Another nail in the coffin
Some reflections occasioned by the Treaty between the EU and Chile

Marcel Wissenburg

1. On treaties

In this lecture I want to consider the recent treaty between the EU and Chile, the so-called Association Agreement (2002). I want to put it in a broader context – one that may not be all that broad from a philosopher's point of view since no metaphysics or other magic tricks are involved, but still perhaps unfamiliarly broad from the perspective of legal or political scientists. The broader view I offer is called 'political pluralization'. It is not really a scientific theory since it is based only on an unsystematic interpretation of developments in politics for the last (say) 50 years. It therefore does not *explain* current political developments; at least that is not my aim. Instead, since I think of the future as open, in particular open to being shaped by purposive human action, I developed the notion of political pluralization to allow us to see possible courses of action and their consequences.

I shall formulate, as hypotheses and not as the revealed truth, a few reasons why we should perhaps not be all that happy with this Association Agreement between the EU and Chile, or with any 'international' treaty, for that matter. Happiness is a subjective state of mind – you are free to disagree with me.

My story – I will not pretend that it is more – proceeds as follows. I shall first assert that treaties are not what they used to be: mutual recognitions of state sovereignty. Sovereignty is or has become a fiction; the reality is one of political pluralization, and the possible consequences of political pluralization are rather nasty. I shall argue that in this politically pluralized reality, states try to maintain their grip on reality by means of, among other things, treaties, and I hope to illustrate this with fragments from the Chile-EU Association Agreement. My 'analysis' of treaties leads me to believe that they achieve the opposite of what they intend to do: they help to dig the grave of the sovereign nation-state. I conclude with an argument for the value judgement that we should not be happy about modern treaties.

Let me begin then with a brief word on treaties. Treaties today are not what they used to be in Mediaeval times: no longer are they treaties between rulers, solemnly sealed with formal oaths and the like, and with an extra flavour of sacredness added by their being written down and solemnly signed. Nor are treaties what they became after 1648, after the peace of Westphalia, when for the first time not individual rulers but representatives of sovereign nation-states, and those representatives *only*, signed an agreement mutually recognizing each other's sovereignty. For a long time, every treaty was exactly like this – a declaration in which two or more parties first declared themselves, *willed* themselves, to be sovereign nation-states, declarations in which they then were mutually recognized as such by the other parties, and finally came to the point that they wished to create peace or to conspire in war or for peace.

Today, the aims of most treaties have changed. Since roughly 1945 but perhaps for the first time in 1919 when the League of Nations was founded, they have become more and more self-binding agreements on the *internal* rules of nation-states – and yet they still retain the fiction of sovereignty. Yes – fiction! Sovereignty, to be more exact, is a legal fiction at the very least if we define legality in a positive sense as a rule or concept that is actually followed, actually accepted in the minds or acts of real existing individuals. Sovereignty has become a fiction because it no longer reflects political reality – that is, assuming it ever did. Instead, we live in times of political pluralization.

2. Political Pluralization

What is political pluralization? As scholars, we like to distinguish between on the one hand less interesting superficial changes in our social environment – changes of the business as usual type –, changes that are not in fact 'real' changes at all, and on the other hand structural changes, macro changes, true political change. The real world often refuses to oblige. Real life often makes it quite hard to distinguish between passing phenomena and lasting change.

One pattern that may be perceived amidst the changes that we experienced over the past fifty years is referred to as dehierarchisation: a change in the way of governance and in the role of the governments of nation states, from direction of, to co-operation with, civil society and the economic sphere (cf. Schmidt 1999; and Take forthcoming). Dehierarchisation thus relates to changes in power relations, to changes in participation, and changes in policy implementation. Whether or not this is truly a new phenomenon, or at least new in some areas (environment, emancipation, unemployment policy), and whether or not phenomena illustrating dehierarchisation really form a pattern, remains to be seen. Here, I shall assume that it does. However, I also want to immediately amend the dehierarchisation thesis: if it does signal a fundamental change, it must in fact signal two changes. One is the occurrence of co-operation between state, civil society and economic sphere; the other is a structural precondition for co-operation: political pluralization (Wissenburg 2001).

