

MAKING BREAD FROM BROKEN EGGS: A BASIC RECIPE FOR CONFLICT RESOLUTION USING EARNED SOVEREIGNTY

NATHAN P. KIRSCHNER*

I. INTRODUCTION

The idea of state sovereignty is one of the most important and contentious issues in international law. It is an abstract concept that has evolved over time with important effects. Many recent and ongoing conflicts, such as those in Southern Sudan, Georgia, Sri Lanka, the Philippines, Aceh, Iraq, and Bougainville, revolve around the idea of sovereignty. This article examines the concept of earned sovereignty¹ and shows that its core elements taken alone are a step-by-step approach to keeping disputants involved in conflict resolution, while its optional elements are parts of a toolkit to be used in facilitating the step-by-step approach laid out by the core elements of

* Nathan P. Kirschner is an Appellate Attorney with the United States Department of Veterans Affairs, Office of the General Counsel, Professional Staff Group VII. He is a member of the Advisory Council of Public International Law and Policy Group (PILPG). The views expressed in this article are the views of the author alone. The author would like to express his gratitude to Professor Paul R. Williams, Dr. Francesca Jannotti Pecci, and Kristi Barlow for their insightful comments on an earlier version of this article.

1. See generally Paul R. Williams & Francesca Jannotti Pecci, *Earned Sovereignty: Bridging the Gap Between Sovereignty and Self-Determination*, 40 Stan. J. Intl. L. 347 (2004); Paul R. Williams, Michael P. Scharf & James R. Hooper, *Resolving Sovereignty-Based Conflicts: The Emerging Approach of Earned Sovereignty*, 31 Denv. J. Intl. L. & Policy 349 (2003).

the theory. A review of recent practice shows that the core elements of earned sovereignty offer a three-part roadmap for conflict resolution beginning with shared sovereignty, continuing through institution building, and ending at a determination of final status. Other parts of the theory, called optional elements, are tools stakeholders in a conflict situation may use in order to move from one core element to another until a final status solution is obtained. Though the optional elements of phased sovereignty, conditional sovereignty, and constrained sovereignty are parts of earned sovereignty, they need not always be used. In-depth analysis of the peace agreements in Southern Sudan, Bougainville, and Aceh show that, while the core elements are implemented throughout, the optional elements are used to varying degrees and in some instances not at all.

Before delving into earned sovereignty, Part II of this article examines the concept of state sovereignty in international law, finding that it is an important, if complicated, subject, and makes the point that a step-by-step approach to accumulating sovereignty such as earned sovereignty is useful in conflict resolution. Part II concludes by finding that the concept of sovereignty is fluid in practice, and it is this fluidity that makes it particularly useful.

Part III provides a general discussion of earned sovereignty as an important and perfectible concept, using a bread-baking analogy to show the relationships between the core elements and the optional elements. Part IV demonstrates how those relationships are expressed in international practice using Southern Sudan, Bougainville, and Aceh as case studies. Finally, Part V concludes that the core elements alone can provide a pared-down version of earned sovereignty useful in conflict resolution, while the optional elements retain their usefulness as tools to help implement and secure the use of the core elements.

II. SOVEREIGNTY IS ONE OF THE PREMIER ISSUES FACING INTERNATIONAL LAW IN THE TWENTY-FIRST CENTURY

Issues concerning sovereignty of states and substate entities are some of the most important and complex issues debated in the international legal community today. As Lorie M. Graham stated, "Let me just close by saying that in the last six weeks I have heard it twice stated that the defining issue in international law for the [Twenty-First] [C]entury is finding compromises between the principles of self-

determination and the [sic] sanctity of borders.”² Diane Otto agreed that the idea of state sovereignty was one of immediate importance: “There is little doubt that states’ sovereignty is being contested by contemporary developments both locally and supra-nationally.”³

Though scholars may agree that sovereignty is an important concept, discussions of sovereignty are often complicated. Sovereignty has been referred to as:

an imprecise, subjective term, referring to many different belief systems over time. However, sovereignty retains relevance: functionally as an organizing principle, and politically as a symbol of national self-identity.⁴

Dan Sarooshi, who wrote on the relationship between sovereignty and international organizations, affirmed this belief by stating,

[t]he characterization of sovereignty as an essentially contested concept has an important real-world manifestation in relation to international organizations. The concept of sovereignty being inherently unstable and in a constant state of having its core criteria subject to contestation and change has the consequence that there is no single, or indeed authoritative, definition that can be given to the concept.⁵

2. See Lorie M. Graham, *Self-Determination for Indigenous Peoples after Kosovo: Translating Self-determination “Into Practice” and “Into Peace,”* 6 ILSA J. Intl. & Comp. L. 455, 465 (2000).

3. Dianne Otto, *A Question of Law or Politics? Indigenous Claims to Sovereignty in Australia*, 21 Syracuse J. Intl. L. & Com. 65, 100 (1995); see also Helen Stacy, *Relational Sovereignty*, 55 Stan. L. Rev. 2029 (2003). Stacy, in putting forth the concept of relational sovereignty, argues that “[s]overeignty is a concept that reflects both the historic conditions at the time of its initial conception, and the philosophical and intellectual moods of that moment. In other words, the conceptions of sovereignty at the foundation of legal and political theory arose out of the contingencies of history, rather than as the result of any immanent logical necessity in history or in the development of political thought.” *Id.* at 2048.

4. Jenik Radon, *Sovereignty: A Political Emotion, Not a Concept*, 40 Stan. J. Intl. L. 195, 208 (2004). Radon goes on to say that sovereignty is a “critical focal point for an academic exploration” because of the “contemporary controversy surrounding its proper place in world order.” *Id.*

5. Dan Sarooshi, *The Essentially Contested Nature of the Concept of Sovereignty: Implications for the Exercise by International Organizations of Delegated Powers of Government*, 25 Mich. J. Intl. L. 1107, 1110 (2004).

Taken at its most simple, “[t]he basic rule for international legal sovereignty is that recognition is extended to entities, states, with territory and formal juridical autonomy.”⁶

Even if one takes a more complicated view of sovereignty as an abstract concept, as a practical matter, some scholars, including Stephen Krasner, believe that:

[t]oday, stability requires more than maintaining a balance of power among strong states. Safety . . . depends on the ability of the United States and the international community to make sovereignty work—to establish democracies that improve the lives of ordinary individuals rather than of the ruling elite.⁷

It is therefore important to study sovereignty, with all its variation, in order to better understand, prevent, and end conflicts within and among states.

This article bases its arguments regarding sovereignty upon the definition of sovereignty as a bundle of rights, including external and internal governing rights.⁸ It is this idea of sovereignty that allows the theory of earned sovereignty to function.

A. *MOST RECENT CONFLICTS REVOLVE AROUND SOVEREIGNTY*

Many recent and ongoing conflicts concern “the central problem of sovereignty: what are powers reserved to government; who exercises which of them; and how should they be exercised?”⁹ If one

6. Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* 14 (Princeton U. Press 1999).

7. Stephen D. Krasner & Carlos Pascual, *Addressing State Failure*, 84 *For. Affairs* 153, 163 (July/Aug. 2005).

8. Paul R. Williams & Karen Heymann, *Earned Sovereignty: An Emerging Conflict Resolution Approach*, 10 *ILSA J. Intl. & Comp. L.* 437, 443-44 (2004) (“The external sovereign rights may include: 1) The right to territorial integrity; 2) The right to defend the state through the use of force; 3) The right to govern by establishing, applying and enforcing law; 4) Eligibility for international organizations; 5) The capacity to act as a legal entity for owning, purchasing transferring property, etc.; 6) Grant of sovereign immunity for noncommercial activities and consular relations; 7) Capacity to sign international agreements; 8) The duty to respect other nations; and 9) The obligation to abide by international law. A state or sub-state’s internal governing rights may consist of: 1) Taxation; 2) Determining governing structures and political policies; 3) Providing for social welfare; 4) Regulating the judicial system; 5) Creating internal law; and 6) Managing state infrastructures.”)

9. Sarooshi, *supra* n. 5, at 1110-11. On the contestation of sovereignty by

looks at recent and ongoing conflicts, such as those in Southern Sudan, Bougainville, and Aceh, one finds that they revolve around the issues laid out as external or internal governing rights.¹⁰

B. A STEP-BY-STEP APPROACH TO ACCUMULATING SOVEREIGNTY IS
USEFUL IN CONFLICT RESOLUTION

Stakeholders involved in many conflict and newly post-conflict situations often do not know where to begin.¹¹ Once the peace process begins, the parties have no idea how to proceed, and progress is often hampered by unclear, divergent objectives that lead to impasses.¹² In many post-conflict situations, conditions go unmet or important steps fail to take place as scheduled.¹³ “The importance of formulating strategies to keep disputants engaged in settlement processes should not be underestimated.”¹⁴ Recent experience in peace negotiations has proven that keeping the parties engaged in the development and implementation of a peace plan is by far the most difficult challenge.¹⁵ Hence the importance of a guideline like earned sovereignty can be noted.

The parties themselves, regional organizations, international organizations, and nongovernmental organizations (NGOs), often must work together to keep peace negotiations and peace implementation on track.¹⁶ Scholars have proposed, for example, that the United Nations (UN) could “construct positive sanctions to enhance a given community’s sense of identity.”¹⁷ Furthermore, “[i]f the UN placed more faith in reward-based strategies, clearer rules and regulations governing their use will need to be developed.”¹⁸

international organizations in relation to the contestation of sovereignty between Nation-States, Sarooshi believes that these questions are the central problems surrounding the concept of sovereignty. *Id.* at 1110.

10. See Williams & Heymann, *supra* n. 8, at 438.

11. See generally Edward A. Amley, Jr., *Peace by Other Means: Using Rewards in UN Efforts to End Conflicts*, 26 *Denv. J. Intl. L. & Policy* 235 (1998).

12. See generally *id.*

13. *Id.* at 279-80.

