

St Antony's International Review Secession, Sovereignty, and the Quest for Legitimacy

VOLUME 6, NUMBER 1, MAY 2010

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Editorial Introduction: Secession, Sovereignty, and the Quest for Legitimacy

GRACE BOLTON, LAURENCE MCGIVERN, AND SARAH STEELE

Recent events in Kosovo, South Ossetia, and Abkhazia have drawn the attention of the international community to secessionist movements: sub-state groups that lay claim to, and struggle to achieve, independent statehood.¹ The increased awareness of these movements has revitalized intellectual debate over the shifting meanings of sovereignty, self-determination, state building, recognition, and security. As policymakers strive to come to terms with these issues and developments, the academic community is also faced with the challenge of identifying their nature and possible implications.

Inasmuch as secession is considered “neither legal nor illegal in international law, but a legally neutral act the consequences of which are, or may be, regulated internationally,”² the legal and normative foundations of its practice are frequently challenged. Indeed, the concept of secession raises many more questions than it answers. What criteria have been used to justify secession? How do secessionist movements problematize our understanding of state sovereignty and self-determination? What are the legal and political implications of recognizing secessionist entities? Are there common patterns involving secessionist movements in different geopolitical areas? What does the future hold for secessionist movements?

When approaching these questions, it is necessary to acknowledge that secession is an issue that traverses a number of disciplines and that a singular focus can often be problematic and limiting. The articles in this issue of the *St Antony's International Review* (STAIR) reflect an interdisciplinary approach, bringing together contributions from legal scholars, area studies specialists, and practitioners. These contributions range from theoretical articles that consider normative and legal approaches to case studies that focus on China, Somalia, Indonesia, and the post-Soviet space.

Diverse as these perspectives are, each article concerns itself with the legitimacy of secession both in theory and as reflected in state practice. In this sense, “legitimacy” has normative, legal, and political aspects.

Grace Bolton, Laurence McGivern, and Sarah Steele, “Editorial Introduction: Secession, Sovereignty, and the Quest for Legitimacy,” *St Antony's International Review* 6, no. 1 (2010): 3–15.

However, it is occasionally “unclear whether ‘legitimacy’ is being used in a descriptive or a normative sense.”³ Nevertheless, it is apparent that legitimacy has strong ties to notions of sovereignty and to justice—both of which underpin the ideas of secession, remedial secession, and humanitarian intervention, which are addressed in the theoretical articles.

Importantly, while legitimacy is tied to discussions of secession quite frequently in a range of scholarly works,⁴ three distinct approaches can be identified.⁵ The first position accepts secession as legitimate by virtue of democracy. That is, secession is legitimate when a territorially defined community expresses its political will to exercise its independence from the host state. A second position constructs secession as a legal extension of the right to national self-determination, suggesting that its legitimacy is derived from the existing right to self-determination and the expression of a distinctive national identity. In political philosophy, this second position is generally referred to as an “ascriptivist” theory of secession, while the first is described variously as a “choice” or a “plebiscitary” theory.⁶ Finally, a remedial approach suggests that secession is legitimate as a remedy for human rights abuses and a denial of self-determination. Clearly, each of these positions relies on different legal, political, and normative footings.

The articles in this issue of *STAIR* seek to engage with these longstanding debates over the legitimacy of secession. We have organized this issue to present an overview of the legal, political, and normative approaches to secession and to provide an insight into the contemporary debates and theoretical issues affecting secession. However, examining theories of secession without reference to its practice presents only a partial view. Therefore, we present articles that consider different experiences of secession over the last half century. This allows the reader to observe the political implications of theoretical debates over the right of self-determination and recognition, and to explore the particular problems raised by the practice of secession for internal and external actors. In particular, we aim to highlight the different forms of legitimacy that affect secession: the political legitimacy of the actors, the normative legitimacy of their actions, and the legal legitimacy which may be conferred by the international community via recognition. We suggest that these dimensions of legitimacy are often in tension. In the sections that follow, we aim to both draw out and potentially reconcile some of these tensions.

Debates in the post-Cold War era consider the increased legitimacy of humanitarian intervention and the emerging responsibility to protect doctrine. This may have implications for legitimizing secession, particularly in cases where the inhabitants of the secessionist entity experience human rights abuses and a denial of internal self-determination. This doctrine of a qualified right to secession as an *ultimum remedium* is described as “remedial secession.”⁷ A recent restyling of the doctrine as the “remedial right to self-determination” divorces the model from the radicalism of secession, making it potentially more palatable for the international community.⁸

The theoretical articles in this volume by James Summers, Jure Vidmar, and Andrew Coleman measure the extent and examine the implications of these shifts. Notably, these authors explore different legitimizations of secession and employ varied approaches in their attempts to reconcile the tensions between the concepts of state sovereignty and territorial integrity within positive international law and an “emerging international constitutional order,” in which “people matter more than states” and “outdated concepts, such as non-intervention.”⁹

In his article “Relativizing Sovereignty: Remedial Secession and Humanitarian Intervention in International Law,” Summers explores the relationship between remedial secession and humanitarian intervention in international law. While recognizing that the roots of both ideas stem from the liberal Enlightenment conception of statehood, Summers points to their common goal of preventing the abuse of minorities. However, the main connection between remedial secession and humanitarian intervention is that both concepts challenge the principle of territorial integrity. Summers demonstrates that, despite their inadmissibility in positive international law, both principles have some relevance, both in theory and—more prominently—in practice.

