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**Sovereignty in contested states:  
new models a challenge to Westphalian absolutism?,**

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## **Introduction**

Debates on the changing nature of sovereignty in the post Cold War world have left many diplomats, military planners and academics uninterested. The debate has been widely treated as something of 'purely theoretical' appeal with little or no application in the real world. There has been until relatively recently too large a gap between the post-structuralist debates on international relations theory and the more empirically based literature on conflict resolution and changing forms of governance. This is unfortunate as it weakens both sets of debates. The evidence of emerging models of sovereignty in actual use by political actors, or implied in the pragmatic compromises made or being actively discussed by political actors in contemporary nationalist politics and in peace making processes, fundamentally challenge the absolutist conception of sovereignty. The traditional Westphalian model of sovereignty, based on absolute monopoly of internal force and absolute recognition of external borders (subject only to very limited universal human rights provisions) still forms the basis of the positivist legal definition of sovereignty but it is being increasingly departed from when pragmatic compromises are being negotiated to resolve nationalist conflicts in the post Cold War world.. In this context maintaining the fiction of traditional sovereignty, while perhaps comforting to voters skeptical of globalization or regional integration, actually hampers our capacity to construct models of governance appropriate to serious ethnic conflict or areas of contested sovereignty.

Refusing to recognize the 'actually existing' variety and flexibility in models of sovereignty within the modern state system creates and reinforces a number of problems. Firstly, it promotes a model of international society which by definition says to political actors in a conflict that an offer in negotiations of anything less than traditional absolute sovereignty is a second-class offer, while in fact it may well offer them substantially the same level of 'self-determination' and 'sovereignty' as the traditional model offers in practice. If, however, the theory of absolute sovereignty grounded in a single state is the only model on offer, and the view is maintained that it represents the 'real' norm of international society, then we are often faced with choices between ever smaller partitioning to create mono-ethnic states (with large scale population movements in most cases) or models of minority rights, which seek to sharply divide sovereignty and internal equality and effectively 'buy off' nationalist

demands with promises of social economic and cultural minority rights within a larger integrated state. Neither of these options offers a very bright future. Regional integration may well create the conditions for the successful transformation of autonomous regions with ambitions for independence into states within regional blocs, such as Scotland and Quebec which are discussed below, but there are clear limits to this approach and not all territories offer such geo-political solutions.

The impact of minority rights approaches on the other hand is severely limited by the incomplete nature of even the strongest supranational legal frameworks, in the European Union (EU) and the European Convention on Human Rights (ECHR). The British Government has for example on many occasions, especially in relation to Northern Ireland, asserted its national interests over any individual rights guaranteed by European institutions.<sup>1</sup> Such forms of citizenship will also be limited by the very strong individualistic flavour of EU and ECHR citizenship protections, which will have less influence when a group focus is required. Paul Close looks at what he perceives to be an embryonic 'group rights' ethos in the ECHR but recognizes that realpolitik will ensure its limited application.<sup>2</sup> Indeed on issues of sex-equality, the European (EU) Court of Justice seems to be moving against women-focused affirmative equality policies towards more universalist judgments. If EU and ECHR decisions are to be based on individualistic and 'free market' universalistic criteria then their impact on any subordinated group will be limited.

International minority rights law is also specifically framed in terms of the protection of individuals belonging to groups.<sup>3</sup> It does not establish rights for communities, or rights which can be easily measured or tested on a community wide basis. Neither at present is it an effective method of enforcement, even at the individual level. In this context it is difficult to envisage judgments on minority rights being very effective remedies for minority ethno-nationalist communities who feel excluded or dominated within their existing states. Therefore models of citizenship

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<sup>1</sup>*Irish Times*, 28 September 1995, has extensive coverage of British Government reaction to decisions by the ECHR on the 'Gibraltar' case, where the Court found the British Government to have breached the Convention by killing three unarmed IRA members in Gibraltar

<sup>2</sup> Paul Close, *Citizenship, Europe and Change*, Basingstoke: Macmillan, 1995:89-91.

<sup>3</sup>The United Nations *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* 1992, has no legal force and there is no monitoring mechanism.

The Council of Europe *Framework Convention for the Protection of National Minorities*, 1995 is not judicable in the ECHR. The European Convention on Human Rights itself is based strongly on individual rights.

and sovereignty which rely exclusively of offering internal ‘minority’ rights to disaffected communities mobilized on a nationalist basis are unlikely to form the basis of successful negotiations.