The process of political pluralization is as hypothetical as dehierarchization is: it is an interpretation of political changes in the role of the nation state since, roughly, the end of WW II. It refers in essence to the emergence of 'polities' other than the nation state, undermining the actual power[1] of state governments without (as yet) denying the formal sovereignty of the state. Sovereignty, in this context, should be read as external independence and, slightly more unusual, as having the internal supreme authority over the distribution of rights in society (a monopoly and freedom to recognize licensed 'subcontractors'). The traditional expression of internal sovereignty as a monopoly on power is justified by, and is the means to, this end (Wissenburg 1999). Two further remarks are in order here. First, not *all* political change since WWII can or need be interpreted as political pluralization or dehierarchization. The riots surrounding WTO meetings over the past years for instance signal a less than complete harmony in the relation between states, NGOs and civil society. Secondly, one could argue that liberal democracies are built on the recognition of (moral pluralism and, consequently) 'state-free' social spheres (family, economy, religion, education etc.) and thereby on power sharing. The cardinal difference with political pluralization is that the latter implies something even libertarians will distrust: an increasing gap between formal sovereignty and actual power, or in other words, the deterioration of the state's monopoly on the attribution of rights and the use of power.

Examples of political pluralization abound, not just in the area of national politics (dehierarchization) but also on the sub-national and international scene (processes of internationalisation or globalisation, both political and economic). In the international arena, states increasingly co-operate.[2] The establishment of the United Nations Organisation gave a new impetus to the development of an international system of law; the political evolution of Europe (ECSC, EEC, EC, EU) implied that legislative and executive powers moved from individual states to Brussels. On the national and sub-national levels, states have transferred power to 'minority' nations, granting different degrees of

[1] Power is interpreted here as individual (i.e., an actor's) freedom of action, expressed in terms of the (number of) single acts that an actor is not prevented from by others. For a discussion of this conception of power see (Van Hees and Wissenburg 1999). Weberian characterisations of power, in terms of the constraints put on others, can logically be represented as instances of power as individual freedom of action. The latter concept is broader: is also includes e.g. interactions with an actor's non-human environment, and it does not require consciousness of power.

[2] One might want to argue that two can do more than one, that co-operation implies an expansion of power. In a way, this can but need not be true: co-operation creates a new actor, consisting of the co-operating parties, one that may be able to 'do more' (however measured) than its constituent parts on their own. The point, however, is that those constituent parts (i) cannot do these extra things on their own *and* (ii) commit themselves to terms of co-operation constraining their original freedom of action. Odysseus, when sailing past the Sirens, did not increase his *own* power by tying himself to the mast, nor that of any individual member of his crew by stuffing their ears; what increased was the power of the collective crew aboard the ship.

autonomy and self-government to cultural and ethnic minorities and regions. They have started to share power with or even handed over power to sections and factions within their respective civil societies. Finally, states are increasingly confronted with 'governance without the state': sectors within civil society addressing new political issues and resolving political conflict among themselves, with the state playing only a minor role or none at all except that of bystander (Young 1997). More and more then, politics takes place in arenas other than the traditional sovereign nation state. International organisations, institutions administrating international regimes, international down to local systems of 'governance' in which the state often plays the role of an equal partner (or even no role at all), a multitude of border-crossing forms of regional co-operation, extra-governmental political co-operation, all seem to be gnawing away at the authority and power of the state.

Political pluralization can be a source of efficiency and effectiveness when the newly created institutions are appropriately designed, particularly where complex, border-crossing, sometimes literally global problems are concerned – the problem of sustainability and sustainable development immediately comes to mind (Wissenburg 1997). Yet the down side is that new institutions, adequate or not, have to operate amidst other, older institutions that all claim their own spheres and responsibilities - particularly the sovereign nation-state. The result may be the co-existence of mutually effacing or contradictory systems of political norms. In a morally and institutionally plural world, additional institutional arrangements will be insufficient to deal with global problems; diverging normative conceptions of (among others) sustainability are likely to hamper any policy. The problem seems to be control: the absence of sovereigns 'ordering' the world of rules and regulations.