Summers presents an overview of the situations in which remedial secession, humanitarian intervention, or indeed both can be observed. His article identifies conflicts in Bangladesh, Kosovo, South Ossetia, and Abkhazia to illustrate areas in which the two concepts have accompanied each other, although he is careful to refer to Kosovo, at present, as enjoying “remedial autonomy,” due to its lack of universal recognition. While remedial secession and humanitarian intervention lack legal legitimacy, the article implies that their normative and political legitimacy may override the rule of law in this area. However, both concepts are supported by assumptions stemming from the liberal discourse, a stance that may

prove problematic for those who reject such starting-points. Nonetheless, Summers' identification of the main elements of the relationship between humanitarian intervention and remedial secession merits further discussion.

Jure Vidmar's article on "Remedial Secession in International Law: Theory and (Lack of) Practice" provides a concise and detailed overview of the legal instruments relevant to remedial secession and highlights the legal difficulties surrounding this contentious doctrine. Basing his analysis on the relevant judgements and legal instruments, notably the inverted reading of the safeguard clause of the Declaration on Friendly Relations, Vidmar suggests that remedial secession is not tantamount to an entitlement but can only be said to be given effect through recognition.

To test this nuanced interpretation, Vidmar turns to instances of non-colonial state creation, which include the dissolution of the Soviet Union and the disintegration of Yugoslavia, as well as the secessions of Bangladesh from Pakistan, and Kosovo from Serbia. He concludes that unequivocal support for remedial secession cannot be found and that recognition was only conferred *en masse* following the consent of the host state. Nonetheless, despite Serbia's opposition, Kosovo has attracted the recognition of 65 states to date. This may indicate the increased salience of normative considerations in relation to recognition, and questions the widely accepted legal view that recognition is declaratory of statehood, rather than constitutive. Indeed, the invocation of remedial secession could lend legitimacy to newly formed states post-recognition. Vidmar points out that the 2008 Kosovo Declaration of Independence makes reference to human rights abuses, and in so doing, invokes the doctrine of remedial secession. Vidmar proposes that, for the remedial secession claim to be valid, human rights violations may need to be ongoing. However, the normative legitimacy of applying a ten-year statute of limitation to human rights abuses and the denial of internal self-determination is questionable.

While legal legitimacy can be conceived in many ways, Vidmar understands it here as reflecting the ways in which the international legal order can make or deny claims about the status of entities. Law acts here in a recognitional sense, acting to confer status and standing of the international system. The debates over this point are picked up by Andrew Coleman in his contribution, "Determining the Legitimacy of Claims for Self-Determination." Coleman argues that the International Court of Justice (ICJ) has an important role to play in assessing claims for independent statehood and suggests that Advisory Opinions could provide a basis upon which the legitimacy of self-determination claims can be assessed.

As the ICJ itself notes, “[a]lthough without binding effect, the advisory opinions of the Court nevertheless carry great legal weight and moral authority ... [and] contribute to the elucidation and development of international law.”¹⁰ Coleman argues that the incentives for states to follow ICJ guidelines are unclear, and that, in order to avoid the high financial and human cost of open conflict and the security risks of “overspill,” states may well be willing to accept the mediation of an international body, the best placed of which is the ICJ. Coleman suggests a number of preconditions that the ICJ could use to inform its Advisory Opinions, and provides an accompanying analysis. The current situation in Kosovo is used as a testing ground for these preconditions and to provide a contemporary example of the applicability of ICJ preconditions. From a normative perspective, Coleman’s suggestions seem plausible, even if political considerations may lead some readers to question the practicality of such a system, especially in relation to bindingness and enforcement.

Concerns about the complexity of the international legal framework are also debated by two anonymous authors in the article titled “China and the Principle of Self-Determination of Peoples.” This article examines how states respond to external standards and principles, such as self-determination, and highlights the tension between maintaining domestic control over key areas of political legitimacy while conforming to externally defined “legitimate” normative and legal standards. The authors point to a contentious translation of the term “people” in the official Chinese translations of international documents. This translation allows China to treat its population as one unified people, rather than an agglomerate of disparate nationalities, and consequently to claim that it is following international standards. A realist scholar of international relations might describe the Chinese approach as one of attempting to present a façade of compliance with international law whilst trying to maintain a strong grip on troublesome secessionist groups. The “mis-translation” also undermines claims to self-determination and its derivative, remedial secession.