Basing citizenship on international minority rights law also has the weakness that it explicitly treats nationalists in a contested region as a minority of the dominant state. The international declarations on minority rights are strongly framed in a context of settled and agreed state boundaries. They are offering ‘minority rights’ as a permanent alternative to constitutional change. This is not a form of citizenship which nationalists in ‘minority’ groups within a contested state would readily accept and indeed a core element of any conflict resolution approach will need to acknowledge the contested nature of the state, and incorporate it into the framework of citizenship. Sovereignty frameworks need to avoid absolutist principles designed to reaffirm a particular ‘national’ view of sovereignty. Solutions to contemporary nationalist and ethnic conflicts need to meet peoples’ real demands for self-determination, while seeking to uphold potentially conflicting rights in some sort of just and equitable world order. This requires a model of sovereignty which is more adaptable and more flexible than that described in the traditional texts of international relations.

The acceptance of a changing and more flexible model of sovereignty does not require the straw argument that the Cold War or earlier periods represented an actually existing model of absolute sovereignty.<sup>4</sup> The classical model of a state centred world and absolute sovereignty clearly never represented the real post-war world. It certainly did not represent the reality of small states’ decision-making processes, which were nearly always framed within a pragmatic recognition of the limitations of independence. Post-colonial states, large and small, usually achieved independence in adverse circumstances with many external impediments to autonomous decision-making. Furthermore, security and intervention decisions during the cold war saw a high level of covert operations and use of proxy forces by the superpowers, which at one level make the contemporary debates on sovereignty and intervention seem ahistoric, even allowing for the important distinction between covert intervention and open formal intervention by international organizations.

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<sup>4</sup> J. Samuel Barkin and Bruce Cronin set out a useful historical overview of the wide-ranging models of sovereignty in the post Westphalian world, in ‘The State and the Nation: Changing Norms and the Rules of Sovereignty in International Relations’, *International Organisation* 48(1): 107-130.

There was no 'golden age' of clear UN mandates<sup>5</sup>, terms of reference were often political compromises or holding operations leaving little room for long-term peace building. While the pace of globalization has certainly quickened and has created a qualitatively different political world there can be little argument with the view that conflict and conflict resolution has frequently breached the idea of absolute state sovereignty as a principle of inter-state relations.

The debate on 'shared-sovereignty' has to date been focused largely on the process of European integration. This chapter seeks to widen that debate to other crucial arenas of international politics and examines three areas where traditional assumptions about sovereignty are clearly inadequate to explain contemporary developments. Firstly it examines the emergence through the 1980s and 1990s of new models of sovereignty from the constitutional nationalist parties in Quebec and Scotland. Though as yet unimplemented in either place and still representing a minority view (if just so in Quebec) the modern party programmes of Parti Québécois (PQ) and the Scottish National Party (SNP) represent a novel and 'non-traditional' approach to resolving the contest over sovereignty with their Canadian federal/British states. The second section looks at the proposals which have been made by the international community to resolve the conflict in Kosovo at the pre-bombing conferences in Rambouillet, France and more recently as incorporated into the, United Nations imposed, Constitutional Framework of 2001. Neither the Rambouillet proposals or the present Constitutional Framework could be construed as representing a traditional Westphalian model of state sovereignty and yet they were drafted and in the later case imposed with the support of the worlds most powerful states and the wider international community. Finally and perhaps in the strongest actually existing example to date, the 1998 peace agreement in Northern Ireland, which for all its faults and the perpetual crisis since its signing offers an agreement and a process which goes far beyond an internal power-sharing consociational solution<sup>6</sup>, both in the compulsory structures of external association and in the relatively novel guarantees of citizenship rights to Irish nationalists in Northern Ireland, without requiring them to hold any duty of allegiance or loyalty to the British state.

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<sup>5</sup> Fred Halliday 'Peace Process in the late twentieth century: a mixed record' in Michael Cox, Adrian Guelke and Fiona Stephens eds., *A farewell to arms? From Long War to Long Peace in Northern Ireland*, Manchester: Manchester University Press, 2000.

<sup>6</sup> As drawn from the work of Lijphart. See for example Lijphart, Arend (1977). *Democracy in plural societies : a comparative exploration*. New Haven : Yale University Press.