Being sovereign, the state by definition reserves for itself the legal authority to regain what it loses or delegates to pluralized political institutions, but in many instances in the real world this may be or may fast become impossible. The price of retreating from, for example, international co-operative structures may be too high, in terms of economic prosperity, reliability or viability, and the resistance from among citizens, civil society, the private initiative and/or minorities – who all stand to lose often dearly-gained freedom – may be too severe. Similar problems will make it difficult for the nation state to regain its authority within its borders, once it has delegated enough power for long enough. Yet the real drawbacks of political pluralization lie not in the difficulties involved in turning the clock back, but in the new situation itself. Political pluralization is synonymous with three 'health' conditions of social life that may seriously hinder political co-operation: incompossibility, loss of polity and loss of identification. We shall discuss these in sequence, *within* the context of the classical nation-state but without prejudice against border-crossing, supranational and international developments. The arguments made are however (*mutatis mutandis*) applicable to these as well.

Nation states, civil societies and organisations and the economic sphere all impose systems of legal and moral rules on their domains and members; to keep things simple, let us call the products of these systems 'rights'. Nation states (being sovereign) ideally operate as monopolists attributing rights either directly to individuals or indirectly through the channels of civil society and economy. They are prepared to exercise their monopoly on the use of violence to protect the former monopoly. Where heterarchy occurs, where the monopoly on the attribution of rights crumbles and two or more authorities independently attribute rights to the same individual, odd situations can result. If one independent authority grants me an absolute right to freedom of movement, and another grants you the same, our two rights physically contradict one another when we try to fill the same space in the universe at the same moment in time. (Obviously, rights do not have to be absolute to physically contradict one another; nor do they need to be *legal* rights only.) This problem is sometimes referred to as that of the *incompossibility* of rights (Steiner 1994, Wissenburg 1998, 1999): the attribution of rights to physically contradictory or mutually effacing ('existentially overlapping') acts of one or more agents. In history, the most famous example of incompossible systems of rights is the medieval conflict surrounding the right of investiture. In modern times, political pluralization may (and sometimes already does) result in conflicts between prescriptive codes (political norms): the legal codes of the state and the norms of the economic actor, for instance.

Political pluralization may also bring loss of polity and loss of identification. The emergence of political plurality implies a fragmentation of our reference group, the *polis*. What follows is first of all something *remotely* similar to a very diffuse market for political actors, 'regimes' rather than states alone, all relatively free to offer their services to customers formerly known as citizens or societies. What also follows is the mirror image of incompossibility: the loyalties of individuals and groups to different political entities may clash.

To avoid complications, we shall focus on the incompossibility problem solely as a *pars pro toto* representation of all fundamental adverse consequences of political pluralization, assuming other problems to be derivative. Unchecked, political pluralization will for instance result in (irreducible) international policy diversity. This is not necessarily a regrettable development: different policies can be quite effective, more efficient in combating internal conflicts, produce a far wider range of learning opportunities and effects, be better adapted to local circumstances, and allow a wider range of conceptions of the good to be satisfied (Wissenburg 1997). It is the fundamental problems of political pluralization we need to worry about: both in practical terms (counteracting policies, border-crossing effects) and in moral terms (where effect X of a policy in realm A, say the extinction of species X, is morally unacceptable to the people in B).

Against the background of political pluralization, what can we say about international treaties? Obviously, their intention is not to add to the confusion, not to increase political pluralization, but to *diminish* it. We can understand them as incorporating means to protect and restore sovereignty. Within the European Union, to give only one telling example, treaties between member states on workers' rights 'dictated' by Brussels (read: negotiated between members) have often been used by individual governments 'at home' to enforce locally unpopular measures (Van der Vleuten 2001). By the same token, the existence and evolution of the European Union itself is often interpreted as a strategy of sovereign nation-states struggling to retain or regain control over their social, political and economic affairs.