The article raises an interesting point concerning the issue of translation of international documents—specifically about whether inaccurate translations can be used to justify certain behaviours, or in extreme cases to circumvent the application of unwelcome ideas. The importance of standardizing the meaning of international treaties and documents across all translations is clear. Aside from allowing an unknown number of breaches of international law, an incorrect translation of a principle could create a gap between the initial intended meaning and the “derivative” meaning, as the different versions of the norm become internalized and socialized.¹¹ There is a danger that, if left without correction, two

very distinct interpretations of self-determination could result from one principle, leading to inconsistencies that could undermine the legal and normative legitimacy of the international order.

Living with(out) Secession in Somaliland and Aceh

Despite the attention given to secession in normative and legal debates, secession is ultimately tied to the practice of the sovereign state. Whilst sovereignty is a diversely conceived and heavily debated concept,¹² the sovereign state and its territorial integrity remain at the heart of deliberations over the legitimacy of secessionist movements. To that end, there are practical boundaries to the implementation of the normative considerations and legal legitimizations, which are often overshadowed by political legitimacy. Two aspects in particular are considered in the existing literature: the political legitimacy of the state in exercising its right to maintain territorial integrity, and the political legitimacy of the secessionist movement in its separatist attempts.¹³ In this issue of *STAIR*, these aspects are considered in case studies on Aceh and Somaliland, and in the practitioners' perspectives on Transnistria and the Caucasus. Taken in the abstract, each article surveys the exercise of secession and the legitimacy of the actions of the state parties and the non-state secessionist entities. Viewed more concretely, they consider the specificities of the grievances of secessionist groups and the different methods used to assert political legitimacy under the guise of statehood, which is *de facto*, if not *de jure*.

In a comprehensive exploration of Somaliland, Dominik Helling applies the "war makes states" argument advanced by Charles Tilly to a context in the developing world. The *de facto* state of Somaliland, whilst unrecognized by the international community, is a more "functioning" entity than its recognized parent state, Somalia. Somaliland is an example of "secession of the fittest," or *saue qui peut* secession.¹⁴ While Somalia is widely recognized as a failed state,¹⁵ Somaliland seeks to avoid the same fate by consolidating its *de facto* independence. Helling examines how Somaliland established itself as a viable state by presenting the "traditional peace" argument, which credits the British colonial system with leaving traditional social structures in place in the north whilst the Italians destroyed such structures in the south. Although he does not deny that traditional structures played a role, Helling proposes his own "bellicose peace" argument, which considers the constructive aspects of warfare and assigns the success of Somaliland to the institutions and attitudes resulting from conflict.

While accepting that war is neither necessary nor sufficient for nation building, Helling argues that in some circumstances, war and, more specifically, the exercise of warfare, can help with state formation. Helling's general position is that war has the potential to form states in the developing world. No explicit comment is made on the legitimacy of the new state, nor on the question of whether war and warfare could even delegitimize a secession claim. The implication is that warfare in Somaliland has increased legitimacy by forming functioning institutions and consequently avoiding state failure. The points raised by Helling could be related to Vidmar's discussion of the role of recognition with regard to legitimacy. Somalia is recognized, yet recognized by all as a failed state. By contrast, Somaliland remains unrecognized, yet functions in a manner much more representative of a state than its parent. While it may lack legal and normative legitimacy, Somaliland may well enjoy more political legitimacy than Somalia.

In their article on "Incorporation and Institution-Building: Autonomy and Elections in Post-Conflict Aceh," Patrick Barron, Samuel Clark, and Blair Palmer draw on their extensive experiences in Aceh to examine an alternative approach to secession, which avoids bringing the principles of self-determination and territorial integrity into conflict. The 2005 Aceh Peace Agreement provided extensive autonomy and created institutions designed to integrate previous belligerents, who could otherwise act as "peace spoilers." The authors focus on the 2006 elections—the first elections after the peace deal—as a crystallization point for this process. Post-war elections mark a critical point in state development after conflict in that they provide an opportunity for former combatants to engage in the democratic process, and can be constitutive of a stable new political system in the emerging state.

Integration and institution-building can sometimes come into conflict. In order to keep former belligerents from becoming disenchanted with the politics of peace, certain institutional rules must be bent or broken occasionally. Barron, Clark, and Palmer present a series of instances in which good practice was sacrificed to allow for greater integration. The position adopted by authorities in Aceh appears to be that even bad institutional practice is better than no institutional practice at all. The authors recognize that the trade-off between stability and legitimacy is delicately balanced. The long-term consequences of engagement may well be a stable entity, but the legitimacy of such an entity will be jeopardized. Conversely, there is little value in having a legitimate state that fails as "peace spoilers" return to their former warmongering habits. The authors note that the 2009 elections were subject to fewer controls on parties, candidacies, and electoral practice. Greater freedom at the

polls in Aceh is expected to lead to greater autonomy in the long run. The success of the integrationist policies will be tested if, or when, the Acehnese use their increased autonomy to decide to secede. Will the integrated secessionist forces maintain their institutionalized function and hold the state together, or will they revert to their previous position and tear the state apart?