## **Cosmopolitan Nationalism and flexible sovereignty**

The upsurge in nationalist political activity in the immediate aftermath of the Cold War was initially interpreted as part of the process of collapse<sup>7</sup>. Debates centred on the extent to which prior nationalist movements helped weaken the Soviet system or if the collapse itself simply allowed opportunists to declare themselves nationalists in the manner of the *Nomenklatura* nationalist parties. More recent debates heavily influenced by the wars of dissolution in Yugoslavia have placed nationalist politics in clear opposition to the wider processes of globalization, with impact and consequences throughout the world. Nationalist movements are to a large extent analyzed as particularist, in opposition to cosmopolitans or globalists<sup>8</sup>. While there clearly are nationalist movements who constitute themselves in this way - not only in the Balkans but among the far right in Western Europe. It is not the only model of late twentieth century nationalism. Tracing the attitude of West European separatist movements to European Integration we can see a sharp shift in attitude among some of the more successful long-standing nationalist movements to the EU in particular and to their definition of 'independence' and sovereignty in general. (This is not in any way to deny the parallel existence and indeed growth of far-right anti-integration nationalist parties, though many of them do not have the same historic roots).

## ***Scottish Nationalism and Globalization***

The Scottish National Party opposed Britain's entry to the European Economic Community, as did the Welsh nationalists Plaid Cymru and indeed in Northern Ireland the Ulster Unionist Party, the Democratic Unionist Party and both of the then existing factions of Sinn Féin. The SNP clearly saw the European Economic Community as a supranational if not imperialist institution which would 'simply' replace London rule with a mix of London and Brussels rule. The EEC was analyzed as a threat to culture and economic position. It was perceived to worsen their position vis a vis self-determination and Scottish sovereignty. This position slowly changed through the

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<sup>7</sup> Zvi Gitelman ed., *The Politics of Nationality and the Erosion of the USSR*, Basingstoke: Macmillan, 1992.

<sup>8</sup> e.g. Mary Kaldor, *New and Old Wars: Organized violence in a Global Era*, Cambridge: Polity, 1999.

1980s to one where the SNP is now strongly in favour of European Integration<sup>9</sup> in general and of the European single currency in particular and argues that small nations have had a positive experience in the EU compared to small nations within the 'British Union'.<sup>10</sup> Their election slogan of 'Independence in Europe' emphasizes how central the EU has become to their overall political strategy.

Opinion polls in Scotland show a similar response. While there has been a somewhat varied level of support for Scottish Independence over the years, if a survey question specifically asks a respondent if they support 'independence within the EU' the positive response is higher than in surveys which simply ask about support for 'independence'. Perhaps more strikingly, if a single survey repeats the question with and without the EU reference the 'independence in Europe' question will almost inevitably get the larger positive response.<sup>11</sup> The logic of the SNP position here is that the British state is now too large to be a source of identity for the Scottish people and too distant to reflect their political ambitions but also too small to perform useful economic, monetary and security functions. It is now relatively clear what political decisions might be made in Edinburgh; there are also a body of decisions which will be made in Brussels (or at the World Trade Organization or the United Nations). What is less clear, say the SNP, is what decisions about Scotland, if any, can be most usefully made in London.

The imagery of Ireland in recent Scottish elections presents an interesting picture of Scotland's image of itself as a potential small state. In the mid-1980s when the Irish economy was in deep crisis, the Republic of Ireland featured rarely in the discourse of Scottish politics and when it was introduced it was usually by Conservative politicians pointing to the fate which faced an independent Scotland - of higher unemployment, emigration and debt. In the most recent Scottish elections the SNP have made Ireland a positive feature of their campaign, not in a simple successful break-away from Britain argument, but in arguing how smaller states with control of some key aspects of macro-policy can respond more flexibly and more successfully to the processes of globalization than peripheral regions of larger states. Michael Keating drawing on Latouche has argued in the context of Quebec that neo-

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<sup>9</sup> Press Release at SNP launch of European Parliament Election Campaign. 27 May 1999, on [snp.org.uk](http://snp.org.uk) [5 November 2000].

<sup>10</sup> Alex Salmond 'Scotland and Ireland', *Scottish Affairs* 25: 68-77, p. 70-1.

<sup>11</sup> e.g. Brown, Alice et al *The Scottish electorate: the 1997 general election and beyond*. Basingstoke: Macmillan Press, 1999 surveys summarised at p.147.

corporatist responses to globalization are strongest when there is a shared culture<sup>12</sup> and to the extent that social-partnership is one of the defining differences between Irish and British policy making there is some weight to the SNP position. In pointing to the Irish macro-policy making model based on an open economy and Foreign Direct Investment, but also a highly institutionalized form of social concertation,<sup>13</sup> the SNP are looking to a comparative model which draws on their rhetoric about a distinct Scottish form of politics which is more consensus seeking than the Westminster model and the anti-concertation approach at the level of the British state. It is however also a model which would manage their interaction with a globalizing world rather than try to oppose the process or seek to withdraw from it. There are clearly a number of factors which collectively explain the current strength of the SNP, not least of which is the legacy of Thatcherism. However, contemporary Scottish nationalism rests on a vision of itself which is not only at ease with European integration and a globalized economy but which positively uses those processes to argue the case that now more than ever Scottish independence is a viable prospect and that Scottish independence does not require withdrawal from, or opposition to, strong supranational institutions – institutions which are significantly stronger than the EEC which the SNP opposed up to the 1980s.<sup>14</sup>