Yet this strategy of protecting sovereignty through treaties between sovereign states is, I would argue, self-defeating in one important respect. It is *not* self-defeating in any legal respect – each and every treaty mutually recognizing sovereignty reinforces sovereignty. The legal authority of the state, its *potestas*, remains unchallenged. Its actual power on the other hand, its *potentia*, diminishes with every treaty, since a modern treaty implies self-binding, that is, it implies that a state either limits its own liberty of action, or hands over control to a regime or treaty organisation. The more governments bind themselves to promises to others (and the more they keep their promises, that is, the more they implement treaties), the greater grows the discrepancy between *potentia* and *potestas*, between political and legal sovereignty. In other words, the EU (like any treaty organization) is at the same time an instance of political pluralization and an attempt to deal with pluralization, a countermeasure.

We can understand modern international treaties and the rationality of signing and keeping them only if we ignore the legal fiction of sovereignty and the idea that treaties are signed by (representatives of) sovereign nation-states. We are dealing with something more akin to *any* two actors - be they individuals or corporations, political, economic or other – negotiating mutually beneficial deals in return for the sacrifice of things considered, overall, less beneficial. Thus, we should understand the contracting parties to a treaty (states) not as absolute, sovereign powers but as 'supreme' powers, as 'high powers' trying to maintain, regain or establish control, as one type of political actor amid others.

Treaties are a matter of the generation and redistribution of power: they involve two or more power players acting together, supporting each other, to ensure that mutually accepted and overall beneficial aims are met. Of course, mutual advantage demands also that some sacrifices in terms of e.g. liberty of action have to be made; in a power play, moreover, not all parties necessarily gain or lose equally.

I shall now try to illustrate this with the recent Association Agreement between the EU and Chile.

3. The Association Agreement

The 1450 page long Association Agreement between the EU (or rather: the European Community), its Member States, and the Republic of Chile (signed on 18 November 2002) is only one of many treaties ruling international relations these days. It is also a very *specific* kind of treaty – meaning that due to its focus on *specific* issues, it is not representative of *all* treaties. A quick glance through EU treaties, however, indicates that what I am about to say about this particular treaty applies, *mutates mutandis*, to all EU treaties with other countries.

There is a very helpful EU website summarizing the treaty – in official terms. The official (EU) version of the treaty is that it consists of three parts (chapters): political, trade and co-operation. However, the reader immediately notices that the trade and co-operation chapters both deal with the same thing: the economic relations between EU and Chile. The opening formalities and the political chapter take up 56 articles and far less pages – the economic part takes up articles 57-197 and *all* of the seventeen annexes.

In the official summary, the political chapter contains articles on 'the political dialogue between the EU and Chile' that is to be 'strengthened', on an aspiration to 'co-ordinate positions and undertake joint initiatives in international for a', and on co-operation 'in the fight against terrorism'. The means to these aims are dialogue, 'increased' consultation, involvement of civil society, and something mysteriously called 'the regular contribution of the Association Parliamentary Committee'. That summary is more or less correct. What it says and what the treaty says is that no party is obliged to follow another's dictates, yet they shall remain on speaking terms. The *exact* means of communication are left in the dark – let us be honest, a commitment to talk without schedules and agendas attached is not exactly a *clear* commitment.

What is important to note about these first 56 articles is not only their non-committed nature, indicating that the governments involved do not mind good advice but do object to interference in – with a classic expression – 'the internal affairs of a sovereign state'. There is more. The treaty pays special attention to co-operation and exchange of information on one very specific subject: the efficiency and effectiveness of government bureaucracies, partly veiled behind expressions like (art. 16.1(a)) the institutional capacity to underpin democracy, partly more openly by inviting co-operation to secure the modernization of the state and its institutions. In so far as the treaty has any explicit political objectives backed up by action goals, then, these aims are to protect the state against loss of actual power. At the same time, though, the treaty establishes an Association Council with independent powers (Article 3), supported by an Association Committee of bureaucrats. This is political pluralization at its best: one the one hand, an attempt to strengthen the state, on the other, instruments that take away some of its power – and it does take away power, because the Association Council is given quite a task in the following 140-odd articles.