“Defrosting” Secession in the Post-Soviet Space

In acknowledgement of the important role played by actors who encounter these issues on a daily basis, we include two articles to reflect practitioners’ perspectives on secession. In their respective articles on the situations in Transnistria and the South Caucasus, John Beyer, former British Ambassador to Moldova, and Richard Giragosian, Director of the Armenian Center for National and International Studies in Yerevan, provide an overview of the practical issues in mediating secessionist claims, focusing on the interactions between internal and external actors who strive to find solutions for these so-called “frozen conflicts.” Beyer explores different positions on the spectrum of conflict analysis and suggests that the conflict in Transnistria is a better example of a “frozen” conflict than the struggles in the South Caucasus. Giragosian initially accepts the concept but suggests that it no longer applies to these conflicts following the August 2008 war and the controversy surrounding Russia’s recognition of South Ossetia and Abkhazia.

“Frozen conflicts” are considered intractable because of the elusive nature of a politically navigable resolution at the local level. Consequently, Beyer and Giragosian analyse the role of internal actors and consider the appropriation of these conflicts by local elites on both sides of the secessionist divide to bolster political legitimacy and national unity. While both authors emphasize the need to engage with local elites, Giragosian recommends promoting dialogue on cross-national issues. In considering the interactions between the elites of the secessionist entity and the elites of the “host state,” it must be emphasized that these two sets of elites are not of equal standing. Whereas the elites representing the host state can present their case in the international institutions and regional fora of which they are members, the elites representing the secessionist entities are reliant on the goodwill of these organizations to be able to present their views. In particular, the United Nations Security Council provides such invitations sparingly.¹⁶

Both Beyer and Giragosian consider the important role played by international actors in the mediation and management of these conflicts.

While both authors acknowledge the role played by the mediation efforts of the Organization for Security and Co-operation in Europe (OSCE) and the increasing engagement of the European Union in the region, Beyer emphasizes the importance of greater co-operation between regional and international players. However, external actors can also complicate the situation, as evidenced by Russia's policy of issuing passports to individuals within these entities.¹⁷ This action has the effect of creating overlapping sovereignty and providing Russia with the ostensibly legitimate claim to intervene on behalf of these Russian "citizens." Giragosian considers the repercussions of Russia's recognition of Abkhazia and South Ossetia, and it is worth recalling that Russia attempted to confer normative legitimacy on its recognitions by invoking remedial secession. While this may illustrate Summers' concern about the potential abuse of the doctrine, it also reflects the position taken by Vidmar that remedial secession can only be said to be given effect through recognition.

Although it is understandable that Beyer and Giragosian focus on the practical issues surrounding the mediation and management of secessionist conflict in the post-Soviet space, it is also important to consider the constitutional status of each entity within the Soviet Union prior to its dissolution in 1991.¹⁸ Whereas the Soviet Socialist Republics (SSRs) were guaranteed a nominal right of secession under the Soviet constitutions, Autonomous Soviet Socialist Republics (ASSRs), such as Abkhazia, and Autonomous Oblasts (AOs), such as South Ossetia and Nagorno-Karabagh, could not rely on any such right.¹⁹ On December 21, 1991, the Union Republics constituted the Commonwealth of Independent States (CIS) and formally undertook to recognize and respect "each other's territorial integrity and the inviolability of the existing borders."²⁰ Accordingly, the international community began to bestow recognition on the Union Republics. Although Nagorno-Karabagh, South Ossetia, and Transnistria also issued sovereignty and independence declarations, the fate of the so-called autonomies—units below Union Republics—"received limited attention in the heady months of 1991" but became "a source of political conflict and international instability in the coming years," when leaders of the autonomies found themselves within the borders of the new successor states.²¹

As Giragosian and Beyer illustrate, Abkhazia, South Ossetia, Nagorno-Karabagh, and Transnistria vehemently assert their independent status. While the international community did not confer legal legitimacy on these entities (by withholding recognition), their political leaders grounded their claims for political legitimacy, and the right to secede, within these constitutional structures. The decision to recognize the Union Republics meant that the internal administrative borders sur-

rounding the Union Republics now became borders between independent states—thereby acquiring an importance for which they were not designed.²² Similar critiques of the decision to recognize only the constituent republics of the Socialist Federal Republic of Yugoslavia, thereby ignoring the claims of the Kosovo Albanians,²³ point us towards the conclusion that the prioritization of the territorial integrity of the Union Republics, and the marginalization of the claims made by erstwhile autonomous entities, leave the international community with limited options for resolving these disputes. These options include forms of federalism and possibly remedial secession.

