

# Civil Wars as Challenges to the Modern International System

*Hendrik Spruyt*

*Abstract: The current international system is based on Westphalian principles in which authority is defined territorially. Within this territory, the state has sole jurisdiction. Adherence to these principles has contributed to the decline of interstate war. Conversely, applying these principles and correlated norms to states that gained their independence after 1945 has contributed to civil conflicts. These norms are opaque, as is the case with the principle of self-determination; or they lock in an unstable status quo, as with uti possidetis, the principle that borders inherited at the moment of independence should always be maintained; or they are inconsistently applied and often violated, as with the principle of noninterference. Consequently, they provide poor guidelines as to when, and on which grounds, external intervention in civil wars might be warranted. I argue that the degree to which the combatants challenge Westphalian principles should guide policy responses. Furthermore, the international legal regime should reconsider uti possidetis. In some instances, partition might be a reasonable solution to civil wars.*

The Westphalian agreements of 1648 set Europe on a course through which political authority became territorially defined and juridically autonomous within recognized borders. In the centuries since, these principles of order came to define the very notion of what qualifies as “domestic” politics and what is “international.” Through these principles, European states devised a mode of governance that demarcated spheres of jurisdiction and thereby facilitated regular interstate relations.

The treaties of Osnabrück and Münster set the foundations for the Westphalian system, articulating a particular logic of organization that differed in several key aspects from the preceding feudal order. The feudal legitimation of authority, based on personal ties, contrasted with the Westphalian territorial definition of authority. Moreover, Westphalia presupposed, in principle, a hierarchical government within the territorial space of a given state. Ju-

HENDRIK SPRUYT is the Norman Dwight Harris Professor of International Relations at Northwestern University. He is the author of *Ending Empire: Contested Sovereignty and Territorial Partition* (2005), *The Sovereign State and Its Competitors: An Analysis of Systems Change* (1994), and *Contracting States: Sovereign Transfers in International Relations* (with Alexander Cooley, 2009).

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ridically, Westphalia recognized no higher authority than that of the sovereign ruler, in contrast to transterritorial imperial and religious claims of emperors and popes. As the conduit between the domestic realm and interstate relations, the sovereign ruler would handle international affairs.

Stephen Krasner has distinguished four types of sovereignty.<sup>1</sup> “Independence sovereignty” refers to the degree of a state’s sensitivity to globalization and international flows across its borders. “Domestic sovereignty” denotes the organization of political authority within the state and the extent to which this authority can de facto exercise effective control. Max Weber most famously articulated this aspect of sovereignty, defining the state as an entity that possesses a monopoly on the legitimate use of force.<sup>2</sup> “Westphalian sovereignty” signifies that juridical authority resides fully with the hierarchical authority of the territorial realm. No higher supranational authority exists, unless the given state has voluntarily recognized such an institution. Finally, “international legal sovereignty” refers to the recognition of the state by others as an independent entity.

Many states that were recognized as sovereign territorial states prior to World War II possess most of these traits. By contrast, many of the states that emerged in the wake of decolonization lack key features of sovereignty.

While the Peace of Westphalia hardly heralded the victory of these principles, by the end of the twentieth century, Westphalian principles had become the norm. Today, sovereign territorial states are the constitutive actors of the international system. Westphalian norms are thus not simply moral precepts, but serve as rules with material consequences.

The global spread of Westphalian principles in the course of the twentieth century has contributed to the decline of interstate war. Respect for mutually recognized bor-

ders has delegitimized the acquisition of territory by force. Consequently, the survival rate of states has increased significantly compared with earlier centuries.<sup>3</sup> Material conditions have also increased the costs of warfare between the major powers. Combined, these dynamics have made interstate war, certainly among the major powers, virtually obsolete.<sup>4</sup>

Paradoxically, however, as interstate warfare has declined, intrastate war has been tragically common.<sup>5</sup> In the half-century following World War II, there were almost 150 civil wars, averaging more than 143,000 casualties each.

I submit that the global expansion of Westphalian principles and correlated norms partially contributed to the frequency and intensity of civil wars after 1945. That is, even as it decreased interstate warfare, the very victory of the Westphalian system set the stage for the rise of intrastate conflict, particularly in those countries that became independent with decolonization. Moreover, Westphalian principles have not only created some of the precipitating conditions of civil wars, but the confusion surrounding their application and the contestation with rival sets of norms have confounded the search for policies that might address such conflicts.

I begin this essay by tracing how the extension of Westphalian principles has affected the occurrence of civil wars. Subsequently, I discuss how correlated norms have had pernicious effects. In the final section, I provide a typology of civil wars to assess the type of threat posed by a given conflict. Depending on the type of civil war, altering some of the correlated principles of the Westphalian order might serve as a partial guide for policy responses.

**D**evelopments in the last half-century have challenged the traditional understanding of sovereign territorial statehood in several ways. Prior to World War II, the

Montevideo Convention on the Rights and Duties of States (1933) put preponderant weight on the factual control over territory and the monopoly of force.<sup>6</sup> Article 1 proclaimed that “the state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.” The Convention emphasized that a state’s international legitimacy did not hinge upon recognition from other actors, thus endorsing the declaratory theory of statehood, as stipulated in article 3: “The political existence of the state is independent of recognition by the other states.” Thus, the Weberian conception of the state, emphasizing *de facto* capability, claimed primacy over the recognition of one’s own sovereignty by other states.