Compared to the relatively non-committal political part, the economic articles of the treaty are a completely different cattle of fish. Of course there are non-committal bits of text here as well, even meaningless phrases, like my personal favourite in Article 16.1(c), where the parties agree that they will seek to 'stimulate productive synergies'. But overall, the economic part has real substance. According to the summary, they cover 'a wide range of areas', which is a bit of an understatement. I've seen articles on Industrial co-operation, on standards and assessments, on services, on investment opportunities, on transport, energy, agriculture, fishery, statistics, customs, environment, consumer and data protection, intellectual property, science & technology, mining, tourism, and many more.

The summary also says, about the economic part of the treaty, that 'Chile and the EU have reached a very ambitious and innovative agreement that goes well beyond their respective WTO commitments'. Not only does it do *that*, it also does something else, by logical implication: it binds the parties to an immense number of mutual and one-sided obligations and rules – all accompanied by incredibly precise time schedules, percentages, definitions and what not. One may bicker with the EU summary about whether economic development really goes hand in hand with social development and the

protection of the environment – attention for the last two is far more limited and far less precise – but one cannot deny that the treaty is an impressive attempt to control economic developments. This becomes even more clear when we compare all these articles relating to the free movement of goods to the one single article dealing with the free movement of humans – all it says there is that the parties agree to take back their nationals once the other party has kicked them out as illegal immigrants.

Here, of course, we see the double face of political pluralization again: on the one hand, self-binding, on the other empowerment of the state in the attempt to check and direct economic globalization, the evolution of a modern global economy. In both lies mutual advantage for the contracting parties, at the exclusion of other parties. Exactly who benefits, where and when, from which part of the economic obligations, and who pays, is an interesting topic for further research.

4. Conclusion

The Association Agreement between the EU and Chile illustrates many of the points I made earlier. Obviously, inductive evidence cannot be taken as proof for the political pluralization thesis itself, but it does indicate that political pluralization can serve as a fruitful interpretative scheme. Ultimately, the treaty combines two (apparently) contradictory motives: on the one hand, the desire to maintain the legal fiction of state sovereignty, on the other, the attempt to control, or regain control of, international economic relations. We can then interpret the treaty as a countermeasure against political pluralization and at the same time as a factor contributing to it.

The result is as contradictory as the treaty (or any modern treaty) itself: the more self-binding a treaty is, the more it adds to the fragmentation and pluralization of politics, and the greater the discrepancy becomes between the potestas of the legally sovereign state and the potentia of the state as one among many powerful actors. Treaties seem to be nails in the coffin of the sovereign state, or to use another metaphor, the sovereign nation-state apparently brings forth its own undertakers, in the form of treaties digging its grave.

How to assess this development – that is, assuming I am right? Two comments are in order here. First, there is the question of whether or not treaties themselves have negative consequences. My answer is that they do, at least in terms of political pluralization.

The whole development of increasing numbers of treaties and regimes between an increasing number of states, and their increasing depth, will not lead to chaos and the end of civilization. (Although the exclusion of so-called rogue states may have this effect, exactly because they feel excluded – and they cannot be included because there is nothing to gain in it for other ‘civilised’ parties.) In terms of economic control, they may or may not have the desired effect, and that effect may or may not be desirable – that depends on one’s view on free trade and on the contribution the treaty makes to it. But in political-institutional terms it brings with it all the troubles of political pluralization: the danger of incompossibility, loss of polity and loss of identification. It undermines the position of the state as the one factor ideally bringing stability to society and to the lives of the individuals within society.