14. *Id.* at 281.

15. *Id.* at 281-82.

16. See *id.* at 262.

17. *Id.* at 283.

18. *Id.* at 296.

Earned sovereignty fits into this model of conditional engagement and positive sanctions. The core elements outline a set of steps that show constant rewards for progress in obtaining, and preserving, peace: sharing sovereignty fosters dialogue between the stakeholders; institution building fosters competence in the substate entity and provides both the stakeholders and the international community with assurance of future competency; determining final status of the substate entity, whether it is autonomy, independence, or something else entirely, gives the parties an idea of an ultimate reward, a goal that all parties can attempt to attain.

The optional elements, with the possible exception of constrained sovereignty, keep the parties on track by rewarding them for tasks accomplished during the implementation process. Phased sovereignty rewards the substate entity with increased sovereignty over time. This “timer” on sovereignty rewards the original state with peace for the duration of the phased sovereignty period. It rewards the substate entity with a gradual delegation of authority. It rewards both parties with a period of time in which to continue dialogue and solicit aid from the international community. Conditional sovereignty again rewards the substate entity with increased sovereignty, this time for meeting certain conditions using a quid pro quo arrangement. It rewards the original state with a quid pro quo system that allows the original state to set, to some degree, the conditions necessary for the substate entity to obtain increased sovereignty rights or powers. Finally, constrained sovereignty rewards the substate entity with increased sovereignty, though not independence nor, necessarily, as much sovereignty as it had originally desired. The original state is rewarded with restrictions on the conduct of the substate entity, which could provide, for example, a measure of increased security for the original state.

C. *THE CONCEPT OF SOVEREIGNTY IS FLUID IN PRACTICE*

Numerous articles and books attempt to define sovereignty and statehood.¹⁹ Some even go so far as to argue that sovereignty, by its

19. See generally e.g. Krasner, *supra* n. 6, at 14; Scott Pegg, *International Society and the De Facto State* 187-92 (Ashgate Publ. Co. 1998). Pegg quotes Victor Li, who claims that “[f]rom an *international law perspective*, a *de facto* entity may clearly conduct foreign relations with countries which have not extended *de jure* recognition to it” and that “[*d*]e *facto* states already have some degree of ‘juridically cognizable’ existence.” *Id.* at 189, 192. Pegg also discusses how the status of *de facto* statehood

very nature, is indefinable, and it is that very lack of definition that gives the intellectual discussion surrounding the concept such great importance.²⁰ For example, an article in *The Economist* showed that “many western diplomats think that it is unrealistic for Serbia to retain any kind of link to Kosovo.”²¹ Some are contemplating the idea of conditional independence, which “would break the link with Serbia and replace the present UN mission with a new body that would have considerable reserve powers to keep the province under tight international control for many years to come.”²² Conditional independence, similar to that of earned sovereignty, takes the idea of sovereignty out of its strict historical sense, and lends credence to the theory that a modern idea of sovereignty involves the distribution of a bundle of rights.

III. EARNED SOVEREIGNTY IS AN IMPORTANT AND PERFECTIBLE CONCEPT; OPTIONAL ELEMENTS ARE MEANS TO THE END OF ACHIEVING FINAL STATUS

This section will show that the concept of earned sovereignty, when pared down to the core elements, offers a step-by-step approach to using a reward-based system to keep disputants engaged in peace processes. It will further demonstrate how, in practice, the optional elements are in fact parts of a toolkit to be used in facilitating the step-by-step approach laid out by the core elements of the theory.

A. CORE ELEMENTS: SHARED SOVEREIGNTY, INSTITUTION BUILDING, AND DETERMINATION OF FINAL STATUS AS EGGS, FLOUR, AND BREAD AS AN END PRODUCT

The core elements, outlined in this section, are the indispensable components in the step-by-step process of conflict resolution through earned sovereignty. The first step is delegation of certain responsibilities to the substate entity in shared sovereignty. The second step involves an increase in the capacity of the substate entity to undertake those responsibilities through institution building. Finally,

could be conferred upon Eritrea before independence, Tamil Eelam, the Republic of Somaliland, and the Turkish Republic of Northern Cyprus. *Id.* at 187-92.

20. See Sarooshi, *supra* n. 5, at 1110.

21. *Kosovo's Final Status: Independence Dreams*, 375 *Economist* 51, 52 (June 4-10, 2005).

22. *Id.*

the third step, determination of final status, involves ascertaining a level of responsibility to be exercised by the substate entity that will satisfy the original state, the substate entity, and the international community. The entire process could be analogized to baking bread. The parties must begin with eggs and flour and desire the baking process to result in bread.

1. *Shared Sovereignty: The Eggs*

“Each case of earned sovereignty is characterized by an initial stage of shared sovereignty, whereby the state and substate entity [and possibly the international community] may both exercise some sovereign authority and functions over a defined territory.”²³ Which parties exercise what parts of sovereignty over the substate entity varies from case to case? For example, in Kosovo, though Serbia retains legal sovereignty over the province, sovereign authority has been administered by the UN for years, with some powers delegated to a local government.²⁴ In other situations, such as in Bougainville, sovereignty is shared between the state and the substate entity without any administrative authority being ceded to the international community.²⁵ This still, however, allows for the participation of the international community in a supporting role.²⁶

2. *Institution Building: The Flour*

The substate entity, frequently with the assistance of the international community, “undertakes to construct new institutions for self-government, or modify those already in existence. . . to develop the institutional capacity for exercising increased sovereign authority.”²⁷ This institution building often takes place during the

23. See Williams & Jannotti Pecci, *supra* n. 1, at 355.

24. *Id.* at 358-59.

25. See generally *Bougainville Peace Agreement* (Aug. 30, 2001), http://www.usip.org/library/pa/bougainville/bougain_20010830.html (last accessed Apr. 14, 2007).

26. See e.g. *id.*; *Memorandum of Understanding Between the Government of the Republic of Indonesia and the Free Aceh Movement* (Aug. 15, 2005), http://www.thejakartapost.com/ri_gam_mou.pdf (last accessed Apr. 14, 2007) [hereinafter *MoU*] (specifically the provisions relating to the establishment of the Aceh Monitoring Mission (AMM)).

27. Williams & Jannotti Pecci, *supra* n. 1, at 355.

period of shared sovereignty and sometimes prior to the determination of final status.²⁸ It can come in many forms, from the creation of new administrative organizations, as is currently happening in Southern Sudan, to the modification of already existing institutions, such as the Public Service of Bougainville, discussed *infra*.²⁹ The methods of institution building are determined on a case-by-case basis, taking into account the need for the new institutions to aid in the reconciliation process and possibly implementing confidence-building measures in order to bring a satisfactory settlement to the conflict.

3. *Final Status: Bread as an End Product*

“The third core element is the . . . determination of the final status of the substate entity and its relationship to the parent state,” which is invariably predicated on the approval of the international community evidenced by international recognition.³⁰ This element may be decided at any time during the peace process: before an agreement is signed, in the agreement itself, or after implementation of the agreement.

B. *OPTIONAL ELEMENTS AS MEANS TO ACHIEVING THE END OF FINAL STATUS: THE TIMER, THE YEAST AND COUNTING CALORIES*

In the original presentation of earned sovereignty certain processes deemed optional elements were attached to the core elements, including phased sovereignty, conditional sovereignty, and constrained sovereignty.³¹ Section C, *infra*, will discuss how the optional elements are not specific parts necessary for a conflict resolution scenario to be termed earned sovereignty. Instead, they are tools used to move from one core element to another, eventually arriving at a determination of final status.

1. *Phased Sovereignty: The Timer*

“Phased sovereignty entails the accumulation by the substate entity of increasing sovereign authority and functions over a specified period of time prior to the determination of final status.”³² An example

28. *Id.*

29. *Id.* at 356-59.

30. *Id.* at 355-56.

31. *Id.* at 355, 356.

32. *Id.* at 356.

would be setting a specified time for a referendum on independence and, until the date of the referendum, allowing the substate entity participation in the national government so that it could gain competency and experience within a pre-determined timeframe.³³ Application of phased sovereignty to the conflicts between Sudan and Southern Sudan, Papua New Guinea and Bougainville, and the Republic of Indonesia and the Free Aceh Movement (GAM) are discussed in Section IV.

Phased sovereignty is the timer in the bread-baking analogy. Once the ingredients are mixed—at least two parties, shared sovereignty, and institution building—they are put in the oven of phased sovereignty and the timer is set. While the international community waits, and possibly participates in institution building, the processes that take place eventually produce a final status solution acceptable to all stakeholders.

2. *Conditional Sovereignty: The Yeast*

“Conditional sovereignty may be applied to the accumulation of increased sovereign authority by the substate entity, or it may be applied as a set of standards to be achieved prior to the determination of the substate entity’s final status.”³⁴ The first manifestation of this tool involves a quid pro quo arrangement between the two parties.³⁵ The example of the roadmap to peace in the Israeli/Palestinian conflict springs readily to mind.³⁶ The Roadmap is set out as a “performance-based” plan under which the parties must perform certain obligations in order to ensure progress through the different phases of the plan.³⁷ Failure to comply with obligations impedes progress under the Roadmap.³⁸ The second manifestation of conditional sovereignty involves the substate entity fulfilling a number of criteria, with the

33. See generally the discussion in this article of the Southern Sudan and Bougainville peace agreements *infra*, at 15.

34. Williams & Jannotti Pecci, *supra* n. 1, at 356.

35. See *id.*

36. See UN News Centre, *A Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict*, <http://www.un.org/News/dh/mideast/roadmap122002.pdf> (last accessed Apr. 14, 2007) [hereinafter *Roadmap*].

37. *Id.* at [¶ 1].