Developments following World War II enshrined the principle of territorial sovereignty by extending independence and juridical equality to former colonies and mandate territories. In the process, the international system separated the connection between *de jure* recognition and *de facto* state capacity. International legal, *de jure*, recognition was bestowed on the former colonies, irrespective of whether they factually met the earlier Montevideo criteria. That is, the former colonies were recognized as juridical equals of already existing states, and became fully independent, even though their governments lacked the institutional capacity to effectively govern their territories in the traditional Westphalian sense. Thus, paradoxically, shortly after the establishment of the Montevideo criteria, the constitutive theory of statehood gradually gained primacy in the decades following 1945.

There were several reasons for this shift. First, the colonial powers lacked the capabilities and will to hold subject territories. While some of the maritime empires withdrew in a process of calculated and negoti-

ated withdrawal, others got mired in the last colonial wars. Britain largely exemplified the first process, while Portugal, France, and The Netherlands exemplified the latter. Ultimately, the “Winds of Change,” to use Harold MacMillan’s phrase, blew decidedly against the imperial powers.<sup>7</sup>

At the same time, the colonies resisted efforts to make their independence contingent upon criteria of fitness. The fitness benchmark evolved in the interwar period, when the colonial powers asserted that their withdrawal, and subsequent recognition of independence for the colonies, hinged upon suitable conditions. But Lord Lugard’s claim that the imperial powers were bringing “the torch of culture and progress” to “the abode of barbarism” carried little appeal in the postwar era.<sup>8</sup>

The insistence of the superpowers further expedited imperial withdrawal. Both the United States and the USSR sought to capitalize on the nationalist sentiments in the colonies to enhance their respective positions in the Cold War. The Soviet Union hastened to support national struggles of liberation, while the United States exerted pressure on the European colonial powers through diplomatic and economic means, most notably Marshall Plan aid.

In addition, multilateral organizations, such as the United Nations, enshrined the principle of self-determination. The UN professed as one of its key objectives: “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.”<sup>9</sup> Former colonies that had already gained their independence, such as India, subsequently used international organizations to further the cause of decolonization, equating self-determination of peoples with independence.

As a consequence, though some European powers were slow to recognize the changed conditions in the immediate after-

math of World War II, decolonization was swift. Dozens of newly independent states emerged in the decade and a half after 1945.

However, unlike the states that acquired independence prior to World War II, the newly independent states of the postwar era lacked Weberian characteristics, as James Fearon's essay in this volume notes.<sup>10</sup> European dynasts historically expanded their control over rival warlords partially by competition and selection over many centuries of interstate war. The European process of nation-building that coalesced within the fixed territorial parameters of the given state was long and arduous. In mobilizing their populations for war, rulers needed to expand administration, taxation, and public education. In so doing, they affected every aspect of society. The bellicist theory of state formation has persuasively argued for the importance of centralization by warfare.<sup>11</sup> As rulers either defeated or bought off their rival lords, they acquired a monopoly over the means of violence. At the same time, local identities gradually transformed: individuals became citizens and members of the imagined community, the nation. For sure, this process included frequent internal conflict, as Francis Fukuyama describes in the English case. Yet, in the end, centralized state authorities and relatively homogeneous nations emerged.<sup>12</sup>

The territories dominated by the European colonial powers, however, did not undergo such dynamics. These states gained independence in the wake of decolonization, regardless of their capability to provide a meaningful level of public goods, and regardless of their heterogeneity. Borders were artificial relicts, particularly in Africa, largely demarcated by the maps of European powers as the metropolises divided the continent in the late nineteenth century.

Moreover, in most cases of decolonization, the colonial borders remained intact, no matter how artificial. Populations di-

verse in ethnicity, religion, race, and other markers of identity remained grouped together within the territorial boundaries created by the colonial powers.<sup>13</sup>

The historical legacy of combining heterogeneous communities within artificially evolved borders has complicated contemporary efforts at state-building and economic development. In many cases the newly independent states resembled capstone governments.<sup>14</sup> In such polities, the ruling elite would share common traits but govern vertically stratified societies. They lacked the infrastructural power and monitoring capabilities that we have come to associate with the modern state. Maintaining control over diverse populations thus logically meant that the ruling elite had to tolerate considerable autonomy of local power brokers and instead hope to rule by ad hoc alliances with the local powers that be.

The desire to catch up to the Western nation-state model, and to develop their economies, subsequently influenced the relations between state elites and their heterogeneous societies. During the colonial struggles, indigenous groups might have forged a temporary unity by virtue of their anti-European or anti-Western stance. The nationalist leaders who had led the struggles, such as Jomo Kenyatta in Kenya and Julius Nyerere in Tanzania, could be revered and provide for coherence. However, as the initial unity receded, state attempts to capture greater resources from their societies increasingly impinged on local autonomies, leading to friction.<sup>15</sup>

The lack of interstate war further hindered many rulers of the newly independent states. Whereas warfare and state-making coincided in Europe, the maintenance of existing borders, and thus the absence of a security imperative in Africa, doomed many of the newly independent states to weakness. The very strength of the principle of international legal sovereignty, which delegitimized changes in preexisting terri-

torial borders, made it impossible for these weaker states to redress the problems they inherited from the colonial period.<sup>16</sup>

As a result, local affinities of village, clan, tribe, ethnicity, and religion remained salient, precluding the formation of a common national identity. As Benedict Anderson has shown, the creation of an imagined community, the nation, requires large-scale public education, a shared language, and high degrees of literacy in order to displace other sources of affinity.<sup>17</sup> None of these conditions held in many countries in sub-Saharan Africa, the Middle East, and Central Asia.