### ***Quebec, Sovereignty and Globalization***

The development of Parti Québécois' (PQ) nationalist vision in recent years follows a similar non-particularist route. While coming from a background where English speakers were barely seen as fellow citizens of Quebec and certainly had more limited cultural rights, the contemporary PQ strategy is to stress very strongly the inclusive vision of citizenship it espouses. While obviously committed to maintaining a French speaking public culture the relaxation of language laws, some

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<sup>12</sup> Francisco Aldecoa and Michael Keating eds., *Paradiplomacy in Action: the foreign relations of subnational governments*, Portland OR and London: Frank Cass, 1999, p. 4.

D. Latouche 'Quebec, See Canada: Quebec Nationalism in a new global age, in A-G Gagnon ed. *Quebec State and Society*. Toronto: Methuen, 1984.

<sup>13</sup> Peadar Kirby *The Celtic tiger in distress : growth with inequality in Ireland*. Basingstoke, Hampshire; New York, NY : Palgrave, 2002, for a more critical Irish reflection on recent Irish economic and social performance than the image used by Scottish nationalists.

<sup>14</sup> Survey confirmation of the strong pro-European integration views of SNP members of both the British House of Commons and the Scottish Parliament in a comparative study, Baker, David, Nick Randall and David Seawright 'Celtic Exceptionalism? Scottish and Welsh Parliamentarians Attitudes to Europe, *The Political Quarterly* p.211-226, 2002.

loosening of restrictions on English language education and in particular the rapid response of the party to the outburst of its leader against English speakers and immigrants in the aftermath of the defeat of the 1995 autonomy referendum<sup>15</sup> shows a party committed to an inclusive nationalist programme. The party's positive attitude to the North American Free Trade Association (NAFTA), a currency linked to the Canadian Dollar and possible joint citizenship rights with Canada indicates its view of sovereignty is one which would not be recognized in a standard political textbook of even the late 20<sup>th</sup> century.<sup>16</sup> It could be argued that parties like PQ and the SNP and indeed the Catalans are no longer really nationalist-separatist parties in the traditional sense but simply regional-autonomy parties. Yet a state such as the United Kingdom with a political rhetoric which is very strong on British sovereignty and national interest, is part of a much more highly developed political union and economic bloc than NAFTA is likely to become in the foreseeable future, is considering abandoning its own currency to join the euro and has had since the Treaty on European Union a concrete concept of EU citizen. If PQ is not a nationalist movement, then is the United Kingdom no longer a state?

PQ and the SNP probably have the most highly developed strategies in this regard and this is probably not unconnected to the prospect that they might indeed realize their political ambitions before too long. They are not the only exceptions however to a rule which places nationalist politics in a particularist, exclusionary and anti-integrationist camp. Certainly Plaid Cymru in Wales, the *Convergència Democràtica de Catalunya* (CDC) in Catalonia, the *Partido Nacionalista Vasco* in the Basque Country, the SDLP and to a lesser extent Sinn Féin in Ireland in recent years have a vision of national self-determination which is not hostile to European Integration, which is open to a more global world and which certainly proclaims a concept of sovereignty which is less than absolute and which accepts that key economic, monetary and possibly security issues will not be made at the level of the 'independent' state.

Of course there are many, too many, counter examples. I make no attempt to deny the anti-cosmopolitan perspective of other nationalist movements. (Neither of course

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<sup>15</sup> See *Independent* (London) 1 Nov. 1995 for details of PQ premier Jacques Parizeau's attack on English speakers and ethnic minorities and his forced resignation within 24 hours

<sup>16</sup> See *The Guardian* (London) for details and also *Financial Post* (Toronto) 9 Sept. 1995; *Toronto Star* 24 Mar. 1995 for details and critical comment.

have the SNP or PQ ever advocated the violent overthrow of the state.) The argument is that there is diversity. There is no deterministic relationship between a nationalist, even a separatist position and anti-cosmopolitan ideologies which insist on the absolute autonomy and sovereignty of independent states. Furthermore the more successful nationalist movements within liberal democracies have political strategies which positively embrace national self-determination in circumstances which would see them share their sovereignty with regional organizations and even with their 'old enemy'. Sovereignty for these movements is not seen in the absolutist visions of the nineteenth century or in the state-centred views of Realist authors but rather in a more multilayered and dynamic format combining function and symbolism to promote political goals and self-determination while recognizing the strong globalizing and regionalizing pressures in economics, politics and culture.