38. *Id.* at [¶ 2].

eventual return on their investment being a determination of final status.³⁹

To once again use a cooking analogy, conditional sovereignty is like using certain critical ingredients to make a dish. The quid pro quo aspect is embodied in the idea that if one wants to make chocolate chip cookies one must use chocolate chips. The important factor is the use of chocolate chips. If the baker fails to use chocolate chips, plain cookies result. The second interpretation of conditional sovereignty, which involves fulfilling a number of steps before attaining final status, could be analogized to making an entire three-course meal, advertising chocolate chip cookies as dessert. If the host forgets to add the chocolate chips, the guests may leave disappointed.

3. *Constrained Sovereignty: Counting Calories*

“The third optional element, constrained sovereignty, consists of applying limitations on the sovereign authority and functions of the new state.”⁴⁰ In analyzing instances of constrained sovereignty, it is especially useful to think of sovereignty as a bundle of rights. For an entity to be entirely “sovereign” under the bundle of rights theory, it must possess all of the external and internal governing rights described in Part II. In constrained sovereignty some of the governing rights are not devolved to the substate entity. Instead, they are retained by the original state or, in some instances, transferred to the international community.

In the bread analogy, constrained sovereignty is what happens when the parties bake too little bread. The parties used all the right ingredients, the bread cooked for the appropriate time, and now it is ready to eat. However, there is too little of it. It may be necessary for each party to get less bread than they had hoped in order to ensure that all parties get a piece, whether that decision is taken amongst the parties themselves or imposed by an outside facilitator (the host of the party, to follow the analogy). Most would agree, however, that it is better to have some bread than none at all.

39. See Williams & Jannotti Pecci, *supra* n. 1, at 356.

40. *Id.*

C. *OPTIONAL ELEMENTS ARE MEANS TO THE END OF FINAL STATUS*

The optional elements of earned sovereignty, as outlined above, are therefore tools to facilitate the transition from one core element to another, with the eventual goal of determining an acceptable final status for the substate entity. To continue the analogy above, final status is the ability to eat bread. It is the ability to exercise mutually acceptable levels of whatever may be called “sovereignty” by the state, the substate entity, and the international community.

IV. DEMONSTRATIVE CASES

Earned sovereignty is currently being used, in practice if not in name, in a number of conflict and post-conflict situations around the world.⁴¹ In order to illustrate the breadth of its use and the diverse ways in which its core and optional elements can be used, the peace agreements that have been, and are being, implemented in Southern Sudan, Bougainville, and Aceh will be examined. These conflicts were selected because they resulted in peace agreements that were relatively successful and could therefore serve as guides to the future application of earned sovereignty.

A. *SOUTHERN SUDAN*

The signing of the *Comprehensive Peace Agreement (CPA)* between the Government of Sudan (GOS) and the Sudan People’s Liberation Movement/Army (SPLM/A) marked the conclusion of a twenty-one-year civil war that cost the lives of 1.5 million people.⁴²

As an introduction, it is important to note that the *CPA* is a name given to a collection of other agreements and protocols including, but not limited to, the *Machakos Protocol*, the *Agreement on Security Arrangements*, and the *Protocol on Power Sharing*.⁴³ For that reason

41. See generally *id.*; Karen Heymann, Student Author, *Earned Sovereignty for Kashmir: The Legal Methodology to Avoiding a Nuclear Holocaust*, 19 Am. U. Intl. L. Rev. 153 (2003).

42. BBC News, *Country Profile: Sudan* [¶ 1], http://news.bbc.co.uk/1/hi/world/middle_east/country_profiles/820864.stm (updated Jan. 24, 2007).

43. See *Agreement Between the Government of the Sudan (GOSS) and the Sudan People’s Liberation Movement/Sudan People’s Liberation Army (SPLM/SPLA) on Implementation Modalities of the Protocols and Agreements* (Dec. 31, 2004), http://www.usip.org/library/pa/sudan/cpa01092005/implementation_coversheet.pdf

the *CPA* is the most complicated peace agreement examined in this article, if not one of the most byzantine, drafted in recent history. In order to provide specific examples of the *CPA*'s provisions, particularly as they relate to the theory of earned sovereignty and the concept of sovereignty as a bundle of rights, this article will focus on the *Implementation Modalities of the Protocol on Power Sharing* dated May 26, 2004.⁴⁴ In order to provide for ease of understanding, the author will continue to refer to the agreement generally as the *CPA*.

The *CPA*, specifically the portion noted above, is replete with examples of all the elements of earned sovereignty.⁴⁵ It satisfies the core elements because it contains numerous examples of shared sovereignty and institution building and provides specific means for the determination of final status. The *CPA* also contains examples of all three of the optional elements: phased sovereignty, conditional sovereignty, and constrained sovereignty. Interestingly, and importantly, a number of the provisions do not fit neatly into the above categories. Instead, a number of them are hybrids of two (or more) of the elements that make up earned sovereignty.

The *CPA* contains multiple examples of shared sovereignty.⁴⁶ The process outlined by the parties for drafting an interim constitution

(last accessed Apr. 14, 2007).

44. *Id.*

45. *See id.*

46. *See generally Implementation Modalities of the Protocol on Power Sharing* (May 26, 2004), http://www.usip.org/library/pa/sudan/cpa01092005/implementation_agreement.pdf (last accessed Apr. 14, 2007) [hereinafter *Implementation Modalities of the Protocol on Power Sharing*] (utilizing shared sovereignty in a number of other situations, including the “[e]stablishment of [the] referendum commission,” *id.* at Activity 1(b); the plan for “repatriation, resettlement, reintegration, rehabilitation, and reconstruction,” *id.* at Activity 2; “[e]stablishment of Assessment and Evaluation Commission (AEC),” *id.* at Activity 3; “[i]mprovement of institutions and arrangements created under the Agreement to making the unity of Sudan attractive to the people of Southern Sudan,” *id.* at Activity 4; “[g]uarantees to safeguard agreement against Unilateral revocation or abrogation,” *id.* at Activity 5; the “[n]ational reconciliation and healing process,” *id.* at Activity 7; the “National Population Census,” *id.* at Activity 8; the “[e]nactment of National Electoral Law,” including “[e]stablishment of the National Electoral Commission,” to hold general elections, “[p]residential elections and elections for the post of President of the government of southern Sudan,” *id.* at Activity 9; establishment of the Council of States, *id.* at Activity 11; “[e]stablishment and convening of [the] National Assembly,” *id.* at Activity 12; “[d]etermination of the scope of legislative competency of the National Assembly and the Council of States respectively,” *id.* at Activity 13; “[e]lection of Speakers, Deputy speakers, and other officers of the

is perhaps the most important example.⁴⁷ In April 2005, the National Constitution Review Commission (NCRC) convened to draft the Interim National Constitution (INC), which was ratified on July 6, 2005.⁴⁸ The NCRC is a body made up of representatives of both stakeholders tasked with drafting the interim constitution prior to the election of regional assemblies, particularly in Southern Sudan.⁴⁹ A second equally important example is the institution of the Presidency. Under the terms of the CPA, the institution of the Presidency shall be composed of the President, the First Vice President, and the Vice

National Legislature,” *id.* at Activity 14; “[d]efining the functions of the two Vice Presidents,” *id.* at Activity 16; “[s]pecification of appointments made by the President with the consent of the 1st Vice President,” *id.* at Activity 17; “[m]atters in respect of which the President shall take decisions with the consent of the First Vice President according to the Protocols and Agreements,” *id.* at Activity 20; “[r]epresentativeness of the administration of the National Capital,” *id.* at Activity 21; “[r]epresentation of the people of Sudan in the law enforcement agencies in the National Capital and provision for their adequate training,” *id.* at Activity 22; “[a]ppointment of a special commission to ensure that the rights of non-Muslims are protected in the National Capital,” *id.* at Activity 23; “[c]lustering of National Ministries,” *id.* at Activity 25; “[a]llocation of seats on the National Executive,” *id.* at Activity 26; “Information Campaign in all languages to popularize the Peace Agreement and foster national unity, reconciliation and mutual understanding,” *id.* at Activity 27; “[e]stablishment of the National Civil Service Commission,” *id.* at Activity 28; “[e]stablishment of the National Security Council,” *id.* at Activity 31; “[e]stablishment of the National Security Service,” *id.* at Activity 32; “[i]dentification of the security organs of the two Parties and their assets,” *id.* at Activity 34; “[d]evelopment and promotion of national languages,” and specifically “enact[ing] a founding law,” *id.* at Activity 35(a); establishment of the Human Rights Commission, *id.* at Activity 36(b); “[e]nactment of the Constitutional Court Act,” including “establishment of the Constitutional Court,” *id.* at Activity 37(a)-(b); “[e]stablishment of the National Judicial Service Commission,” *id.* at Activity 38(b); “Southern Sudan representation in the Constitutional Court, National Supreme Court, and other national courts in the capital,” *id.* at Activity 39; “[s]ubmission and approval of the CPA the National Assembly (NA) and National Liberation Council (NLC),” *id.* at Activity 40; “[p]reparation of the Constitutional Text by the NCRC,” *id.* at Activity 42; “[p]reparation of other legal instruments as stipulated in 2.10 of PSP,” *id.* at Activity 44; “[o]rganization of an inclusive Constitutional Review Process,” *id.* at Activity 45; “[d]etermination of North/South border of 1/1/56,” *id.* at Activity 46; and “[e]stablishment of the Abyei Area Council,” *id.* at Activity 56.).

47. *See id.* at Activities 2-34.

48. U.S. Dept. of St., Bureau of African Affairs, *Background Note: Sudan*, <http://www.state.gov/r/pa/ei/bgn/5424.htm> (last accessed Apr. 14, 2007).

49. *See Machakos Protocol* ¶ 3.1.2 (July 20, 2002), http://www.usip.org/library/pa/sudan/sudan_machakos07202002_toc.html (last accessed Apr. 14, 2007) [hereinafter *Machakos Protocol*]; *Implementation Modalities of the Protocol on Power Sharing*, *supra* n. 46, at Activity 41.