Decolonization expanded the Westphalian system and brought with it a set of related norms and expectations. Three norms in particular – self-determination, *uti possidetis*, and noninterference – would govern the subsequent international relations of the newly independent states. Decolonization entailed the right of self-determination of peoples. *Uti possidetis iuris* (as you possess under law) stipulated the maintenance of inherited borders: the newly recognized states were to leave the colonial borders in place, no matter how arbitrary. Noninterference meant that, in principle, no state should interfere with the domestic affairs of another state. In other words, states had to respect each other's juridical autonomy.

In addition to these norms, the expectation was that the newly independent states would gradually develop along the Western model with increasing economic capacity and a monopoly over the means of violence in their territory. Modernization theory thus predicted that, over time, traditional societies would transform into the Western nation-state model.

Unfortunately, these norms can be opaque, as is the case with the principle of self-determination; or they lock in an unstable status quo, as with *uti possidetis*; or they are inconsistently applied and often violat-

ed, as with the principle of noninterference. Moreover, the expectation that the Weberian model of statehood would emerge has proven illusory, and the attempts to impose it by external intervention have failed. The combination of these factors has exacerbated the problems posed by civil wars, and has provided little guidance for the settlement of some of those conflicts.

To begin with the principle of self-determination of peoples, as enshrined in article 1 of the UN Charter: How are we to understand peoples? Does this apply to any community that defines itself as a nation? If so, the number of potential states is far larger than the current number of existing states (almost two hundred). Indeed, hundreds more should be entitled to secession and deserving of international recognition.

However, for all the expansiveness of UN Secretary General Boutros-Ghali's *Agenda for Peace*, he nevertheless argued for the maintenance of existing borders and states: "If every ethnic, religious, or linguistic group claimed statehood, there would be no limit to fragmentation."<sup>18</sup> Read in this restrictive manner, the self-determination of peoples would thus refer only to the self-determination of subject polities, such as the colonies and mandates of the pre-World War II era.<sup>19</sup>

Which interpretation should prevail? Boutros-Ghali provided little help, observing that "the sovereignty, territorial integrity and independence of states within the established international system, and the principle of self-determination for peoples, both of great value and importance, must not be permitted to work against each other in the period ahead." How to resolve this paradox in practice went unanswered.

The rigorous application of *uti possidetis* has also come at a cost. To be clear: the new African rulers themselves were not eager to alter the inherited boundaries. By becoming the new rulers of the former colony, they acquired title to the resources, even if lim-

ited, that the preceding government left behind. Redesigning the territorial landscape to more accurately coincide with ethnic, tribal, or religious affiliations would threaten their own position. The new governments thus endorsed the external legal principle of *uti possidetis iuris* in order to maintain the inherited borders. At the Organization of African Unity (OAU) conference in Cairo in 1964, the heads of state thus accepted “to pledge themselves to respect the borders existing on their achievement of national independence.”<sup>20</sup>

First applied to the independence of Latin American states in the early nineteenth century, *uti possidetis* subsequently played an important role in the international arbitration of border disputes. As the International Court of Justice noted: “The Chamber nonetheless wishes to emphasize its general scope, in view of its exceptional importance for the African continent. . . . Its obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power.”<sup>21</sup> The African states were thus condemned to work with the arbitrary borders formulated by the former colonial powers.

But *uti possidetis* itself is less obvious than sometimes imagined. To which borders does the principle apply? While secessionist movements of substate units have been deemed illegal, as in the cases of Katanga and Northern Cyprus, secession by units within a federal system might be acceptable, although to varying degrees.<sup>22</sup> The international community has, with reservations, extended the right of secession to such units, provided the territorial borders that demarcated them within the federal system were retained, as was largely the case with the former Yugoslavia.

However, here again other preconditions confound the principle of self-determination. As Tanja Börzel and Sonja Grimm de-

scribe, the European Union guidelines on recognition stipulated several strict criteria. The seceding republics had to adhere to various international agreements, such as the UN Charter, and guarantee rights of minorities within their borders. Furthermore, they had to declare their respect for democracy and the rule of law.<sup>23</sup>

The application of a third legal principle, noninterference, has similarly been fraught with inconsistency, facing challenges from rival sets of principles and norms. The principle of noninterference in other states’ internal affairs, including civil wars, is long-standing. States are obliged to refrain from interfering in insurgencies in other countries. Even if the insurgent group has been recognized as a belligerent party, third parties must refrain from premature recognition of the insurgency. For example, the British willingness to build Confederate warships and to receive these warships in British ports during the American Civil War constituted a violation of neutrality in the judgment of an international arbitration panel. Britain recognized the finding and settled the dispute with a substantial remuneration to the United States.<sup>24</sup>

In practice though, the legal principle has more often been honored in the breach rather than in its observance. Particularly during the Cold War, the superpowers and their allies engaged in decidedly hot conflicts either directly or by proxy. Civil war combatants found diverse backing from the United States, Britain, France, the USSR, and the People’s Republic of China.

