisdiction, unable to judge other sovereigns, and, thus, is obligated to deal with other sovereigns as equals. Second, *sovereignty is internally and externally directed*. Each state is free to choose its own mode of governance, and that choice is entitled to respect and noninterference from other states. Third, *states are the primary actors in the international system*, and it is on their consent that international order rests. These principles formed the basis of the international political, economic, and legal system for the subsequent three centuries.

It must be made clear at the outset that Westphalia hardly ushered in the era of global peace that its architects imagined. Europe continued to engage in wars of great brutality and scope. Even when not at war at home, European nations engaged in a race of conquest that transformed the globe and displaced alternative systems of international relations that were as conceptually developed as that of Europe. Eventually, decolonization led to the export of the model of the territorial nation-state, but this development generated a new series of conflicts between, and especially within, new states as various groups sought to consolidate authority. It is not too much to say that Westphalia stood for peace in theory and war in practice. Perhaps, for this reason, Westphalian ideas began to erode in the twentieth century. It is a commonplace that Westphalian sovereignty has been diminished by the postwar system of the United Nations and its associated human rights instruments that purport to make domestic treatment of citizens a matter of international concern. For the first time, the international system as a whole identified human rights as a central goal of global institutions. Led by the United States, liberal internationalism involved opening up states to outside scrutiny. But, the U.N. Charter itself reflected a split. While the Charter emphasized human rights, article 2(7) contained a Westphalian caveat: —Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter... While the protection of human rights was a normative goal of the system, the actual operating system of international law continued to emphasize state consent, noninterference, and sovereign equality. Since the end of the Cold War, reports of the death of Westphalia have increased in frequency and intensity. It has often been asserted that the erosion of Westphalian sovereignty is increasing with the phenomenon known as globalization. Virtually every writer on globalized governance claims that it spells the death, or at least the weakening, of Westphalia. International institutions, such as the International Criminal Court (ICC), the human rights treaty bodies, and the World Trade Organization (WTO) have infringed on policy areas previously considered national prerogatives. Regional organizations, of which the European Union (EU) is the paradigm, have transformed nominally sovereign nations into members of regional blocs, and the WTO is asserted to constitutionalize economic globalization at the multilateral level. Nongovernmental organizations and corporations, as well as individuals, have gained personality on the international plane. All this, it is claimed, calls for new thinking and the discarding of sovereignty as an outmoded concept.

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