President.⁵⁰ Subsequent negotiations determined that the First Vice President shall be the President of Southern Sudan if the elected President is from Northern Sudan.⁵¹ Following the death of Dr. John Garang, Salva Kiir Mayardit was made the president of Southern Sudan and is currently acting as First Vice President of Sudan.⁵² Under the system developed in the CPA, the President shall take some decisions with the First Vice President's consent.⁵³ This executive structure therefore provides an important and potentially powerful example of shared sovereignty, in which the national government cannot act without the consent of the substate entity.

The CPA similarly contains many examples of institution building. Most of the institutions of the newly-created government of Southern Sudan must be cut from whole cloth.⁵⁴ Specifically, it calls for the establishment of no less than twenty-one new institutions at the state and national levels.⁵⁵ The National Electoral Commission, the National Assembly, the Institution of the Presidency, the Human Rights Commission, the Constitutional Court, and the Judiciary of Southern Sudan are just a few examples of new institutions created by the CPA.⁵⁶

The international community recognized the importance of institution building since the signing of the CPA.⁵⁷ In his report on the

50. *Implementation Modalities of the Protocol on Power Sharing*, *supra* n. 46, at Activity 15.

51. *Draft Constitutional Text* ¶ 62(1) (Mar. 16, 2005), <http://www.reliefweb.int/library/documents/2005/govsud-sud-16mar.pdf> (last accessed Apr. 14, 2007).

52. CPA Monitor, *May Report on the Implementation of the CPA* ¶ 13, http://www.unmis.org/common/documents/cpa-monitor/cpaMonitor_may06.pdf (last accessed Apr. 14, 2007) [hereinafter *May CPA Monitor*].

53. *Implementation Modalities of the Protocol on Power Sharing*, *supra* n. 46, at Activity 20.

54. Intl. Crisis Group, *Sudan's Comprehensive Peace Agreement: The Long Road Ahead*, § 2, ¶ 1, http://www.crisisgroup.org/library/documents/africa/horn_of_africa/106_sudan_comprehensive_peace_agreement_long_road_ahead_web.doc (updated Mar. 31, 2006) ("With more than 50 national bodies and commissions to be formed, multiple systems and levels of governments (with the GOSS and southern state governments to be formed almost from scratch), the parties, partners and observers are understandably overwhelmed.").

55. *See generally Implementation Modalities of the Protocol on Power Sharing*, *supra* n. 46.

56. *Id.* at Activities 9, 12, 15, 36, 37, 52.

57. Report of the Secretary-General on the Sudan, UN S, UN Doc. S/2005/57, ¶ 25

Sudan from January 2005, some six months after the signing of the CPA's *Protocols*, UN Secretary-General Kofi Annan (Secretary-General Annan) stated that the assistance of the UN should be "an all-inclusive national process."⁵⁸ The UN mission, he said, should work with the government of Southern Sudan (GOSS), including in the area of policy formation and planning.⁵⁹ A high-level representative of the UN mission should be present at all times in Southern Sudan.⁶⁰ Secretary-General Annan also said that the UN mission should include a public information component to assist the Government of National Unity (GNU) and the GOSS in providing an effective information capacity.⁶¹ A civilian police component should advise and assist both stakeholders in re-examining roles and functions and in reviewing methods of operation of police.⁶² A rule of law section would be

(2005) ("To avoid or minimize these risks, strong and concerted strategies at both the national and international levels are required. The Sudanese leadership, in collaboration with the international community, will need to identify ways to prevent competing interests from derailing the process. To promote the inclusive implementation of the Comprehensive Peace Agreement, the new Sudanese leadership will have to promote its acceptance beyond its immediate constituencies to the wider body politic and civil society. The new Government must take the lead, with the help of the international community, in starting to restore confidence and reconciliation in an all-inclusive national process.").

58. *Id.*

59. *Id.* at ¶ 37.

60. *Id.* ("While the mission's headquarters would be based in Khartoum, a special office would be established in Rumbek, which would relocate should the government of southern Sudan decide to move its capital to another location. This office would be charged with working with the government of southern Sudan, as well as managing the peace support operation, including policy formation and planning in the south. Pending a final decision on the mission's management structure for the interim period, at least one of the four members of the mission's senior leadership (namely, my Special Representative, his two deputies and the Force Commander) would be present at all times in southern Sudan.").

61. *Id.* at ¶ 42 ("The public information component of this mission would seek to offer a clear, impartial, reliable and credible voice and information source for all stakeholders in the peace process. The component would further assist the Government of National Unity and the government of southern Sudan by providing an effective information capacity, including through local and national radio, television and newspaper outlets, in order to promote understanding of the peace process and the role a United Nations peace support operation would play among local communities and the parties.").

62. *Id.* at ¶ 54 ("The civilian police component of the mission would work in close collaboration within bilateral international partners to advise and assist existing government police structures and the SPLM/A police force as they re-examined their

tasked to work with international partners to support legislative, executive and judicial institutions of GNU and Southern Sudan, including good offices and technical assistance in areas such as constitutional development and the strengthening of institutions and systems.⁶³ Finally, the section of the UN mission responsible for human rights should work with both parties to develop a local capacity including establishment of a Human Rights Commission.⁶⁴

In June 2006, Secretary-General Annan delivered another report to the Security Council on the Sudan.⁶⁵ In it, he noted that the parties continued to make gradual progress towards full implementation of the CPA and that, while the main structures are in place, many of the commissions charged with overseeing the implementation process were not being used effectively.⁶⁶ Problems still existed with the forming and deploying of Joint Integrated Units.⁶⁷ He expressed optimism in that Sudan People's Liberation Army (SPLA) and Sudan Armed Forces (SAF) soldiers were being redeployed on schedule, that the Ceasefire Joint Military Committee met regularly, and that the Assessment and Evaluation Commission had formed four working groups.⁶⁸ He noted

roles and functions and reviewed their methods of operation to move away from military-style policing, which evolved in wartime, towards a style involving direct interaction with the community.”).

63. *Id.* at ¶ 56 (“The rule of law component would ensure that the peace support operation was able to work closely with other international partners to support the establishment and operation of essential legislative, executive and judicial institutions of the Government of National Unity as well as the government of southern Sudan. Accordingly, the rule of law component would offer good offices, advice and technical assistance to support key processes in a number of areas, including constitutional development and the strengthening of legislative, judicial and correctional institutions and systems.”).

64. *Id.* at ¶¶ 58-59 (“The human rights component of the peace support operation would work with the parties to develop and strengthen national and local capacity for the protection and promotion of human rights, including the development of an independent and effective national Human Rights Commission, which would be of particular importance”; “[t]he human rights component, working closely with the rule of law component and other international partners, would also assist national stakeholders in the development of a transitional justice strategy in accordance with the lessons learned and experience identified in my report on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616).”).

65. *See generally* Report of the Secretary-General on the Sudan, UN S, UN Doc. S/2006/426 (2006).

66. *Id.* at ¶ 2.

67. *Id.* at ¶ 4.

68. *Id.* at ¶¶ 6-8.

that a number of important commissions had yet to meet, and that though the membership of the NCRC had been chosen, “its original directive of ensuring the independence of [CPA] institutions was omitted from its new mandate.”⁶⁹ The UN Mission in Sudan (UNMIS) had “intensified efforts aimed at promoting reconciliation and local conflict resolution” in southern Sudan, though tensions were increasing and its efforts were limited by various constraints.⁷⁰ “In March [2006], UNMIS assisted the [GOSS] in organizing its first review of rule of law institutions in Southern Sudan,” and continued “to provide policy expertise and support for reform of correctional institutions in the Sudan.”⁷¹

Secretary-General Annan reported that in March 2006 the Sudan Consortium, which was organized by the World Bank, the International Monetary Fund (IMF), and the UN, brought together representatives of the GNU, the GOSS, and twenty-two donor countries in Paris.⁷² Though donors again expressed support for a Multi-Donor Trust Fund managed by the World Bank, disbursement remained very slow.⁷³ Thus, the Secretary-General emphasized that the greatest challenge for Southern Sudan is “creation of a true peace dividend,” that the prospects for long-term stability will suffer if “[t]he gap between peace and a tangible improvement in people’s living conditions [is not] bridged,” and that, for this to occur, the international community must ensure the provision of adequate resources for reconstruction and development.⁷⁴

The third core element of earned sovereignty, determination of final status, will be decided by referendum, tentatively scheduled for 2011.⁷⁵ Activity 1 in the CPA, broadly titled, “Self determination Referendum for people of South Sudan,” sets forth that a referendum will take place six months prior to the end of the Interim Period.⁷⁶ Per

69. *Id.* at ¶¶ 2, 9.

70. *Id.* at ¶ 18.

71. *Id.* at ¶ 30.

72. *Id.* at ¶ 41.

73. *Id.*

74. *Id.* at ¶ 58.

75. *See May CPA Monitor, supra* n. 52, at ¶ 21 (“President Bashir visited Juba and Rumbek on 14 February 2006 for the first time since Dr. Garang’s funeral. . . . During his speech, President Bashir noted the right of the people of Southern Sudan to vote freely in the referendum in 2011.”).

76. *Implementation Modalities of the Protocol on Power Sharing, supra* n. 46, at

the *Machakos Protocol*, the Interim Period is a period of six years following the Pre-Interim Period, which began with the signing of the *CPA* and extended for six months thereafter.⁷⁷

The *CPA* therefore contains all of the core elements of earned sovereignty. In essence, using these three basic tools, Southern Sudan should be able to obtain some form of increased sovereignty; that is, it can add to the bundle of sovereign rights it already holds.

The *CPA* is also interesting because it illustrates utilization of at least two of the conditional elements of earned sovereignty: phased sovereignty and conditional sovereignty.