With the end of the Cold War, many of the recipients of external aid faced a loss of foreign support. With neither the United States nor the Soviet Union and their respective allies interested in supporting the central governments of beleaguered states, these governments became more vulnerable to internal rivals. At the same time, diminished resources curtailed the capaci-

ty of governments to provide for essential services, leading to the rise of alternate political organizations beyond the state. As James Fearon demonstrates in his essay in this volume, shifts in the balance of power in favor of potential rebel groups created windows of opportunity against an already weak central state.<sup>25</sup>

Further, the current international legal regime regarding external intervention creates problems of its own. Given that military action against another country is *prima facie* illegal in international law – unless authorized by a multilateral organization, such as the United Nations Security Council – the great powers have often sought multilateral approval for their actions, as did the two Bush administrations for their actions against Iraq in 1991 and 2003. The need for multilateral approval inevitably raises collective action problems, complicating the possibility of united action by the international community. Russia, for example, opposed intervention in Yugoslavia, as it does today in Syria. Similarly, continued multilateral restrictions on the government of Iraq from 1991 to 2003 proved difficult to maintain given fissures in the alliance. Even when external intervention on humanitarian grounds might be needed, as with the Rwandan genocide, it has been difficult to realize. And as Barry Posen rightly notes, the shift from a unipolar world to a multipolar one will complicate collective action even further.<sup>26</sup>

Moreover, the principle of noninterference – the respect for a state’s juridical autonomy – is not absolute. Competing international norms and various legal justifications challenge the supremacy of the nonintervention principle. First, one can argue that the failure of governments to provide rudimentary public goods to their own populations, while in the process creating negative externalities for other states, justifies external intervention.<sup>27</sup> The responsibility to protect (R2P) doctrine im-

poses an obligation upon the community of sovereign states to punish those governments that violate the basic rights of their peoples.<sup>28</sup> Following the World Summit Outcome 2005, the UN General Assembly thus affirmed that collective use of force against a state could be justified under UN auspices when national authorities failed to protect their citizens.

Extending this view, some have argued that good governance entails the ability of citizens to hold their own governments accountable. Thus, external intervention against a target state might be justified not merely on the grounds of a systematic violation of individual rights, but by the very nature of the target regime.<sup>29</sup>

The strategic argument in favor of regime change finds another source in democratic peace theory.<sup>30</sup> The crux of the theory is the view that the long-term prospects for international peace depend on the spread of democracy to authoritarian regimes. This perspective has been a virtual bedrock for U.S. foreign policy since the end of the Cold War.

The Bush administration articulated an even more expansive rationale for interference in other states to justify its intervention in Iraq. While international law can justify a *preemptive* strike – if that state realistically fears an imminent attack by the target state – the Bush administration also advocated for the justification of *preventive* war.<sup>31</sup> Though the United States did not face an imminent attack from Iraq, the Bush administration attempted to justify U.S. military action against Iraq by citing the dangers of the weapons of mass destruction the administration alleged were present there. By this view, states that acquire weapons of mass destruction – or, as in Iraq’s case, are suspected of attempting to acquire them – could be subject to military action, even if they were not otherwise poised to engage in war.

In this cauldron of competing norms and justifications for and against noninterfer-

ence, national governments and subnational actors have tried to leverage legal and normative changes in the international system to their advantage. Central governments have argued for a strict interpretation of noninterference and respect for Westphalian principles. Conversely, secessionist movements have used emerging doctrines such as R2P to obtain international support for their demands. For example, the secessionist components of Yugoslavia argued that Milosevic's crimes against humanity justified their claim to independence. Serbian violation of human rights and democratic principles served to invalidate Serbia's sovereignty, while it conversely validated the other republics' sovereignty claims.

In sum, opaque norms and conflicting principles present the international community with paradoxes, confounding the search for solutions to civil wars. Respect for Westphalian regulative principles, such as *uti possidetis*, has contributed to the reduction of interstate war. Meanwhile, the same principle contradicts the equally admirable goal of self-determination by locking in arbitrary borders of the colonial period. Noninterference respects a government's juridical autonomy, but also stifles the likelihood of external intervention in cases of civil and human rights abuses, or even genocide. Are any guiding principles possible given this complexity?

Reassessing several international legal principles as well as the goals of external intervention can provide some guidance for how the international community might respond to civil wars. I argue in particular that we might reconsider to what extent extant borders should remain in place in all circumstances. In addition, we might adopt a less ambitious agenda regarding external state-building.<sup>32</sup> Reconsidering these principles alongside an assessment of the types of civil wars can provide some policy guidance.

No doubt each civil war presents many unique challenges. How external actors will respond to the challenges posed by specific civil wars will hinge on the geopolitical value of the country in question, the strength of the opposing forces, the target state's regime type, and domestic sentiments in the intervening countries, among other factors. The many modalities of civil wars make it infeasible to develop an all-encompassing theory to guide policy in all circumstances. Indeed, for that reason, predicting, let alone preventing, the outbreak of civil wars has met, at best, with limited success.<sup>33</sup>

Nevertheless, I contend that we can aspire to develop a reflective equilibrium between abstract theories and the realities of case-by-case variation.<sup>34</sup> Rather than aspire to general overarching theories, we might classify cases by several patterns, which in turn might guide policy choices.

Any external response to civil wars first requires assessment of the type of threat posed by the conflict. In their essays in this volume, Karl Eikenberry and Stephen Krasner as well as Stewart Patrick analyze civil wars in terms of their negative effects on other states to determine whether we should view civil wars as relatively localized or with broader systemic effects. I submit that whether a civil war presents local or systemic threats also depends on the objectives pursued by the combatants. Specifically, to what extent do they challenge the general principles of the Westphalian international order?