That brings me to a second, more fundamental comment: should we *mourn* the passing of the sovereign state? Note that I do not wish to imply that the state as a very powerful actor is disappearing – the evidence (e.g. in the form of the number of treaties and regimes) evidently points in a different direction. What I have argued is that one of the state’s properties, sovereignty, is more and more becoming a fiction (if ever it had any reality) – and what I am asking is whether sovereignty is a desirable property in a state or not.

Recently, the Canadian government, faced with the question of the legitimacy of intervention in regional conflicts elsewhere in the world (one of the greatest political dilemmas since the fall of communism), asked an international commission of experts for their opinion. The result is a report (Evans and Sahnoun, 2001) that has a number of interesting things to say about sovereignty. First, they

give a positive (empirical) argument for sovereignty: it would be needed because 'effective and legitimate states remain the best way to ensure that the benefits of the internationalization of trade, investment, technology and communication will be equitably shared' (Evans and Sahnoun, 2001: 1.34). The sovereign state, the Commission argues, is often the last or only line of defence against global inequality of power and resources (Evans and Sahnoun, 2001: 1.32). Let us assume for a moment that the Commission is right, that sovereignty can help states to defend themselves against global inequality – this is a question empirical political scientists can perhaps settle, but I cannot. What is more interesting in the present context are the reasons the Commission gives for this apparent defensive duty. One the one hand, they argue, sovereignty expresses a recognition of equal worth and dignity for states and peoples, and affirms 'their right to shape and determine their own destiny'. What legitimizes sovereignty then is something deeper: there is, apparently, a kind of (natural?) right to collective self-determination – which raises a question the Commission does not answer (nor does anyone in our times – it seems to be a highly controversial issue): what justifies the superiority and even the existence of a collective like a state, a nation, a people, in the first place? Peoples and nations perhaps really exist at any given moment in time, but they are also historical and ideological constructions. Their existence is no more morally legitimate than that of the Mongol Khanate, the medieval aristocracy, the Caliphate – the mere *fact* that they exist or existed cannot morally *justify* their existence.

One the one hand then, the Commission makes the problematic claim that sovereignty can be good because it serves collective self-determination. On the other, it argues that sovereignty is more than a right to external independence and a right to internal self-rule. Sovereignty also implies a duty, or in the words of the commission, a responsibility. It is not a 'claim of the unlimited power of a state to do what it wants to its own people', but a dual responsibility 'externally – to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state' (Evans and Sahnoun, 2001: 1.35). In other words: sovereignty is a good *only* when it is used to enforce the rights of individuals, beginning with the state's own citizens – but the responsibility also extends to individuals members of other states that do not perform their duty.

Two things follow from this observation. One is that the Commission contradicts itself. If one reads the report, one sees this clearly in the difficulties the Commission has in *limiting* rather than *justifying* the right to intervention. On the one hand, sovereignty is justified by what it does to individuals and their universal rights, regardless of local customs and rules; on the other, it is justified by an under-developed argument for collective self-rule. One cannot blame the Commission alone for this contradiction, although one can blame it for not seeing it – the Commission merely expresses a contradiction that is imminent to the modern concept of sovereignty.

The second observation one can make also concerns a contradiction: one the one hand, sovereignty is there to protect individuals (or peoples) against global inequality and, although the Commission does not use those terms, exploitation and subjection. But on the other hand, this immediately makes sovereignty a weapon of the powerful: it allows them to protect themselves not against *in*equality bit against *e*quality.

So is the – I say again, hypothetical – demise of sovereignty worth mourning for? I do not think we have seen any clear reasons to morally appreciate sovereignty – the concept is too ambiguous. And yet: the protection of humans, regardless of whether that includes or excludes rights to creating collectives, borders, insiders and outsiders, friends and enemies – that protection requires *clear* rules and *clearly visible* authorities, and not the confusion created by political pluralization.

What we should ask ourselves then, in the final analysis, is whether treaties like the Association Agreement, and that treaty in particular, contributes to the certainty, safety and stability of individual lives, and to the prevention of unjustified equality on a global level. The fact that we cannot answer this question immediately bodes ill for the treaty.