A Recalibrated Approach to Secession?

Returning to the discussion of legitimacy, we come back to the important tension between political, legal, and normative conceptions. Summers and Vidmar approach this conundrum in different ways. While Summers bases his analysis of remedial secession on assumptions of the liberal international order, Vidmar argues that considerations of remedial secession were not the decisive factor for establishing the legitimacy of secessionist entities. While remedial secession may undermine the political legitimacy of the host state and add to the recognitional legitimacy of the entities, host state recognition remains the most important factor.

We are left, though, with the ultimate question of what conditions make the *international* legal system legitimate as a mediator for secession? Indeed, we see from the articles in this volume that the roles of law and the international system in secession are difficult to capture. Coleman suggests that the ICJ could exercise legitimacy as an arbiter for secessionist claims—a suggestion that is laudable in its normative content, but political considerations might limit its implementation. Meanwhile the article on China highlights that the search for an international order that is consistent and universal may be difficult, even illusory, in a system where the community of states does not have a common and consistent understanding of sovereignty and the external expression of self-determination.

While the different positions taken by the contributors point towards the absence of scholarly consensus on these topics, their contestation allows us to engage with the broader issues of state-making and sovereignty that pervade contemporary debates. The debates highlighted in this edition of *STAIR* therefore act as a reminder that the political realm plays host to legal and normative principles, which can be weighted and calibrated differently, but are often in tension. Indeed, question-

ing the legitimacy of secession thus also involves interrogating the assumptions on which the contemporary international legal and political systems rest. Fundamentally, exploring secessionist movements involves questioning sovereignty and asking how it is to be weighed against other factors, such as human rights, in the international order. Perhaps the appropriate question is not whether a balance *can* be struck between the normative, political, and legal factors that interact with secession, but whether such a balance *should* be struck. After all, many satisfactory international regimes are predicated on being dynamic and responsive. Some of the greatest achievements of international order are a product of the ongoing dialogue between law and politics. Secession may be one such instance that requires a flexible approach. ■

Notes

¹ This definition draws on John R. Wood, "Secession: A Comparative Analytical Framework," *Canadian Journal of Political Science* 14, no. 1 (1981): 107–34, 110.

² James R. Crawford, *The Creation of States in International Law*, 2nd ed. (Oxford: Oxford University Press, 2006), 268.

³ Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004), 250.

⁴ See Lee C. Buchheit, *Secession: The Legitimacy of Self-Determination* (New Haven, CT: Yale University Press, 1978); Buchanan, *Justice*; Paul Groarke, *Dividing the State: Legitimacy, Secession and the Doctrine of Oppression* (Aldershot: Ashgate, 2004).

⁵ For this categorization, see Tim Nieguth, "'We Are Left with No Other Alternative': Legitimizing Internal Secession in Northern Ontario," *Space and Polity* 13, no. 2 (2009): 141–57.

⁶ Wayne Norman employs three categories of secession theories: "National Self-Determination Theories," "Choice Theories," and "Just-Cause Theories." Wayne Norman, "The Ethics of Secession as the Regulation of Secessionist Politics," in *National Self-Determination and Secession*, ed. Margaret Moore (Oxford: Oxford University Press, 1998). Buchanan describes "Ascriptivist (Nationalist) Theories" and "Plebiscitary (Choice) Theories" as "Primary Right Theories" and sets them against "Remedial Right Only Theories." Buchanan, *Justice*, 352–4.

⁷ Buchheit, *Secession*, 122.

⁸ See Marc Weller, *Escaping the Self-Determination Trap* (Lieden: Brill, 2009).

⁹ Marc Weller, *Contested Statehood: Kosovo's Struggle for Independence* (Oxford: Oxford University Press, 2009), 2.

¹⁰ International Court of Justice (ICJ), "Advisory Jurisdiction," <http://www.icj-cij.org/jurisdiction/index.php?pi=5&p2=2> (accessed March 21, 2010).

¹¹ On these concepts, see Thomas Risse and Kathryn Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction," in *The Power of Human Rights: International Norms and Domestic Change*, eds. Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (Cambridge: Cambridge University Press, 1999), 1–38.

¹² "The term sovereignty has been used in four different ways—international legal sovereignty, Westphalian sovereignty, domestic sovereignty, and interdependence sovereignty. International legal sovereignty refers to the practices associated with mutual recognition, usually between territorial entities that have formal juridical independence. Westphalian sovereignty refers to political organization based on the exclusion of external actors from authority structures within a given territory. Domestic sovereignty refers to the formal organization of political authority within the state and the ability of public authorities to exercise effective control within the borders of their own polity. Finally, interdependence sovereignty refers to the ability of public authorities to regulate the flow of information, ideas, goods, people, pollutants, or capital across the borders of their state." Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, NJ: Princeton University Press, 1999), 3–4.