With that in mind, one might rank various challenges along a continuum of threats to the regulative principles that underlie the Westphalian state system. One might distinguish, first, civil wars aimed at concessions by the extant government, such as increased participation in government or changes in revenue distribution. These do not singularly pose a systemic threat. No doubt these conflicts can have significant external effects, such as refugee flows, the



possible spread of pandemic diseases, and criminal networks, which might precipitate external actions.<sup>35</sup> But the combatants are involved in an internal conflict, and are not pursuing wider systemic objectives. In such cases, external intervention might have salutary effects by providing mediation, by election monitoring, and by facilitating credible commitments. As James Fearon points out, such interventions have achieved some success.<sup>36</sup>

A second type of civil war, aimed at secession, challenges one corollary principle to the Westphalian system, specifically the principle of *uti possidetis*. However, actors in these civil wars do not oppose the concept of the territorial state per se; quite the contrary, they seek such a state for themselves. They object to the current borders and seek de jure recognition as an independent state. In cases in which ethnic conflict has erupted within these states, one solution might be to consent to or even actively aid the partition of the extant state and the separation of belligerents.<sup>37</sup>

One must weigh the benefit of potential partition against the cost of weakening the principle of maintaining existing borders. Will intervention precipitate a move along the slippery slope, and potentially cause more civil conflicts? Standard arguments against relaxing *uti possidetis* predict that emboldening self-determination and legitimating secession would lead to the fragmentation of numerous states; the floodgates would open to innumerable secessionist civil wars. These concerns are reasonable but overstated.

I do not contend that partition should be seen as the first solution to secessionist conflicts. Prior to endorsing partition, institutional solutions might be pursued, such as increasing proportional representation or greater regional autonomy.<sup>38</sup> External actions might thus enhance the benefits for maintaining territorial integrity rather than pursuing partition. However,

we should reconsider the blanket rejection of partition. Contrary to *uti possidetis*, re-drawing boundaries might be a solution if all else fails. Such proposals are already being discussed regarding fractured states such as Iraq, Libya, Yemen, and Syria.

One might also limit secessionist claims to specific categories, such as the republics or provinces of federal states, but deny claims by lesser administrative units within those states. For example, in the Yugoslav Wars, the international community recognized the republics that had delineated territorial borders in the old polity, but was less responsive to demands by smaller political entities.

Limiting secessionist demands to republics or provinces that form part of a federal structure also has advantages. The very existence of a federal system suggests a historical legacy in which diverse populations already had a degree of local autonomy within a given territorial space. Separation along those lines would thus simply recognize those preexisting historical features.

Moreover, such units would already have extant local institutions with some governing capacity. Recognizing the various separate components of a previously integrated federal state would not inevitably lead to a set of failed states. Hence, the international community might be more amenable to demands by federal units than to secessionist movements at lower levels.

Finally, some recognition of new states in the wake of civil wars has already occurred, as in Yugoslavia and Sudan.<sup>39</sup> Whether these constituted unique cases merits further research, but the decades of peace following the Yugoslav Wars suggest that separation, albeit with commensurate domestic reforms, might terminate civil wars with some long-term stability thereafter. Admittedly, as in the case of Sudan, partition by itself may not be a panacea.

A third category of civil wars consists of cases in which combatants do not seek

control over, or concessions from, the extant state, nor do they seek a state of their own. Instead, local power brokers seek to use public functions of the state for their own gain and for their followers, resulting in the quintessential fragile state with dispersed authority. State authorities themselves may even conspire with local power brokers and illicit networks, partially for economic rewards, partially to counter domestic rivals, as shown by Will Reno and Vanda Felbab-Brown in their contributions to this volume.<sup>40</sup>

In these cases, the attempt to externally impose something resembling the Weberian state model has proven illusory, as demonstrated by the experiences in Somalia and Afghanistan. Indeed, given the historical legacy of capstone governments in these countries, the very notion of a high-capacity, centralized state is anathema.<sup>41</sup> Anthropologist Thomas Barfield has suggested that the attempt of the Afghan government to increase state capacity in the post-World War II decades, and to limit local prerogatives, precipitated the ensuing decades of conflict.<sup>42</sup> A large body of research suggests that external state-building is ephemeral at best.<sup>43</sup> For example, political scientist Ken Menkhaus has argued that, in Somalia, one can only hope that warlords will step in as intermediate power brokers and provide localized public goods. Some warlords in Africa might indeed already act in this capacity.<sup>44</sup>

Because the interests of external actors do not correspond with the interests of domestic power brokers, external state-building efforts in these circumstances are unlikely to produce substantial results. Warlords might appear to accommodate settlements that aim to strengthen central authority, but they only appear to do so. As Stephen Biddle shows, the information asymmetries between external actors and local elites give the latter substantial advantages.<sup>45</sup>

A more likely outcome is the emergence of hybrid authority structures in which public and private actors both seek to benefit from external connections, with few gains in central state capacity. Other states might engage with government officials and local power brokers, but without any illusion this will result in something resembling the Western state model.

Finally, the most problematic type of civil war is the one in which actors fundamentally reject the regulative principles of the Westphalian system and legitimate their authority in nonterritorial terms. For example, as Tanisha Fazal shows, religiously motivated combatants may seek to control their religious community irrespective of existing borders.<sup>46</sup> Consequently, they contest the extant government's legitimate authority and, indeed, the very existence of the state.

Whereas concessions to the combatants might resolve the other types of civil war, this last category diametrically contradicts the current logic of organization established by the Westphalian system. Mediation or relaxing the principle of *uti possidetis* might help resolve some civil wars, but such policies are ineffective responses to this type of conflict.