Phased sovereignty, the accumulation of increasing sovereign authority and functions over a specified period of time, can be seen throughout the *CPA*, wherein certain powers are granted to the Sudan People's Liberation Movement (SPLM) and, later, the fledgling GOSS.⁷⁸ This process was to be implemented along a timeline, beginning, as discussed above, with the signature of the *CPA* and passing through a Pre-Interim Period, an Interim Period, enactment of the INC and finally ending in the self-determination referendum for the people of South Sudan.⁷⁹ This is probably the single greatest example of phased sovereignty in the *CPA*⁸⁰ although whether Southern Sudan will obtain full sovereignty depends upon the outcome of the referendum. Other examples of phased sovereignty not reliant on the outcome of the self-determination referendum include conducting a census two years into the Interim Period, enactment of the National Electoral Law within six months from the start of the Interim Period, establishment of the National Electoral Commission within one month after the adoption of the National Electoral Law, general and presidential elections to be held not later than the end of the fourth year of the Interim Period, and establishment and convening of the Council of States and the National Assembly within two weeks of the adoption of the INC.⁸¹ At the outset, most of the provisions of the *CPA* were to

Activity 1(e).

77. See *Machakos Protocol*, *supra* n. 49, at ¶¶ 2-2.2.

78. *Id.* at ¶ 2.5.

79. *Id.* at ¶¶ 2-3.1.

80. See *id.* at ¶ 2.5; *Implementation Modalities of the Protocol on Power Sharing*, *supra* n. 46, at Activity 1.

81. *Implementation Modalities of the Protocol on Power Sharing*, *supra* n. 46, at Activities 8-9, 11-12.

happen within specified timeframes.⁸²

A number of them have come to pass, though not always as scheduled. On July, 9, 2005, the INC was signed into law by President Bashir and the three-member presidency was inaugurated.⁸³ The National Legislature, which consists of the National Assembly and the Council of States, was formed and convened on August 31, 2005.⁸⁴ After substantial delays, the Government of National Unity (GNU) was established by four decrees issued by President Bashir on September 20, 2005, and “was formed largely in accordance with the CPA power-sharing formula.”⁸⁵ Members of the GNU were sworn in on September 22, 2005.⁸⁶ On December 7, 2005, the National Judicial Service Commission was instituted by President Bashir.⁸⁷ The ratification of the National Judicial Service Commission Act bypassed the NCRC, though it appropriately passed through the National Assembly.⁸⁸ There was considerable difficulty with the establishment of the NCRC.⁸⁹

82. See e.g. *id.* (providing for the “[r]eview of the feasibility of the dates set for census and elections,” *id.* at Activity 10; “[p]reparation of the Constitutional Text by NCRC,” *id.* at Activity 42; “[s]ubmission and approval of the CPA to the National Assembly (NA) and National Liberation Council (NLC),” *id.* at Activity 40; “[e]stablishment of an inclusive Southern Sudan Constitutional Drafting Committee,” *id.* at Activity 47; “[e]stablishment of the First Southern Sudan Assembly,” *id.* at Activity 48; “[e]stablishment of the Council of Ministers of [the] Government of Southern Sudan,” *id.* at Activity 51; “[e]stablishment of the Judiciary of Southern Sudan,” *id.* at Activity 52; “[a]ppointment of the President and Justices of Southern Sudan Supreme Court, Courts of Appeal and Judges of other Courts,” *id.* at Activity 53; “[e]stablishment of state legislatures,” *id.* at Activity 55; “[e]stablishment of Abyei Area Council,” *id.* at Activity 56; “[d]rafting and adoption of the State constitutions,” *id.* at Activity 58; and “[e]stablishment of state Council of Ministers,” *id.* at Activity 59.).

83. *May CPA Monitor*, *supra* n. 52, at ¶¶ 1, 13.

84. *Id.* at ¶ 23.

85. *Id.* at ¶ 15.

86. *Id.* at ¶ 16.

87. *Id.* at ¶ 30.

88. *Id.*

89. See *id.* at ¶¶ 38-41; see also CPA Monitor, *Monthly Report on the Implementation of the CPA, November 2006*, ¶¶ 1, 3-7, http://www.unmis.org/common/documents/cpa-monitor/cpaMonitor_nov06.pdf (last accessed Apr. 14, 2007) [hereinafter *November CPA Monitor*]. The NCRC originally prepared the INC. *November CPA Monitor* at ¶ 1. President Bashir re-established the NCRC by decree on January 7, 2006. *Id.* at ¶ 3. Its mandate has been controversial, as “President Bashir’s . . . decree did not mention several of the functions assigned to

Conditional sovereignty, where certain benchmarks must be met for increased sovereign authority to be conferred upon the substate entity in a quid pro quo fashion, is also evident in the *CPA*.⁹⁰ For example, the Council of Ministers was to be established prior to elections and “[w]ithin [thirty] days after the Adoption of the INC.”⁹¹ Therefore, it follows that the INC had to be adopted by both parties for the Council of Ministers to be established.

The final optional element, constrained sovereignty, is not explicitly used because the *CPA* does not provide for restrictions on the sovereignty of Southern Sudan following the determination of final status.⁹² One may infer from the text of the *Machakos Protocol* and the *CPA* that, should Southern Sudan decide not to remain part of Sudan in the 2011 referendum, it will be entitled to the entire bundle of rights granted to a sovereign nation.⁹³

The argument could be made, however, that prior to the 2011 referendum a form of constrained sovereignty is in effect in Southern Sudan. This is similar to the current situation in Bougainville, which will be discussed below.⁹⁴ The most striking examples of the use of constrained sovereignty in the pre-referendum period are the degree of control over Southern Sudan that is exercised by the GNU in Khartoum, as discussed above, and the integration of SPLA forces into Joint Integrated Units (JIUs).⁹⁵

NCRC in the *CPA*.” *Id.* at ¶ 4. The NCRC published a new Presidential decree on October 8, 2006 which was originally dated June 3, 2006. This decree confirmed “the mandate of the NCRC to prepare legal instruments as is required to give effect to the [*CPA*]” and confirmed a number of additional functions, including preparing “model State constitutions in compliance with the INC and the Interim Constitution of South Sudan (ICSS).” *Id.* at ¶ 5.

90. See *November CPA Monitor*, *supra* n. 89, at ¶ 6.

91. *Implementation Modalities of the Protocol on Power Sharing*, *supra* n. 46, at Activity 18.

92. See generally *May CPA Monitor*, *supra* n. 52.

93. See *Machakos Protocol*, *supra* n. 49, at ¶¶ 2-2.5; *May CPA Monitor*, *supra* n. 52.

94. See generally Australian Govt. Dept. of For. Affairs & Trade, *Bougainville Peace Process*, <http://www.dfat.gov.au/geo/png/bougainville/> (last accessed Apr. 14, 2007) [hereinafter *Bougainville Peace Process*].

95. *May CPA Monitor*, *supra* n. 52, at ¶ 10 (“The *Joint Integrated Units (JIUs) Act* was endorsed by the National Assembly on 17 January [2006]. The Act covers the establishment of the JIUs, their mandate, areas of deployment, uniform and common doctrine. The Act also specifies the rules relating to the formation of the Joint Defense Board (JDB) and its mandate.”); *CPA Monitor, Monthly Report on the Implementation*

B. BOUGAINVILLE

The *Bougainville Peace Agreement* between Papua New Guinea (PNG) and separatists on the island of Bougainville is probably one of the most comprehensive and successful applications of earned sovereignty.⁹⁶ The peace agreement, signed in 2001 in Arawa, put an end to a conflict on the island that had taken the lives of up to 20,000 people.⁹⁷ It also “provided for elections for the establishment of an autonomous government for Bougainville.”⁹⁸ The PNG Government published an agreed Constitution for the Autonomous Region of Bougainville in December 2004 that facilitated elections and the establishment of an autonomous Bougainville Government.⁹⁹ In June 2005 Bougainville elected a president for its new autonomous government.¹⁰⁰ This election was seen as a key test of the 2001 peace agreement.¹⁰¹

An in-depth examination of the *Bougainville Peace Agreement* shows that the stakeholders made use of all the elements of earned sovereignty. The text of the agreement includes provisions outlining how sovereignty is to be shared, provisions covering institution building, and a strategy for achieving final status.¹⁰² It uses the means of phased sovereignty, constrained sovereignty, and to a lesser extent conditional sovereignty, to arrive at the endpoint of determining the final status of Bougainville.

Two “lists” comprise the shared sovereignty component. Section B(5) of the peace agreement delineates a two-list system for dividing powers and functions between the National Government and the

of the CPA, December 2006, ¶¶ 308-16, http://www.unmis.org/common/documents/cpa-monitor/cpaMonitor_dec06.pdf (last accessed Apr. 14, 2007) (discussing the current status of the JIU Act, JIU strength and composition, and the JDB).

96. See *Bougainville Peace Process*, *supra* n. 94.

97. See BBC News, *Country Profile: Papua New Guinea* [¶¶ 8-9], http://news.bbc.co.uk/1/hi/world/asia-pacific/country_profiles/1246074.stm (updated Jan. 4, 2007).

98. *Id.* at [¶ 9].

99. *Bougainville Peace Process*, *supra* n. 94, at [¶ 4].

100. *Id.* at [¶¶ 7-8].

101. BBC News, *President Elected in Bougainville* [¶ 3], <http://news.bbc.co.uk/1/hi/world/asia-pacific/4612685.stm> (updated June 6, 2005).