### **Flexible Sovereignty and Conflict Resolution in Kosovo**

The question of sovereignty has featured very significantly in the debate on Kosovo but almost exclusively around the issue of the NATO bombing of Serbia.<sup>17</sup> The extent to which that action represented a new chapter in the meaning of sovereignty in creating a precedent for open and declared military intervention for 'humanitarian' purposes is yet to be determined. There is another aspect to the Kosovo conflict which also raises far-reaching questions and that is the nature of the Rambouillet Draft Agreement and the 2001 Constitutional Framework. If, as seems likely, a medium term 'solution' to the Kosovo conflict as offered to the Kosovars by the EU or the wider international community is not an independent state but some variation of the *Rambouillet* accord and the current Constitutional Framework, the provisions of those documents represent a clear indication of current thinking within the international community and a model that was at least acceptable to many of the key actors in the region apart from the Serbs at *Rambouillet*. This type of thinking was reinforced by proposals from the German and French governments in early 1999 for UN or EU protectorate status for Kosovo within the Yugoslav federation. In many ways Bosnia and Kosovo have become protectorates in practice even if their long-

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<sup>17</sup> E.g. ME O'Connell 'The UN, NATO and international law after Kosovo', *Human Rights Quarterly* 22(1): 57-89.

term future remains unclear. While overtaken by events and the subsequent bombing of Yugoslavia, the *Rambouillet* accord is worth analyzing as it represented a serious proposal, supported by the major world powers, which fundamentally violated the normal rules and definitions of sovereignty as articulated in the Westphalian model.

The opening framework section of the *Rambouillet Draft Agreement* raises questions of status immediately by referring to ‘citizens *in* Kosovo’, and not Yugoslav citizens in Kosovo or citizens *of* Kosovo.<sup>18</sup> The preamble to the constitution drafted in Chapter one of *Rambouillet* sets out the objective of establishing ‘institutions of democratic self-government in Kosovo grounded in respect for the territorial integrity and sovereignty of the Federal Republic of Yugoslavia and from this Agreement, from which the authorities of governance set forth herein originate’. While the territorial integrity and sovereignty of Yugoslavia is respected explicitly, this sovereignty is not exclusively derived from the ‘people of Yugoslavia’ but also from the *Rambouillet* Agreement and its provisions. Under the constitution, the Yugoslav people do not have the right to take decisions while are in violation of the Agreement<sup>19</sup> and disputes about interpretation were to be determined by the Chief of the Implementation Mission and not by the Yugoslav (or other) courts.<sup>20</sup> There are also explicit provisions in the Agreement limiting the deployment of the Yugoslav Army<sup>21</sup> and Interior Ministry Troops<sup>22</sup> and prohibiting the declaration of martial law<sup>23</sup>. There are further clauses protecting the right of national communities in Kosovo to use their own communities’ language and national symbols. There was finally to be an international conference to determine a mechanism for a final settlement for Kosovo, on the basis of ‘the will of the people, opinions of relevant authorities, each Party’s efforts regarding the implementation of this Agreement, and the Helsinki Final Act’.

The provisions of *Rambouillet* are certainly open to a number of interpretations and the extent to which they reflected potential outcomes or were simply a prelude to the NATO bombing is open to debate.<sup>24</sup> However much of the debate on the extent to

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<sup>18</sup> Article 4. Full text of Agreement is available at <http://www.monde-diplomatique.fr/dossiers/kosovo/rambouillet.html>

<sup>19</sup> Framework, Article 6

<sup>20</sup> Chapter, 5:5

<sup>21</sup> Chapter 7:4

<sup>22</sup> Article 6

<sup>23</sup> Framework, Article 8

<sup>24</sup> See for example Ivo H Daadler and Michael E O Hanlon *Winning Ugly, NATO's war to save Kosovo*, Brookings Institute Press, 2000; Michael McGwire ‘Why did we bomb Belgrade?’, *International Affairs* 76(1), 2000; Marc Weller ‘The Rambouillet Conference on Kosovo’, *International Affairs* 75(2), 1999; Javier Solana ‘NATO's success in Kosovo’, *Foreign Affairs* Nov/Dec 1999.