The ambitions of some Islamic groups to base political organization on the community of the faithful, whether in the form of a caliphate or other transnational composition, have provided a dramatic contemporary example of this type. In this they diverge from other violent groups, such as the Irish Republican Army or the Basque separatist ETA, whose objectives were state independence. These latter groups objected to the existing state structure but not the concept of territorial statehood.

Whether or not a specific Islamic group can be reconciled with Westphalian legal principles will depend on the group's interpretation of Islamic thought: specifically, whether Islamic law on the state, the

subcomponent of Sharia termed *Siyar*, can be reconciled with a Law of Nations.

Some scholars suggest that interpreting *Siyar* as compatible with contemporary international law anachronistically applies modernist concepts to older Islamic doctrine.<sup>47</sup> *Siyar* has a monistic legal view that does not distinguish between domestic and international legal regimes. It lacks the concept of juridical territoriality, and thus has no conception of a legal order between states.

Traditional Islamic doctrine also prohibited treaties with infidels. Temporary armistices of ten years were permissible if warranted by material conditions, but long-term treaties and the recognition of other sovereigns as equals were forbidden.

Other interpretations, however, suggest that Islamic views can be reconciled with the Westphalian order.<sup>48</sup> Admittedly, Islamic rulers, such as the Ottoman sultans, initially did not recognize sovereign equality. Moreover, these rulers did not sign long-term treaties with non-Muslims, and they did not permit any territorial delimitation of their authority. In practice, though, from the mid-sixteenth century on, as the Ottoman Empire expanded to its Western lim-

its, the Ottoman rulers came increasingly to recognize European sovereigns as equals. Correspondingly, Islamic legal doctrine and diplomacy went through a decisive transformation and rulers adjusted to the territorial states' system.<sup>49</sup>

Various groups will thus have their own interpretation of Islam that informs their logic of organization. For some, there is no inherent tension between religious doctrine and the current nation-state system. However, other groups, particularly those who adhere to a fundamentalist view, such as the restoration of the caliphate, seem particularly irreconcilable with the logic of the Westphalian order. They resemble the early Ottoman *ghazi* warriors rather than the later more-accommodative Ottomans.<sup>50</sup>

Combatants who seek to take over a territorial state or who seek to form their own state might be reconciled with the current international community, even if some principles of the Westphalian order need to be relaxed. However, settling a civil war with protagonists who challenge the very principles of the international state system, such as ISIS, is an altogether different matter.

#### ENDNOTES

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<sup>1</sup> Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, N.J.: Princeton University Press, 1999), 9–25. See also Hendrik Spruyt, *The Sovereign State and Its Competitors: An Analysis of Systems Change* (Princeton, N.J.: Princeton University Press, 1994).

<sup>2</sup> As articulated by Max Weber in his essay "Politics as Vocation." See H. H. Gerth and C. Wright Mills, trans. and eds., *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1946), 78.

<sup>3</sup> Tanisha Fazal, *State Death: The Politics and Geography of Conquest, Annexation, and Occupation* (Princeton, N.J.: Princeton University Press, 2007); and Mark Zacher, "The Territorial Integrity Norm: International Boundaries and the Use of Force," *International Organization* 55 (2) (2001): 215–250.

<sup>4</sup> Raimo Väyrynen, *The Waning of Major War: Theories and Debates* (New York: Routledge, 2006).