¹³ For a normative analysis of secessionist conflicts in Italy, Corsica, Cyprus, Northern Ireland, Yugoslavia, Tatarstan, Chechnya, Abkhazia, Quebec, and Taiwan, see Bruno Coppieters and Richard Sakwa, ed., *Contextualizing Secession: Normative Studies in Comparative Perspective* (Oxford: Oxford University Press, 2003).

¹⁴ See Buchanan, *Justice*, 381.

¹⁵ See Morten Boås and Kathleen M. Jennings, "'Failed States' and 'State Failure': Threats or Opportunities?" *Globalizations* 4, no. 4 (2007): 475–85.

¹⁶ See Vladimir Socor, "Moscow Enlists Post-Soviet Secessionist Leaders to Pressure the UN Security Council," *Eurasia Daily Monitor* 4, no. 72 (2007), [http://www.jamestown.org/single/?no_cache=1&tx_ttnews\[tt-news\]=32674](http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt-news]=32674); and "Abkhazia: Delegation Denied US Access," *RIA Novosti*, April 10, 2007, <http://www.unpo.org/content/view/6545/236/>. In response, the leaders of Abkhazia, South Ossetia, and Transnistria established the Community for Democracy and Rights of Nations on June 14, 2006. For more information, see "Community for Democracy and Rights of Nations," <http://www.community-dpr.org> (all accessed March 24, 2010).

¹⁷ See Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG), "Report of the Independent International Fact-Finding Mission on the Conflict in Georgia," Brussels, 2009, <http://www.ceiig.ch/Report.html> (accessed March 24, 2010).

¹⁸ The Soviet Union was a multinational federation, organized in accordance with an ethno-territorial principle into a federal hierarchy. According to the ethno-territorial principle, the federal structure was based on territorially defined and ethnicity-based entities, which were granted different levels of nominal self-determination to various minorities. See Reneo Lukic and Allen Lynch, *Europe from the Balkans to the Urals: The Disintegration of Yugoslavia and the Soviet Union* (Oxford: Oxford University Press, 1996), 6; and Svante E. Cornell, *Small Nations and Great Powers: A Study of Ethnopolitical Conflict in the Caucasus* (Richmond, UK: Curzon Press, 2001), 25.

¹⁹ The Preamble of the 1974 Constitution of the former Socialist Federal Republic of Yugoslavia (SFRY) stipulated that "The peoples of Yugoslavia, proceeding from the right of every people to self-determination ... have united in a federal republic of free and equal nations and nationalities and created a socialist federative community of working people." Article 72 of the 1977 Constitution of the former Soviet Union provided for a right of secession for the Union Republics only. However, the absence of any implementing law in both the SFRY and the Soviet Union led many commentators to question the extent to which these constitutional secession clauses constituted a substantive, legally exercisable right. In the Soviet Union, the law "Concerning the Procedure of Secession of a Soviet Republic from the Union of Soviet Socialist Republics," issued on April 3, 1990, came as too little, too late. See also Antonio Cassese, "Self-Determination of Peoples and the Recent Break-Up of USSR and Yugoslavia," in *Essays in Honour of Wang Tieya*, ed. Ronald St. John Macdonald (Dordrecht: Martinus Nijhoff, 1993), 131-144, 137; and Ben Bagwell, "Yugoslavian Constitutional Questions: Self-Determination and Secession of Member Republics," *Georgia Journal of International and Comparative Law* 21, no. 3 (1991): 489.

²⁰ Cited from the CIS founding document: "Alma-Ata Declaration," December 21, 1991, http://lcweb2.loc.gov/frd/cs/belarus/by_appnc.html (accessed March 24, 2010).

²¹ Edward W. Walker, *Dissolution: Sovereignty and the Breakup of the Soviet Union* (Lanham, MD: Rowman and Littlefield, 2003), 164.

²² See Cornell, *Small Nations and Great Powers*, 25.

²³ See Peter Radan, "Yugoslavia's Internal Borders as International Borders: A Question of Appropriateness," *East European Quarterly* 33, no. 2 (1999): 137-155.

Relativizing Sovereignty: Remedial Secession and Humanitarian Intervention in International Law

JAMES SUMMERS

ABSTRACT

This article will consider the relationship between remedial secession and humanitarian intervention in international law, concepts that share certain common features. Both relate to the sovereignty and territorial integrity of states, and suggest that such principles are relative rather than absolute in the face of human rights violations. Humanitarian intervention may allow other states to engage in unilateral military intervention without United Nations Security Council authorization in response to those same events. Meanwhile, remedial secession focuses on challenges from within a state by groups seeking to separate from an oppressive system. Although remedial secession and humanitarian intervention are somewhat peripheral in international law, it is argued that both stem from liberal ideas central to statehood, so international law cannot entirely ignore them. Nonetheless, they remain connected more with the legitimacy of the law than its positive content. However, both concepts can be seen in certain circumstances to provide support for secession. Politically, there has been a correlation between the success of secession and outside assistance. Historically, external intervention has played a significant role in establishing many of the world's states. This article will focus on three situations where humanitarian intervention and remedial secession have been invoked: Bangladesh, Kosovo, and South Ossetia and Abkhazia.