which *Rambouillet* was designed to be rejected and hence to isolate the Serbs, focused on the demands therein to deploy NATO troops throughout Yugoslavia. The political provisions of *Rambouillet* can be taken more seriously as a long term perspective, not only because of the support they received at that time but also because many of the concepts are repeated in the governance provisions imposed by NATO and the UN after the bombing. This is re-iterated in UN Security Council Resolution 1244 (1999), the G8 proposals set out in Petersburg, Germany in May 1999,<sup>25</sup> and the Constitutional Framework itself. The UN Security Council resolution, while repeating ‘the commitment of all Member states to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia’, explicitly states that the new international civil presence in Kosovo will promote ‘substantial autonomy and self government in Kosovo’ ‘taking full account of ... the Rambouillet accords’. This phrase was also used by the G8 statement in May 1999 and was accepted by the government of Yugoslavia in June 1999. The phrase and the G8 document are included in the Security Council resolution, as appendices.

The Constitutional Framework of 2001 is an even stronger example, as it is an actually functioning system of governance, sanctioned by the United Nations and accepted, even if not welcomed, by the local parties. While the Constitutional Framework is explicitly transitional it will almost inevitably form the basis for any new constitutional document which may be adopted in the near future. More traditional sovereignty models, involving Kosovo independence, re-integration with Serbia or partition are at present highly unlikely to gain the support of the international community and none of the local actors have the power to secure such an outcome.

The 2001 Constitutional Framework receives its mandate from Security Council Resolution 1244. The Constitution explicitly states that the institutions of self-government shall ‘exercise their authorities consistent with the provisions of UNSCR 1244 (1999)’<sup>26</sup> and affirms the ‘ultimate authority of the Special Representative of the Secretary General (SRSG) for the implementation of [1244]’. Throughout the Constitutional Framework the authority of the SRSG to intervene is affirmed<sup>27</sup>. There is also a long list of areas reserved to the SRSG including ‘external relations’ and

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<sup>25</sup> 6 May 1999, see newspaper ??? 7/8 May 1999

<sup>26</sup> Chapter 2a

<sup>27</sup> e.g. Chapter 4.6 to protect the ‘rights of Communities’.

‘concluding agreeing with states and international organizations in all matters within the scope of [1244]’.<sup>28</sup> Interestingly the Constitutional Framework, unlike the Rambouillet Draft Agreement, does not mention Kosovo’s relationship with Yugoslavia/Serbia. It is simply described as an ‘entity under international administration’<sup>29</sup> and ‘an undivided territory’<sup>30</sup>. While the document, by implication, recognizes the territorial integrity of the Federal Republic of Yugoslavia / the Union of Serbia and Montenegro in relying on Resolution 1244 it is not made explicit, within the document itself as might be expected.

The *Rambouillet* model of sovereignty is incompatible with traditional models, unless it is seen purely as a stepping-stone to independence. Yet the international community in their formal resolutions and in their practice have shown no support for such an outcome. The main problem with moving away from the current ‘provisional’ status quo is that there is no agreement on what else to do. *Rambouillet* was adopted as a pragmatic and transitional document. It has now become a semi-permanent framework. The Yugoslav Government may have had minimal international recognition of their borders, including Kosovo, in the document and the related security council resolutions but Kosovo was clearly so recognized in a technical sense only and the international bodies and governments who were party to the Rambouillet negotiations and the later UN resolutions and actions clearly reserved the right to interfere in the ‘internal’ affairs of Yugoslavia. The government of Yugoslavia / Serbia cannot freely deploy security forces, police forces, declare martial law or control the courts. They have no effective authority within Kosovo and cannot even control the public cultural symbols used by state institutions (though the SRSG does retain a veto in this area). The implementation bodies including the UN and NATO are also acting as international guarantors to the Agreement, with a clear threat of intervention if the Accord was breached. In considering the real basis of sovereignty whether judged by an internal monopoly on the use of violence or in terms of broad legitimacy of right to govern it is clear that Yugoslavia (and now Serbia) have had little real sovereignty over Kosovo. However neither is Kosovo a defacto independent state. It is something else and our conceptualizing of sovereignty needs to catch up with reality in this area.

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<sup>28</sup> Chapter 8 lists all the reserved areas.

<sup>29</sup> Chapter 1.1

<sup>30</sup> Chapter 1.2

## **The 1998 Belfast Agreement<sup>31</sup>**

The Good Friday Agreement of 1998 is the most developed example to date of enshrined ‘flexible sovereignty’. The Agreement does not represent Joint Sovereignty as the Agreement clearly asserts (but only it must be said in an Annex) that Northern Ireland remains part of the UK. The main body of the text uses the open-ended phrase ‘the sovereign government with jurisdiction there’. Nonetheless the provisions of the 1998 Agreement establish a system of inter-locked institutions and a basis for sovereignty and citizenship which go far beyond most previous agreements of this nature.