102. See *Bougainville Peace Agreement*, *supra* n. 25, at Intro. [¶¶ 3, 5].

autonomous Bougainville Government.¹⁰³ According to the peace agreement the two lists will be “as exhaustive as possible” in outlining all the powers and functions of government, and for any issues that arise during the drafting of constitutional amendments, the agreement provides that the parties will consult and agree on how they shall be resolved.¹⁰⁴ It further provides that “[t]he Constitutional Laws implementing [the peace] Agreement will provide an agreed mechanism to deal with . . . overlap or conflict between the two lists.”¹⁰⁵ The first list, which is provided in the peace agreement itself, demarcates the functions and powers of the National Government.¹⁰⁶ The “list” of powers and functions provided to the autonomous Bougainville Government is not actually a list, but rather a catch-all provision stating that the autonomous Bougainville Government shall exercise the powers and functions not already delegated to the National Government, beginning with those available to provincial governments under the National Constitution, and to be developed while drafting the Constitutional laws implementing the peace agreement.¹⁰⁷ Policing functions will also be divided between the autonomous Bougainville Government and the National Government.¹⁰⁸ These examples show how the state, in this case Papua New Guinea, shares sovereignty with the substate entity, the autonomous Bougainville Government, prior to the determination of final status by referendum.¹⁰⁹

The institution building component of earned sovereignty is satisfied in the peace agreement itself by an interesting mechanism that allows the government of an autonomous Bougainville to gradually assume control of various responsibilities. One of the best examples of institution building in the *Bougainville Peace Agreement* comes in the provisions related to the establishment of the Bougainville Public Service.¹¹⁰ The National Government’s Public Service apparatus will remain in Bougainville in the beginning, and then will undergo a transitional period that will result in their conversion into a

103. *Id.* at § B(5).

104. *Id.* at § B(5) ¶¶ 47-48.

105. *Id.* at § B(5) ¶ 49.

106. *Id.* at § B(5) ¶ 51.

107. *Id.* at § B(5) ¶ 52.

108. *Id.* at § B(10)(c) ¶¶ 210-239.

109. *See id.* at § C ¶ 312.

110. *See id.* at § B(10)(b).

Bougainville Public Service, responsible to the autonomous Bougainville Government.¹¹¹ Similar provisions apply to the Bougainville Police and the Bougainville Correctional Institutional Services (CIS).¹¹² In an interestingly hands-off approach on the part of the government of Papua New Guinea, the peace agreement provides that the costs of maintaining the post-agreement, pre-referendum level of autonomy in Bougainville will be shared by the autonomous Bougainville Government and the National Government.¹¹³ The autonomous Bougainville Government will be able to collect Bougainville taxes as well as, by agreement, certain national-level taxes.¹¹⁴

In a briefing to the UN Security Council, Assistant Secretary-General Danilo Türk of the UN Department of Political Affairs, showed the international community's continued commitment to institution building in Bougainville, as evidenced in a May 2004 UN Security Council press release.¹¹⁵ Mr. Türk's statements show that the Bougainville Interim Provisional Government received support from the Law and Justice Programs of AusAID, NZAID, the Australian Federal Police, the UN Observer Mission in Bougainville (UNOMB), the UN Development Programme (UNDP), and UN Children's Fund (UNICEF).¹¹⁶ Statements from the representatives of Germany, Chile, Spain, Romania, Brazil, France, Philippines, China, Angola, the United Kingdom, the Russian Federation, New Zealand (speaking on behalf of the Pacific Islands Forum Group), Japan, and Fiji, underlined the importance of the international community's continued involvement in institution building to support the peace process.¹¹⁷

In particular, AusAID's Framework for AusAID Assistance to Bougainville 2004-2008 outlined three broad objectives for Australian aid to Bougainville: "[h]elp[ing] implement autonomy and re-establish public administration;" "[i]mprov[ing] essential service delivery;" and

111. *Id.* at § B(10)(b) ¶¶ 202-209.

112. *See generally id.* at § B(10)(c)-(d) ¶¶ 210-262.

113. *Id.* at § B(9)(a) ¶ 136.

114. *Id.* at § B(9)(b) ¶ 146.

115. *See* Press Release, Speakers in Security Council Welcome Continued Progress Towards Peace, Prosperity in Bougainville, UN S, UN Doc. SC/8086 (May 7, 2004) (available at <http://www.un.org/News/Press/docs/2004/sc8086.doc.htm>) (last accessed Apr. 14, 2007) [hereinafter UN Press Release 8086].

116. *Id.* at ¶¶ 23, 25].

117. *See generally id.* at Statements.

“[e]xpand[ing] agricultural income-generating opportunities.”¹¹⁸ It also provides funding through the Governance and Implementation Fund.¹¹⁹ In doing so, Australia, hopes that this fund will enhance management of public expenditures and development results, help reforms in the public sector, improve synchronization of donor assistance, and shift the PNG Government’s powers to Bougainville as directed by the Bougainville peace agreement.¹²⁰ These objectives fit well within the core element of earned sovereignty in institution building.

The use of the core elements of shared sovereignty and institution building will hopefully allow the autonomous Bougainville Government to obtain the basic skills necessary to effectively assert itself as either an autonomous or sovereign entity upon determination of Bougainville’s final status in the upcoming referendum. In an effort to ensure that the necessary skills are acquired in a timely and effective fashion, the *Bougainville Peace Agreement* implements, to varying degrees, all three of the so-called optional elements of earned sovereignty: phased sovereignty, conditional sovereignty, and constrained sovereignty. As was acknowledged by Williams and Jannotti Pecci, uses of the optional elements are not necessary in every case of earned sovereignty.¹²¹ They do however, in this case, provide useful tools to facilitate the interim period before a decision on final status for Bougainville.

The *Bougainville Peace Agreement* relies to a greater extent upon phased sovereignty, and possibly constrained sovereignty, than it does upon conditional sovereignty. The quid pro quo arrangements are fewer and farther between. In the case of Bougainville, since nearly all the ingredients have been added, the timer has been set for a period between ten and fifteen years, which leaves the most important question to be decided in the upcoming referendum: Bougainville’s final status.¹²²

118. Australian Govt. AusAID, *Australian Aid to Bougainville* [¶ 3], <http://www.ausaid.gov.au/country/png/bougainville.cfm> (last accessed Apr. 14, 2007).

119. *Id.* at [¶¶ 6-9].

120. *Id.* at [¶ 10].

121. Williams & Jannotti Pecci, *supra* n. 1, at 367 (contending that the belief that phased sovereignty need not be present in all instances of earned sovereignty extends to all three of the optional elements).

122. *See Bougainville Peace Agreement, supra* n. 25, at Intro., Pillar 2.

The “timer” of phased sovereignty is evident throughout the *Bougainville Peace Agreement*. One of the “three pillars” of the agreement is the right of Bougainvilleans to hold a referendum to decide their final status, which “will be held no sooner than ten years, and . . . no later than fifteen years, after the election of the autonomous Bougainville Government.”¹²³ The gradual assumption of powers and duties by the autonomous Bougainville Government in the areas of Public Service, Police Service, and CIS, also shows use of phased sovereignty.¹²⁴

The *Bougainville Peace Agreement* also contains the quid pro quo arrangement that embodies conditional sovereignty. According to the *Bougainville Peace Agreement*, in order for the referendum on Bougainville independence to take place, the conditions of weapons disposal and “good governance” must be met.¹²⁵ The autonomous Bougainville government’s success in meeting these conditions will allow the referendum to proceed within the specified timeframe, at least ten but no more than fifteen years after the signing of the *Bougainville Peace Agreement*.¹²⁶

These conditions are not terribly onerous, as long as the stakeholders remain committed to the peace process. Weapons disposal has been accomplished under international monitoring,¹²⁷ and “good governance” is so vague that it will be difficult for the autonomous Bougainville Government to fail as long as the National Government remains committed to the peace process, and especially to institution building in autonomous Bougainville.

The implementation of the weapons disposal programs in Bougainville has been almost a textbook example of conditional sovereignty:

With the completion of the second stage of weapons collection, the Bougainville peace process could proceed with the remaining tasks, including the finalization of the constitution and the holding of elections, leading to the establishment of an autonomous

123. *Id.*

124. *See generally id.* at §§ B(10)(b)-(d) ¶¶ 201-262.

125. *Id.* at Intro., Pillar 2.

126. *Id.* at § C ¶ 312(a).

127. *Bougainville Peace Process, supra* n. 94, at [¶ 6] (“In May 2005, U.N.O.M.B. declared the weapons disposal program complete and verified the situation on Bougainville as being conducive to holding elections.”).

government.¹²⁸

The UN Political Office in Bougainville's verification and certification of the completion of stage II of the Weapons Disposal Plan triggered the constitutional process of bringing the Constitutional Amendment and the Organic Law on Peace-Building on Bougainville into full operation.¹²⁹ As of May 2004 the Bougainville Constitutional Commission was working on a draft constitution for the autonomous Bougainville, which was to be submitted to the Bougainville Constitutional Assembly (BCA) in June 2004.¹³⁰ "Following adoption by the BCA it would be submitted to the National Government [of Papua New Guinea] for endorsement, expected to take place by the end of July."¹³¹ The Bougainville Interim Provincial Government had also started preparing for the election of the autonomous Bougainville Government, including establishment of the Ministry for Peace and Autonomy.¹³²

The ten- to fifteen-year period prior to the referendum on Bougainville independence also acts as a form of constrained sovereignty. It could be argued that the current, pre-referendum status of the autonomous Bougainville is a test of constrained sovereignty, giving Bougainvilleans an idea of what it would be like to remain an autonomous province of Papua New Guinea. After this limited period of constrained sovereignty, the people of Bougainville will have the opportunity to choose whether to remain autonomous or seek independence from the National government.¹³³ Should the benefits of continued autonomy outweigh those of full independence at that time, a form of entirely consensual, permanent, and increased constitutional autonomy based on constrained sovereignty could result.

The *Bougainville Peace Agreement* is one of the best, if not the best, embodiment of an earned sovereignty approach to conflict resolution. For a period of time, the parties shared sovereignty over

128. Press Release, Bougainville Peace Process Can Proceed with Remaining Steps, as Second Stage of Weapons Collection Completed, UN S, UN DOC. SC/7839, [¶ 1] (June 8, 2003) (available at <http://www.un.org/News/Press/docs/2003/sc7839.doc.htm>) (last accessed Apr. 14, 2007).

129. *Id.* at [¶¶ 14-17]

130. *See UN Press Release 8086, supra* n. 115, at [¶ 21].

131. *Id.*

132. *Id.* at [¶ 10].