References

Association Agreement web site: http://www.europa.eu.int/comm/external_relations/chile/assoc_agr/index.htm, (accessed 30-1-2003)

Association Agreement text: http://europa.eu.int/eur-lex/en/oj/2002/l_35220021230en.html, (accessed 30-1-2003)

Evans, G. and M. Sahnoun (eds.). 2001. *The responsibility to protect. Report of the International Commission on Intervention and State Sovereignty*. Ottawa: International Development Research Centre.

Schmidt, Hilmar. 1999. Nachhaltige Entwicklung und die Aufwertung zivilgesellschaftlicher Akteure in Industrie- und Entwicklungsländern. Paper presented at a conference on the *Wandel der Beziehungsmustern zwischen Staatenwelt, Gesellschaftswelt und Wirtschaftswelt als Anpassung an die Globalisierung*. October, Darmstadt, Germany.

Steiner, Hillel. 1994. *An Essay on Rights*. Oxford: Blackwell.

Take, Ingo. Forthcoming. Transnationale Allianzbildungen im Nord-Süd-Verhältnis. In *Fir für die Institutionen? NGO-Engagement in der internationalen Umweltpolitik*, edited by A. Brunnengräber and A. Klein. Opladen: Westdeutscher Verlag.

Van der Vleuten, Anna 2002. *Dure vrouwen, dwarse staten. Een institutioneel-realistische visie op de totstandkoming en implementatie van Europees beleid*. Nijmegen Universtity Press.

Van Hees, Martin and Wissenburg, Marcel. 1999. Freedom and Opportunity. *Political Studies* 47(1): 67-82.

Wissenburg, Marcel. 1997. 'Epistemology, policy and diversity', *Episteme* 1(1-2), 123-144.

Wissenburg, Marcel. 1998. *Green Liberalism*. London: UCL Press.

Wissenburg, Marcel. 1999. *Imperfection and Impartiality*. London, UCL Press.

Wissenburg, Marcel. 2001. 'Dehierarchization in Global Environmental Politics', in: K. Van Kersbergen, G. Lock and R.H, Lieshout (eds), *Expansion and Fragmentation*, Amsterdam: Amsterdam University Press.

Young, Oran, ed. 1997. *Global Governance*. Cambridge, Mass.: MIT Press.

Summary

In this lecture I want to consider the recent treaty between the EU and Chile in a broader context – one that may not be all that broad from a philosopher's point of view (no metaphysics or other magic tricks are involved) but still perhaps unfamiliarly broad from the perspective of legal or political scientists. I shall formulate, as hypotheses not as the revealed truth, a few reasons why we should perhaps not be all that happy with this treaty, or with any 'international' treaty.

I shall first argue that the existence of the modern form of the treaty (that is, of the shape that most treaties take since roughly halfway the 20th Century) highlights an increasingly deep rift between potestas and potentia, legal power and actual power, between the legal fiction of sovereignty and the political reality of diminishing sovereignty. And since sovereignty is by definition absolute, diminishing sovereignty comes down to its elimination.

Next, I consider the context in which states operate these days: what I call the process of political pluralization, a collection of phenomena that includes the appearance of political actors other than the state next to it rather than subjugated to it. I also point out some of the potentially disastrous social and political consequences of political pluralization.

I argue that one can understand the existence and evolution of the EU as both an instance of political pluralization and as an attempt to deal with pluralization – as a countermeasure. Likewise, treaties ca

be understood as countermeasures. However, once we take that view, we can no longer maintain that the actors involved in treaties are (representatives of) sovereign nation-states. Rather, we are dealing then with something more akin to any two actors - be they individuals or corporations, political, economic or other – negotiating mutually beneficial deals in return for the sacrifice of things considered, overall, less beneficial. I try to illustrate this with the Chile-EU treaty in hand.

Without wishing to reveal beforehand how exactly I reach this conclusion, I end by arguing that treaties are not what they seem to be: they are not effective countermeasures against political pluralization, but rather contribute to the process. The nation-state, through treaties, digs its own grave.