Even though the Northern Ireland Assembly and Executive have been regularly suspended by the British Government – against the letter and spirit of the Agreement according to some analysts<sup>32</sup> – and they remain suspended at time of writing, some institutional elements such as the new cross-border bodies remain in existence and formal and regular meetings between the Irish and British Governments continue. Furthermore, the major institutional elements of the 1998 Agreement will remain in any future agreement. Disputes between the parties have largely focused on other issues such as IRA weapons, police reform, and the deployment of British troops out of Northern Ireland. The model of governance and sovereignty, supported at the time of signing by the Irish and British Governments, the US administration, the European Union and much of the wider international community is likely to remain essentially unchanged in any future deal which re-establishes any local political institutions.

There are a few elements of the 1998 Agreement that do not fit into a traditional model of sovereignty. The British Government has accepted that its sovereign power in Northern Ireland is based on the support of a majority there and not on the will of the wider British public. If a majority in Northern Ireland vote for Irish Unity, the British Government is committed to legislating for that. (A commitment it has yet to make with regard to Scotland interestingly). The devolved Assembly in Northern

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<sup>31</sup> Full Text of Agreement available on the website of Dublin City University’s Centre for International Studies: <http://www.dcu.ie/~cis/Agreement.htm>

<sup>32</sup> O’Leary, Brendan, ‘Agreement is not Devolution in Unitary State’, *The Irish Times* 11 October 2001.

Ireland is strongly linked to the ‘all-Ireland’ North-South Ministerial Council. The Agreement states that ‘they are mutually interdependent’ and that ‘one cannot successfully function without the other’. Participation by Ministers in the North-South Council is ‘one of the essential responsibilities ‘ of Ministers<sup>33</sup>. While nationalists, especially Sinn Féin, strongly supported the North-South body they had opposed the creation of any Northern Ireland assembly until the final stages of the negotiations. In contrast the Unionists strongly supported a devolved assembly within Northern Ireland but opposed cross-border bodies. By locking the two together, political actors had only a single choice, to accept the entire package or reject it in its entirety. The motivations of the actors in finally reaching agreement is the topic of another paper<sup>34</sup> but the design of the agreement certainly aided a comprehensive agreement and helped to prevent cherry picking.

Analyses of the Agreement which seek to minimize the North-South Council and place it on a par with the Nordic Council are missing one of the essential elements of the Agreement. Neither the Northern Ireland Executive nor the British Government has a monopoly of authority or sovereignty, unless they use their ultimate power to collapse the Agreement. All actors are required by the structure of the Agreement itself to operate the institutions and to do so within certain limits. The Swedish Government is not required to have cross-border bodies with other Nordic states even if it chooses from time to time to create such bodies. More significantly if the Finnish Government withdraws from the Nordic Council, the Finnish Government and Parliament does not collapse.

The more ‘internal’ elements of the Agreement also challenge some of the traditional assumptions about sovereignty and citizenship. The Agreement guarantees the right of people in Northern Ireland to hold Irish or British citizenship. It also guarantees full equality of citizenship, without requiring nationalists to give allegiance to the state or loyalty to the government. In this regard one of the central, if often unspoken assumptions of modern citizenship is breached. Citizenship rights are often preceded by duties, especially the duty to give allegiance to the state and to defend it

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<sup>33</sup> Art. 4.2.

<sup>34</sup> For further background on the negotiations and the Agreement see for example John Doyle ‘Citizenship in Contested States Post 2000: The Northern Ireland Peace Agreement and its Global Implications’ pp. 173-196, in Sai Felicia Krishna-Hensel (ed.) *The New Millennium: Challenges and Strategies for a Globalizing World*. New York: Ashgate, 2000.; and John Doyle ‘Towards a Lasting Peace’? : the Northern Ireland multi-party agreement, referendum and Assembly elections of 1998’, *Scottish Affairs*, no. 25: 1-20, 1998.

in time of need. This has been dispensed with despite a long standing unionist insistence that nationalists could not demand power-sharing or further moves towards equality in Northern Ireland unless they showed at least minimal allegiance to the state - often expressed in the demand that ministers at least hold British passports and that parties support the RUC.<sup>35</sup>

The strength of the Agreement is that it does not require the building of a middle ground where none, or almost none exists. Neither did it require a sudden conversion by the chief political actors. It introduced a new dynamic into the situation through a sustained period of external intervention and created a new political and constitutional structure which allowed political actors to work the Agreement. Certainly interpretations differ and it is a dynamic process rather than a final status agreement but nonetheless it has at the very least created the potential for peace and progress.