133. *See Bougainville Peace Agreement, supra* n. 25, at Intro.

Bougainville as its institutions are developed, therefore satisfying two of the three core elements of earned sovereignty. The parties also used all three of the so-called optional elements, to varying degrees, as means of sharing sovereignty and building the nascent institutions of the autonomous Bougainville. The ten- to fifteen-year waiting period prior to the referendum on final status is evidence of the use of phased sovereignty. It is a particularly good example of phased sovereignty, in fact, because it provides a roadmap for the transfer of increased power and responsibility from the national government to the government of autonomous Bougainville, particularly in the areas of the Public Service, Police Service, and CIS. Bougainville can move forward along the path to the referendum on independence, using the method of conditional sovereignty, due to the success of the weapons disposal program. Until the determination of final status, which will satisfy the third core element of earned sovereignty, the autonomous Bougainville will exist in a kind of limbo of constrained sovereignty, as powers are slowly devolved from national institutions to those of the province. For these reasons, Bougainville is probably one of the best relatively recent examples of the use of earned sovereignty to determine the final status of an emerging state at the end of a conflict.

C. ACEH

The peace agreement signed between the Government of Indonesia (GoI) and the Free Aceh Movement (GAM)¹³⁴ is a relatively recent example of earned sovereignty moving at breakneck speed. The conflict between the Indonesian Government and GAM has cost over 9,000 lives since its beginning in 1976.¹³⁵ However, since the signing of the *Memorandum of Understanding (MoU)* between the GoI and GAM on August 15, 2005, steady progress has been made.¹³⁶ When taken together, the text of the *MoU* and its thus-far successful implementation shows a valuable perspective on the application of the various elements of earned sovereignty, particularly the use of

134. BBC News, *Aceh Rebels Sign Peace Agreement*, <http://news.bbc.co.uk/2/hi/asia-pacific/4151980.stm> (updated Aug. 15, 2005).

135. Intl. Crisis Group, *Aceh: A New Chance For Peace*, <http://www.crisisgroup.org/home/index.cfm?!=1&id=3615> (last accessed Apr. 14, 2007).

136. *Aceh: Hope is Fragile But Still Alive*, 377 *Economist* 43, 43 (Oct. 29-Nov. 4, 2005).

constrained sovereignty to end a seemingly intractable conflict.¹³⁷

The use of shared sovereignty in resolving the GoI/GAM conflict begins in the preamble of the *MoU*.¹³⁸ The second paragraph commits the parties to “creating conditions within which the government of the Acehese people can be manifested through a fair and democratic process within the unitary state and constitution of the Republic of Indonesia.”¹³⁹ This statement offers an initial hint that the GoI and GAM will share competencies in the post-*MoU* environment. The hint is confirmed in Section 1, which provides that the governing law of Aceh had to enter into force no later than March 31, 2006 and be promulgated by the GoI.¹⁴⁰ The principals on which the governing law of Aceh should be based are laid out in Section 1.1.2 of the *MoU* and call for such measures that grant authority to the Acehese government in all public affairs “except in . . . foreign affairs, external defense, national security, monetary and fiscal matters, justice and freedom of religion”; measures that mandate the GoI will consult with the government of Aceh and obtain its consent from the Acehese legislature on international agreements that “relate to matters of special interest to Aceh”; measures that provide that decisions by Indonesia’s legislature regarding Aceh “will be taken in consultation with and with the consent of [Aceh’s legislature]”; and, finally, measures that dictate that administrative measures taken by the GoI regarding Aceh “will be implemented in consultation with and with the consent of the head of Aceh administration.”¹⁴¹

According to the *MoU*, the governing law of Aceh would allow the Acehese people to have the opportunity to choose many national symbols, such as the determination of the name of Aceh, the titles of senior elected officials, and the regional symbols such as the flag, crest

137. See BBC News, *Aceh Rebels Surrender Last Arms*, <http://news.bbc.co.uk/2/hi/asia-pacific/4541566.stm> (updated Dec. 19, 2005) (stating that on December 19, 2005 rebels from the Free Aceh Movement (GAM) relinquished the final thirty-five of 840 weapons they agreed to turn over under the August 15 *MoU*); BBC News, *Indonesia Completes Aceh Pull-Out*, <http://news.bbc.co.uk/2/hi/asia-pacific/4545116.stm> (updated Dec. 20, 2005) (in which a spokesman for the Indonesian military stated that security services were on target to meet the December 31, 2005 withdrawal deadline).

138. *MoU*, *supra* n. 26, at Preamble [¶¶ 4-6].

139. *Id.* at Preamble [¶ 2].

140. *Id.* at § 1.1.1.

141. *Id.* at §§ 1.1.2(a)-(d).

and hymn.¹⁴² The GoI is also obligated under the *MoU* to “facilitate the establishment of Aceh-based political parties that meet national criteria.”¹⁴³ It is the GoI’s responsibility under the *MoU* to create “the political and legal conditions for the establishment of local political parties in Aceh.”¹⁴⁴

The *MoU* also provides the Acehnese government the opportunity to self-govern in a number of other substantive ways, particularly in economic matters.¹⁴⁵ For example, Aceh is able to develop funds with external loans, establish interest rates other than those instituted by Indonesia’s Central Bank, elevate taxes to finance official internal activities, carry out foreign and domestic commerce, and attract foreign tourism and investments to Aceh.¹⁴⁶ Aceh also has jurisdiction over living natural resources in its surrounding territorial waters.¹⁴⁷

Importantly, under the *MoU*, “Aceh is entitled to retain seventy (70) per cent [sic] of the revenues from all current and future hydrocarbon deposits and other natural resources [in Acehnese territory and in its surrounding territorial seas].”¹⁴⁸ In order to develop these resources, the *MoU* grants Aceh the right to administer and develop its own seaports and airports, the right to benefit from free trade with all other parts of the Indonesia republic, and the right to benefit from unfettered sea and air access to foreign countries.¹⁴⁹

The court system of Aceh is also touched by shared sovereignty.¹⁵⁰ Under the *MoU*, “[a]n independent and impartial court system . . . will be established for Aceh within the judicial system of the Republic of Indonesia.”¹⁵¹ “The appointment of the Chief of the organic police forces and the prosecutors shall be approved by the head of the Aceh administration,” which will also consult in their recruitment and training in compliance with the applicable national standards.¹⁵² These provisions in particular show a concrete example

142. *Id.* at §§ 1.1.3, 1.1.5.

143. *Id.* at § 1.2.1.

144. *Id.*

145. *Id.* at § 1.3.

146. *See id.* at §§ 1.3.1-1.3.2.

147. *Id.* at § 1.3.3.

148. *Id.* at § 1.3.4.

149. *See id.* at §§ 1.3.5-1.3.7.

150. *See id.* at § 1.4.

151. *Id.* at § 1.4.3.

152. *Id.* at § 1.4.4.

of shared sovereignty, with both the Aceh government and the GoI participating in the selection and training of the judiciary and forces of order.

As a separate and distinct entity, “[a] Commission for Truth and Reconciliation will be established for Aceh by the Indonesian Commission of Truth and Reconciliation” in order to formulate and determine reconciliation measures.¹⁵³

On a level affecting former combatants directly, both the GoI and Acehese authorities will establish a “Reintegration Fund” under the administration of Aceh in order to facilitate the reintegration of persons who participated in GAM activities, including former combatants, pardoned political prisoners and affected civilians, into civil society.¹⁵⁴ In order to deal with unmet claims of those affected by the conflict, “[t]he authorities of Aceh and GoI will establish a joint Claims Settlement Commission.”¹⁵⁵ Former GAM combatants will also “have the right to seek employment in the organic police and organic military forces in Aceh without discrimination and in conformity with national standards.”¹⁵⁶ These provisions again show important instances of shared sovereignty between Aceh and the GoI. Though many of these programs are to be administered by the government of Aceh, few of them could be allowed or funded without the good graces of the GoI.

The *MoU* provides a number of specific provisions that would fall into the category of institution building. These provisions are designed to help Aceh build its internal institutions and to supervise them as they gain competency. For example, the *MoU* provides for outside auditors to verify the collection and allocation of revenues between the GoI and Aceh. The auditors will communicate the results to the head of the Aceh administration.¹⁵⁷

The *MoU* also provides that both stakeholders will take part in the post-tsunami reconstruction effort.¹⁵⁸ In particular, “GAM will nominate representatives to participate . . . in the commission established to conduct the post-tsunami reconstruction,” also known as

153. *Id.* at § 2.3.

154. *Id.* at § 3.2.3.

155. *Id.* at § 3.2.6.

156. *Id.* at § 3.2.7.

157. *Id.* at § 1.3.8.

158. *Id.* at Preamble [¶ 3].

the BRR.¹⁵⁹

From a legal and policy standpoint, one of the most important aspects of the *MoU* is the extent to which it addresses the rule of law and a fair and efficient judicial system. Section 1.4.2 of the *MoU* is therefore critical, in that it states, broadly, that “[t]he legislature of Aceh will redraft the legal code for Aceh on the basis of universal principles of human rights.”¹⁶⁰ Not only that, but the *MoU* goes so far as to dictate that “[a] Human Rights Court will be established for Aceh.”¹⁶¹

One of the most important examples of institution building in the *MoU* is the establishment of an Aceh Monitoring Mission (AMM), an international body tasked with a number of important responsibilities.¹⁶² The AMM successfully completed its mission in December 2006.¹⁶³ The *MoU* tasked the AMM with overseeing the demobilization and decommissioning of GAM and its armaments, the transfer of non-organic military and police troops, the reincorporation of active GAM members, the state of human rights situation, and the process of legislation development.¹⁶⁴ It also provided that the AMM would assist in the human rights field, decide on disputed amnesty cases, investigate and decide on complaints and alleged *MoU* violations, and institute and sustain liaison and cooperation between the parties.¹⁶⁵ These provisions show not only a commitment on the part of the two stakeholders to help Aceh attain a measure of self-sufficiency, but also show the degree to which the international community, in the form of the EU and ASEAN, was committed to a lasting political settlement.