Introduction

Historically, a close relationship has existed between successful national-ist movements and foreign military intervention. In the nineteenth century, such a relationship was evident when military action by Piedmont and Prussia united the Italian and German states, and when the great powers intervened in the Balkans, allowing the independence of several states. The connection was again apparent after World War I, when the Austro-Hungarian, German, and Russian empires crumbled and made it possible for Poles, Czechs, and Finns, among others, to gain independence. Likewise, Japanese militarism in World War II destroyed European power in Asia, starting the post-war decolonization process. In contem-

James Summers, "Relativizing Sovereignty: Remedial Secession and Humanitarian Intervention in International Law," *St Antony's International Review* 6, no. 1 (2010): 16-36.

porary national conflicts there are two concepts which may, in different ways, support intervention to assist a national movement seeking secession: remedial secession and humanitarian intervention. This article explores these concepts and their relationship with international law.

There is no single definition of remedial secession and no agreed criteria by which it can be exercised, if at all. The concept broadly asserts that groups that have been oppressed by a state may break away from that state, and connects to Enlightenment ideas of resistance to tyranny,¹ expressed most notably in the American Declaration of Independence of 1776. This option is usually stressed to be a last resort, when other methods to resolve the situation have failed. Some commentators have emphasized the role of persistent and serious human rights violations directed against a group.² Alternatively, it has been suggested that the repeated failure of a state to allow a people to exercise internal self-determination, or the right of a people to determine its political, economic, social, and cultural development within a state, may give rise to a right to secede.³ Similar considerations, as will be seen, have also been expressed through the notion of a state's "representativeness" in relation to the groups it contains, which has then been balanced against stability in considering the legitimacy of secession.⁴

Humanitarian intervention approaches the sovereignty and territorial integrity of a state oppressing its population, or segments of it, from a different perspective: whether a state that would normally be precluded from interfering in another state's internal affairs is entitled to intervene. There are legal mechanisms in the Charter of the United Nations (UN) that permit legal military intervention in another state's territory. However, humanitarian intervention in this paper refers to unilateral military intervention by one state in another's territory, which is not within proportionate self-defence or authorized by the UN Security Council (UNSC), but is justified on humanitarian grounds instead.

Remedial secession and humanitarian intervention are not always connected. Humanitarian intervention may be concerned with situations that do not involve national conflict or secession. Vietnamese action in Cambodia in 1978 and Tanzanian action in Uganda in 1979, which were both primarily justified through self-defence, may be seen as military action against regimes that engaged in human rights violations focused mainly on their own people rather than dissident minorities.⁵ Moreover, violent ethnic conflicts may relate to struggles over the control of a state, rather than attempts to secede from one. Nonetheless, both concepts represent challenges to the principle of territorial integrity,⁶ and, on a practical level, the two have often proceeded together. Three situations of

alleged remedial secession and humanitarian intervention can be identified: Bangladesh, Kosovo, and South Ossetia and Abkhazia.

When Bangladesh, or former East Pakistan, declared independence on April 10, 1971, its national movement was unable to mount more than a guerrilla campaign against Pakistan. The Indian intervention on December 4, 1971, was decisive in transforming a failing guerrilla struggle into a national government.⁷ Three years after independence, Bangladesh was admitted to the UN. Similarly in Kosovo, the North Atlantic Treaty Organization (NATO) intervention in March 1999 reversed the ethnic cleansing of the former Yugoslav (Serbian) province, and facilitated the establishment of an international administration, in which ethnic Albanians played an increasingly significant role. Thus, the intervention had the result of establishing autonomy for Kosovo within the formal sovereignty of Yugoslavia.⁸ The initial result of the intervention was autonomy for Kosovo rather than secession. Nonetheless, it paved the way for Kosovo's declaration of independence on February 17, 2008, which has now been recognized by sixty-five states. Finally, Russia invoked both humanitarian intervention and remedial secession to justify its intervention in, and subsequent recognition of, South Ossetia and Abkhazia, another separatist entity within Georgia, as independent states.⁹ However, in this last instance, the majority within the Security Council condemned Russia's recognition of the two regions and so far only three other states have extended recognition: Nicaragua, Venezuela, and Nauru.¹⁰ Indeed, without external intervention by states, whether unilaterally or through international organizations, secessionist movements often fail to establish recognized states, despite enduring widespread human rights abuses, as seen in Chechnya.