## **Conclusion**

The modern party programmes of the Scottish National Party and Parti Québécois offer models of sovereignty, within enshrined supranational institutions and with acceptance of key aspects of state policy on monetary, trade, citizenship and even security being permanently grounded in international agreements and institutions. Such institutions are not simply the proposed choice of a 'sovereign' government, who might decide otherwise, they are presented as a fundamental part of the sovereignty package – the context within which sovereignty takes place. The negotiations in Kosovo and Northern Ireland have thrown up models of sovereignty where traditional visions of sovereignty may be fudged to create a viable long-term solution. There are clearly other examples of equal strength which it is beyond the scope of this paper to develop. In Bosnia there is a clear need for imaginative solutions to create a space to build a functioning state of Bosnia-Herzegovina based on some form of power-sharing between ethnic blocs while allowing for structured

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<sup>35</sup> James Molyneux, House of Commons, 15 June 1982, vol. 25, col. 781, opposed power-sharing with anyone who 'wanted to belong to a foreign republic'.  
Martin Smyth (UUP) insisted that 'a person ceases to have citizenship when he takes a passport from another state' (House of Commons, 8 June 1982, vol. 25, col. 107).  
David Trimble Speech to the Irish Association, 20 November 1998, [www.uup.org, 9 February 1999], argues that the agreements requires support for the state and the police from those who seek government posts.

links between the Croats and Serbs and their neighbouring states. The weakness of a broader civic identity certainly creates problems in designing functional institutions but it is not insurmountable. The alternative of a crisis-driven partition with no wider agreed structures, with the inevitable impact that would have throughout the region should be sufficient motivation to seek other solutions. There may be a form of stability at present under the protectorate-ship of the international community but it is not a solution and has not led to the development of a viable state structure.

It is possible to analyze the Middle East peace process as an affirmation of traditional sovereignty. Israeli withdrawal from Lebanon and ultimately from the Golan Heights restores state-sovereign boundaries with those countries while partition and Palestinian statehood could be construed in a traditional manner. However the draft agreement for the 'permanent status' negotiations as set out in the Oslo Accord<sup>36</sup> draws a wider picture. It is impossible to see any resolution of issues such as 'Jerusalem, refugees, settlements, security arrangements, borders, relations and co-operation with other neighbors' within the parameters provided by traditional state-sovereignty. Furthermore though not mentioned even in the Oslo Accords the issue of Palestinian citizens of Israel, will need to be addressed in any long-term settlement. Already there is evidence that Palestinians within Israel feel abandoned to some extent by the PLO in a manner reminiscent of nationalists in Northern Ireland after partition<sup>37</sup>. If the permanent settlement leaves them a weak minority in an explicitly Jewish state how might their concerns be addressed? Even in a settlement built around partition there are clear issues which require extra-territorial structures and guarantees. While any future settlement will have to provide for a Palestinian capital in East Jerusalem, the question of Jerusalem is highly unlikely to be resolved around a simple division. Some form of special status which creates a capital city for Palestine without an absolutist statement of sovereignty seems the most likely outcome. Water, refugees and the question of any remaining Israeli settlements within Palestinian territory all require a level of bilateral co-operation as great if not greater than that between two friendly neighbours. To achieve this after years of conflict will require that these issues are built into the structure of the settlement.

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<sup>36</sup> Article 5:3, "Oslo One", Declaration of Principles on Interim Self-Government Arrangements, 13 September 1993

<sup>37</sup> See for example, As'ad Ghanem, 'State and minority in Israel: the case of the ethnic state and the predicament of its minority', *Ethnic and Racial Studies*, 21:3, (1998); Nadim N Rouhana, *Palestinian Citizens in an Ethnic Jewish State: Identities in Conflict*, (New Haven: Yale University Press, 1997)

Flexible models of sovereignty are in actual use in Kosovo and Northern Ireland. They can be empirically seen elsewhere in the programmes of political movements and in pragmatic solutions drafted in situations of conflict and contested sovereignty. Like most such developments the arrangements are ad hoc, occasionally internally conflicting but nonetheless exist. The challenge for the academic discipline is to push the boundaries of our conceptual understanding, to create new models of sovereignty and of citizenship which are flexible enough to meet the challenge of the contemporary world. Not only will this allow us to offer a much more convincing explanation of what is already happening in the world, perhaps more importantly it can also play a role in developing new models of sovereignty which can provide real and meaningful inputs into conflict resolution processes.

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