The third core element of earned sovereignty, determination of

159. *Id.* at § 1.3.9.

160. *Id.* at § 1.4.2.

161. *Id.* at § 2.2.

162. *Id.* at § 5.1 (“An Aceh Monitoring Mission (AMM) will be established by the European Union and ASEAN contributing countries with the mandate to monitor the implementation of the commitments taken by the parties in this Memorandum of Understanding.”).

163. BBC News, *Peace Monitors End Aceh Mission*, <http://news.bbc.co.uk/2/hi/asia-pacific/6181857.stm> (updated Dec. 15, 2006) [hereinafter *Peace Monitors End Aceh Mission*] (reporting that the AMM formally ended its mission in Aceh after successful local and gubernatorial elections, which took place on December 11, 2006).

164. *MoU*, *supra* n. 26, at § 5.2(a)-(e).

165. *See generally id.*

final status, is contemplated by the *MoU*. The first example comes in the preamble, which specifically states that “[t]he parties commit themselves to creating conditions within which the government of the Acehese people can be manifested through a fair and democratic process *within the unitary state and constitution of the Republic of Indonesia*.”¹⁶⁶ This statement indicates that Aceh’s final status, at least under the *MoU*, is to remain within the Republic of Indonesia. The *MoU* does not provide a referendum or other mechanism for determining possible Acehese independence.¹⁶⁷ This conclusion is supported by the *MoU*’s operational sections. For example, section 1.2.3 states that “[f]ree and fair *local* elections will be organised under the new Law on the Governing of Aceh,”¹⁶⁸ which is a law set to be enacted by the GoI. Section 1.2.6 provides for “[f]ull participation of all Acehese people in *local and national* elections . . . in accordance with the *Constitution of the Republic of Indonesia*.”¹⁶⁹ The governing law of Aceh will be promulgated, seemingly, by the GoI.¹⁷⁰ Section 1.2.1 of the *MoU* specifically states that the GoI “will facilitate the establishment of Aceh-based political parties that *meet national criteria*.”¹⁷¹ Additionally, the Acehese court system will be set up within the judicial system of the Republic of Indonesia.¹⁷² Section 3.2.1 confirms that the Acehese people are citizens of the Republic of Indonesia.¹⁷³ Finally, section 1.1.2 sets out the specific areas in which the GoI retains competence.¹⁷⁴ Though the *MoU* does not provide for Acehese independence, it does provide Aceh with final status and, therefore, satisfies the third core element of earned sovereignty.

The *MoU* also contains all three of the optional elements of earned sovereignty. The dates set in the *MoU* when the government of Aceh will obtain competence in various areas demonstrate phased sovereignty.¹⁷⁵ Conditional sovereignty is shown in the *MoU*’s

166. *Id.* at Preamble [¶ 2] (emphasis added).

167. *See generally id.*

168. *Id.* at § 1.2.3 (emphasis added).

169. *Id.* at § 1.2.6 (emphasis added).

170. *See id.* at § 1.1.2(a).

171. *Id.* at § 1.2.1 (emphasis added).

172. *Id.* at § 1.4.3.

173. *Id.* at § 3.2.1.

174. *See id.* at § 1.1.2.

175. *See id.* at § 1.1.1.

disarmament provisions.¹⁷⁶ Finally, and perhaps most interestingly, the restrictions on the competency of the future Acehese government, as outlined in the *MoU*, provide an excellent example of constrained sovereignty.¹⁷⁷

Phased sovereignty is best exemplified in the *MoU* in the provisions involving elections.¹⁷⁸ Section 1.2.2 shows that, upon signing the *MoU*, the people of Aceh had the right to nominate candidates during elections to be held in Aceh in April 2006.¹⁷⁹ Elections were to take place in April 2006 for the head of the Aceh administration, with elections for an Acehese legislature coming in 2009.¹⁸⁰ Finally, the legislature of Aceh, prior to 2009, “will not be entitled to enact any laws without the consent of the head of the Aceh administration.”¹⁸¹

Conditional sovereignty and its hallmark quid pro quo arrangement play a smaller role in the *MoU* than in the Sudan and Bougainville peace agreements. The *MoU*'s best example of conditional sovereignty is expressed in sections 4.2 to 4.6, which concern the decommissioning of GAM's arms, ammunition, and explosives congruent with the relocation of non-organic military and police forces.¹⁸² Paragraph 4.4 states that “[t]he decommissioning of GAM armaments [would] begin on 15 September 2005, and will be executed in four stages and concluded by 31 December 2005.”¹⁸³ Under section 4.6, “[t]he relocation of non-organic military and non-organic police forces would begin on 15 September 2005. . . .”¹⁸⁴ It would “be executed in four stages in parallel with the GAM decommissioning immediately after each stage has been verified by the AMM, and concluded by 31 December 2005.”¹⁸⁵ The language of the agreement therefore showed that GAM would decommission its arms in four stages and, as each stage was verified by the AMM, the GoI

176. *See id.* at §§ 4.1-4.12.

177. *See id.* at §§ 5.1-5.15.

178. *See id.* at §§ 1.2-1.2.8.

179. *Id.* at § 1.2.2.

180. *Id.* at § 1.2.3.

181. *Id.* at § 1.2.4.

182. *See id.* at §§ 4.2-4.6.

183. *Id.* at § 4.4.

184. *Id.* at § 4.6.

185. *Id.*

would relocate non-organic military and police personnel.¹⁸⁶ This arrangement showed that the *MoU* incorporated a form of conditional sovereignty, albeit to a rather limited degree.

The prevalence of constrained sovereignty in the *MoU* makes it a particularly interesting document in terms of earned sovereignty. In summary, the *MoU* conveys to the people of Aceh an expanded bundle of rights to self-government, while maintaining important links, including constitutional links, to the Republic of Indonesia. The discussions of shared sovereignty and final status, *supra*, illustrate this point. The preamble of the *MoU* reaffirms Aceh's constitutional ties to the Republic of Indonesia and highlights Indonesia's status as a unitary state.¹⁸⁷ The burden fell upon the GoI to promulgate the governing law of Aceh,¹⁸⁸ upon which the entire peace agreement depends.¹⁸⁹

Even once that milestone is accomplished, any Aceh-based political parties must meet national criteria.¹⁹⁰ These provisions, which form the four corners of a concession on the part of GAM in which it foregoes its demand for independence,¹⁹¹ are wonderful examples of an effective use of constrained sovereignty.

In this instance, circumstances were such that both parties were able to come to an agreement in order to end the conflict following the tragedy of the December 2004 tsunami.¹⁹² The method chosen by the parties included all of the elements of earned sovereignty to various

186. *Id.* at §§ 4.4-4.6.

187. *Id.* at Preamble [¶ 2].

188. *Id.* at § 1.1.2(a).

189. Lucy Williamson, BBC News, *Indonesia MPs Back Aceh Autonomy*, <http://news.bbc.co.uk/2/hi/asia-pacific/5168718.stm> (last updated July 11, 2006) (reporting that the Indonesian parliament unanimously passed a new law in July 2006 giving more autonomy to Aceh than any other province in Indonesia but that some of GAM's leaders were unsatisfied with certain aspects of the law); *Peace Monitors End Aceh Mission*, *supra* n. 163 (indicating how former separatist leader and probable gubernatorial election victor Irwandi Yusuf does not believe the current law on Aceh secures every aspect of the autonomy promised to Aceh by the *MoU*). *See also* Seth Mydans, *A Rebel-Turned-Governor Takes the Wheel in Indonesia*, N.Y. Times (Apr. 14, 2007) (available at http://www.nytimes.com/2007/04/14/world/asia/14irwandi.html?_r=1&oref=slogin (last accessed Apr. 14, 2007)).

190. *See MoU*, *supra* n. 26, at § 1.2.1.

191. *See* BBC News, *Aceh Marks Final Troop Withdrawal*, <http://news.bbc.co.uk/2/hi/asia-pacific/4565612.stm> (updated Dec. 29, 2005).

192. *MoU*, *supra* n. 26, at Preamble [¶¶ 1, 3].

degrees. The *MoU* includes provisions for shared sovereignty and institution building as well as using the so-called “optional” elements of earned sovereignty.¹⁹³ Aceh’s final status, at least for the moment, may be inferred from the text of the agreement, and it provides an excellent example of constrained sovereignty. In the very particular context of the Aceh conflict, the parties agreed that constrained sovereignty could provide a mutually beneficial outcome, even though it fell short of Acehnese independence.

V. CONCLUSION

Even a pared-down version of earned sovereignty, which uses the core elements but may not use the optional elements, provides a useful tool for attaining peace between states and substate entities. The *CPA* uses all of the core elements but does not explicitly use all of the optional elements, particularly constrained sovereignty. The *Bougainville Peace Agreement* follows a similar pattern. In both cases the peace agreements themselves contain no true restraints upon the bundle of rights the substate entity may eventually obtain, and the final status of Southern Sudan or an autonomous Bougainville may well be full-fledged statehood. The *MoU* between the Government of Indonesia and GAM takes a completely different approach and uses all the core and optional elements of earned sovereignty. The use of constrained sovereignty, wherein Aceh’s final status is a form of heightened autonomy instead of statehood, is of particular importance in the *MoU*. Indeed, it has allowed the peace process to proceed successfully through the completion of the AMM’s mission. It thus appears that the most important elements of earned sovereignty to apply are the core elements—shared sovereignty, institution building, and determination of final status. The optional elements, however, may be used to a great extent, sparingly, or not at all depending on the particular circumstances of the conflict. As illustrated by the *MoU*, the optional elements retain their usefulness as tools to help implement and secure the use of the core elements of earned sovereignty. In doing so, they ensure earned sovereignty’s continued usefulness as a tool of conflict resolution.

193. *See generally id.*