- <sup>5</sup> Stathis Kalyvas, “Civil Wars,” in *The Oxford Handbook of Comparative Politics*, ed. Carles Boix and Susan C. Stokes (New York: Oxford University Press, 2007), 416–434.
- <sup>6</sup> The text of the Convention on Rights and Duties of States is accessible at <http://www.oas.org/juridico/english/treaties/a-40.html>.
- <sup>7</sup> Hendrik Spruyt, *Ending Empire: Contested Sovereignty and Territorial Partition* (Ithaca, N.Y.: Cornell University Press, 2005).
- <sup>8</sup> Raymond F. Betts, *Uncertain Dimensions* (Minneapolis: University of Minnesota Press, 1985), 55.
- <sup>9</sup> United Nations, *Charter of the United Nations* (San Francisco: United Nations, 1945), chap. 1, art. 1, sec. 2.
- <sup>10</sup> James D. Fearon, “Civil War & the Current International System,” *Dædalus* 146 (4) (Fall 2017).
- <sup>11</sup> Charles Tilly, “War Making and State Making as Organized Crime,” in *Bringing the State Back In*, ed. Peter Evans, Dietrich Rueschemeyer, and Theda Skocpol (Cambridge: Cambridge University Press, 1985).
- <sup>12</sup> Eugene Weber, *Peasants into Frenchmen: The Modernization of Rural France, 1870–1914* (Stanford, Calif.: Stanford University Press, 1979); Barry Posen, “Nationalism, the Mass Army, and Military Power,” *International Security* 18 (2) (1993): 80–124; and Francis Fukuyama, “The Last English Civil War,” *Dædalus* 147 (1) (Winter 2018).
- <sup>13</sup> Robert Jackson, “Quasi States, Dual Regimes, and Neo-Classical Theory: International Jurisprudence and the Third World,” *International Organization* 41 (4) (1987): 519–554.
- <sup>14</sup> For a discussion of how capstone governments function, see Ernest Gellner, *Nations and Nationalism* (Ithaca, N.Y.: Cornell University Press, 1983); and Patricia Crone, *Pre-Industrial Societies* (Oxford: Basil Blackwell, 1989).
- <sup>15</sup> For a genealogical and typological discussion of patterns of rule in Africa, see William Reno, *Warfare in Independent Africa* (New York: Cambridge University Press, 2011).
- <sup>16</sup> Jeffrey Herbst, “The Creation and Maintenance of National Boundaries in Africa,” *International Organization* 43 (4) (1989): 673–692; Jeffrey Herbst, “War and the State in Africa,” *International Security* 14 (4) (1990): 117–139; and Jeffrey Herbst, *States and Power in Africa* (Princeton, N.J.: Princeton University Press, 2000).
- <sup>17</sup> Benedict Anderson, *Imagined Communities* (London: Verso, 1991).
- <sup>18</sup> Boutros Boutros-Ghali, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping* (New York: United Nations, 1992), 17–19.
- <sup>19</sup> Indeed, as Jean-Marie Guéhenno notes, at the very formation of the United Nations, the United States opposed humanitarian justifications for external intervention. Jean-Marie Guéhenno, “The United Nations & Civil Wars,” *Dædalus* 147 (1) (Winter 2018).
- <sup>20</sup> Peter Radan, *The Break-Up of Yugoslavia and International Law* (London: Routledge, 2003), 121. Several months later, they reiterated that “they pledge themselves to respect frontiers as they existed when the States gained independence.” United Nations, 2nd Summit Conference of Heads of State or Government of the Non-Aligned Movement, *Program for Peace and International Cooperation* (A/5763), September 10, 1964, Cairo, Egypt, sec. V.2, [http://cns.miis.edu/nam/documents/Official\\_Document/2nd\\_Summit\\_FD\\_Cairo\\_Declaration\\_1964.pdf](http://cns.miis.edu/nam/documents/Official_Document/2nd_Summit_FD_Cairo_Declaration_1964.pdf).
- <sup>21</sup> International Court of Justice, Reports of Judgments, Advisory Opinions and Orders, *Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali)*, Judgment of 22 December 1986, sec. 20, 565, <http://www.icj-cij.org/docket/files/69/6447.pdf>.
- <sup>22</sup> The international community thus ended up recognizing the federal subcomponents of Yugoslavia. Radan, *The Break-Up of Yugoslavia*, 4. See also Thomas Van Dervort, *International Law and Organization* (Thousand Oaks, Calif.: Sage, 1998), esp. chap. 11. Conversely, the OAU refused to endorse the secession by Biafra during the Nigerian Civil War (1967–1970). Some

- states that supported Biafra, such as France, did so on humanitarian grounds, but did not recognize Biafra as an independent state.
- <sup>23</sup> Tanja A. Börzel and Sonja Grimm, “Building Good (Enough) Governance in Postconflict Societies & Areas of Limited Statehood: The European Union & Western Balkans,” *Dædalus* 147 (1) (Winter 2018).
- <sup>24</sup> United Nations, Reports of International Arbitral Awards, *Alabama Claims of the United States of America against Great Britain*, May 8, 1871, [http://legal.un.org/riaa/cases/vol\\_XXIX/125-134.pdf](http://legal.un.org/riaa/cases/vol_XXIX/125-134.pdf). Following the arbitration panel’s decision, Britain agreed to pay \$15 million to the United States in 1872. (More expansive demands by some U.S. politicians included acquisition of major parts of Canada, which went unfulfilled.)
- <sup>25</sup> Fearon, “Civil War & the Current International System.”
- <sup>26</sup> Barry R. Posen, “Civil Wars & the Structure of World Power,” *Dædalus* 146 (4) (Fall 2017).
- <sup>27</sup> Stephen Krasner and Carlos Pascual, “Addressing State Failure,” *Foreign Affairs* 84 (4) (2005): 153–163.
- <sup>28</sup> Bruce Jones, Carlos Pascual, and Stephen Stedman, *Power and Responsibility* (Washington, D.C.: Brookings Institution Press, 2009).
- <sup>29</sup> This was arguably part of the rationale to call for ousting Muammar Gaddafi. Stephen Stromberg, “Obama on Libya: Strong on Justification, Short on Strategy,” *The Washington Post*, March 28, 2011.
- <sup>30</sup> For an overview of the various strands in the literature on the democratic peace, see Miriam Elman, *Paths to Peace: Is Democracy the Answer?* (Cambridge, Mass.: The MIT Press, 1997).
- <sup>31</sup> Robert Jervis, “Understanding the Bush Doctrine,” *PSQ* 118 (3) (2003): 365–388.
- <sup>32</sup> I thus see limited opportunities for successful external intervention in civil wars.
- <sup>33</sup> For an extensive discussion of efforts to detect and prevent civil wars, see Chuck Call and Susanna Campbell, “Is Prevention the Answer?” *Dædalus* 147 (1) (Winter 2018).
- <sup>34</sup> For a discussion of reflective equilibrium theory in legal reasoning, see Cass R. Sunstein, *Legal Reasoning and Political Conflict* (Oxford: Oxford University Press, 1996).
- <sup>35</sup> See Paul H. Wise and Michele Barry, “Civil War & the Global Threat of Pandemics,” *Dædalus* 146 (4) (Fall 2017); Sarah Kenyon Lischer, “The Global Refugee Crisis: Regional Destabilization & Humanitarian Protection,” *Dædalus* 146 (4) (Fall 2017); and Vanda Felbab-Brown, “Organized Crime, Illicit Economies, Civil Violence & International Order: More Complex Than You Think” *Dædalus* 146 (4) (Fall 2017).
- <sup>36</sup> There is considerable evidence to suggest that external efforts at peace-building – actions undertaken to maintain the peace after the cessation of conflict – have been relatively successful. The conclusion of civil wars in Namibia, Mozambique, and El Salvador are some examples. See Charles T. Call and Elizabeth M. Cousens, “Ending Wars and Building Peace: International Responses to War-Torn Societies,” *International Studies Perspectives* 9 (1) (2008): 1–21; and Fearon, “Civil War & the Current International System.”
- <sup>37</sup> On the argument for partition, see Chaim Kaufman, “Possible and Impossible Solutions to Ethnic Civil Wars,” *International Security* 20 (4) (Spring 1996): 136–175. For an example of the argument in an empirical case, see John J. Mearsheimer, “The Case for Partitioning Kosovo,” in *NATO’s Empty Victory: A Postmortem on the Balkan War*, ed. Ted Galen Carpenter (Washington, D.C.: CATO Institute, 2000), 133–138.
- <sup>38</sup> Such solutions for divided societies are, for example, suggested by consociational theories. See Arend Lijphart, *Democracy in Plural Societies* (New Haven, Conn.: Yale University Press, 1977).
- <sup>39</sup> For a comparison of Sudan and Iraq, see Brendan O’Leary, “The Federalization of Iraq and the Break-up of Sudan,” *Government and Opposition* 47 (4) (2012): 481–516. Some politicians and analysts have suggested the partition of Syria; see James Stavridis, “It’s Time to Seriously

- Consider Partitioning Syria,” *Foreign Policy*, March 9, 2016. Similarly, some argue that partition could have been a solution to the conflicts in Rwanda and Burundi; see Makau Mutua, “The Tutsi and Hutu Need a Partition,” *The New York Times*, August 30, 2000, <http://www.nytimes.com/2000/08/30/opinion/the-tutsi-and-hutu-need-a-partition.html>.
- <sup>40</sup> Felbab-Brown, “Organized Crime, Illicit Economies, Civil Violence & International Order”; and William Reno, “Fictional States and Atomized Public Spheres: A Non-Western Approach to Fragility,” *Dædalus* 146 (4) (Fall 2017).
- <sup>41</sup> Conrad Schetter, Rainer Glassner, and Masood Karokhail, “Beyond Warlordism: The Local Security Architecture in Afghanistan,” *Internationale Politik und Gesellschaft* 2 (2) (2007): 136–152. See also Romain Malejacq, *Neo-Chiefs in the International State System: Power Strategies and Authority in Afghanistan* (Ph.D. diss., Northwestern University, 2013).
- <sup>42</sup> Thomas Barfield, *Afghanistan: A Cultural and Political History* (Princeton, N.J.: Princeton University Press, 2010).
- <sup>43</sup> Similarly, foreign intervention to affect durable regime change rarely leads to democracy. Alexander B. Downes and Jonathan Monten, “Forced to Be Free? Why Foreign-Imposed Regime Change Rarely Leads to Democratization,” *International Security* 37 (4) (2013): 90–131. See also David Edelstein, *Occupational Hazards* (Ithaca, N.Y.: Cornell University Press, 2008).
- <sup>44</sup> Ken Menkhaus, “Governance without Government in Somalia: Spoilers, State Building, and the Politics of Coping,” *International Security* 31 (3) (Winter 2006/2007): 74–106; William Reno, *Warlord Politics and African States* (Boulder, Colo.: Lynne Rienner, 1998); and Reno, *Warfare in Independent Africa*.
- <sup>45</sup> Stephen Biddle, “Building Security Forces & Stabilizing Nations: The Problem of Agency,” *Dædalus* 146 (4) (Fall 2017).
- <sup>46</sup> Tanisha M. Fazal, “Religionist Rebels & the Sovereignty of the Divine,” *Dædalus* 147 (1) (Winter 2018).
- <sup>47</sup> Anke I. Bouzenita, “The Siyar – An Islamic Law of Nations?” *Asian Journal of Social Science* 35 (1) (2007): 19–46.
- <sup>48</sup> Majid Khadduri, “Islam and the Modern Law of Nations,” *The American Journal of International Law* 50 (2) (1956): 358–372; Majid Khadduri, “The Islamic System: Its Competition and Co-Existence with Western Systems,” *Proceedings of the American Society of International Law* 53 (1959): 49–52; Majid Khadduri, “The Impact of International Law upon the Islamic World Order,” *The American Journal of International Law* 66 (4) (1972): 46–50; and James P. Piscatori, *Islam in a World of Nation-States* (New York: Cambridge University Press, 1986).
- <sup>49</sup> Rifaat Abou-el Haj, “The Formal Closure of the Ottoman Frontier in Europe: 1699–1703,” *Journal of the American Oriental Society* 89 (3) (1969): 467–475.
- <sup>50</sup> The concept of a caliphate itself is open to multiple interpretations. “In the Sunni community there was no universally accepted doctrine of the ilāfa [caliphate]. . . . The ilāfa is that form of government which safeguards the ordinances of the Sharia. . . . So long as that principle is applied, there may be infinite diversity in the manner of its application.” H. A. R. Gibb, “Some Considerations on the Sunni Theory of the Caliphate,” in *Archives d’Histoire du Droit Oriental*, vol. 3 (Paris: Librairie Orientaliste Paul Geuthner, 1947), 409.