Both humanitarian intervention and remedial secession remain somewhat peripheral in international law. While both can be seen to relate in their ways to other legal principles, neither is explicitly provided for in legal instruments, or even quasi-legal ones, nor can they be considered clearly established in positive international law.¹¹ This can be attributed to the international legal system, the primary focus of which is the integrity of its principal unit, the territorially defined state. However, humanitarian considerations may legitimize intervention rather than attend to its legality,¹² and remedial secession is advanced only tentatively as a possible exception to the general legal position that self-determination does not encompass a right to secession.¹³ The Canadian Court in *Re. Secession of Quebec* considered that "it remains unclear whether ... [remedial secession] actually reflects an established international law standard."¹⁴ Nevertheless, both doctrines can be seen to derive from a liberal discourse (which finds the basis for the state in the protection

of individual rights and freedoms) that underpins modern statehood and may come to be reflected in international law. As Christian Tomuschat put it: "States ... have a specific *raison d'être*. If they fundamentally fail to live up to their essential commitments they begin to lose their legitimacy."¹⁵ Thus, while the doctrines exist by implication, they also remain highly resilient.

Remedial secession draws from the right of self-determination, which itself contains nationalist and liberal strands.¹⁶ Nationalism and liberalism have different perceptions of justice and oppression, the former seeing a freedom as collective national freedom, which can conflict with the individual freedoms central to the latter. Nationalism, which interprets independence as national freedom, typically provides the ideology both for secessionist movements seeking their own nation-states and for governments that resist them, wishing to preserve the unity of their own national systems and territory. However, as nationalism is based on subjective notions of nationhood, it poses more of a challenge to state-based international law than liberalism, which can value effective state institutions as mechanisms for guaranteeing individual freedoms. Remedial secession draws more explicitly from liberal notions of justice, though nationalism frequently determines the shape of groups seeking to secede and their conflict with the national government.¹⁷

In cases concerning secession, international bodies, while upholding the sovereignty and territorial integrity of states, have consciously distanced themselves from unconditional support for such integrity. The Commission of Jurists considering the *Aaland Islands* case (1920) raised the issue of "whether a manifest and continued abuse of sovereign power, to the detriment of a section of the population of a State, would ... be considered as one which is not confined to the domestic jurisdiction of the State concerned."¹⁸ The Commission of Rapporteurs that followed in 1921 judged that "[t]he separation of a minority from the State" was "an exceptional solution, a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees."¹⁹ The African Commission on Human and Peoples' Rights in *Katangese People's Congress v Zaïre* (1995) contemplated whether concrete evidence of violations of human rights or the denial of the right to participate in government could call territorial integrity into question, while stressing this was not present in the case at hand.²⁰ The Canadian Court in *Re Quebec* (1997) noted the assertion of a "number of commentators" that "when a people is blocked from the meaningful exercise of its right to self-determination internally, it is entitled, as a last resort, to exercise it by secession."²¹ However, in the *Quebec* and the *Katangese People's Congress v Zaïre* rulings this possibility for remedial secession was dismissed as irrelevant to the

case being considered.²² These decisions can be seen as defences of existing states, in which highlighting the conditionality of territorial integrity made the defence of the state appear more reasonable. Amongst these bodies, the only one that actually considered separation as an option was the Rapporteurs on the *Aaland Islands* (1921), who raised the scenario of remedial secession if Finland rejected their autonomy proposals for the islands. However, even then they described this possibility as “exactly the one which we wish to eliminate.”²³ International bodies have, therefore, considered a remedial secession option an essential element in the legitimacy of territorial integrity, but have effectively treated it as secondary to their primary concern of maintaining the integrity of states.

The Declaration on Friendly Relations and Peoples Struggling Against Alien Domination

The first connection between intervention, self-determination, and secession occurred during the process of decolonization. The UN Charter contains both the general prohibition on force, in Article 2(4), and provisions on self-determination. However, states drafting the Charter specifically understood that the right’s inclusion should not provide a pretext for intervention, as the right had been invoked to facilitate Hitler’s intervention in neighbouring countries. Nonetheless, the question of exactly how the Charter provisions should relate to each other became more pressing with decolonization during the 1960s and 1970s. From the mid-1960s, the UN General Assembly became increasingly concerned with national liberation movements fighting against authorities in Portuguese colonies and the white minority regimes of Southern Rhodesia and South Africa.²⁴ While drafting the Declaration on Friendly Relations in 1970 (an attempt to update the principles of the Charter), these considerations, it will be seen, interacted with a parallel attempt to refine the defence of territorial integrity.

The right of peoples to use force in their struggle against colonial or racist regimes and the question of whether outside states could assist them divided the UN General Assembly. The Friendly Relations Declaration referred to peoples denied exercise of self-determination by force, and their right to struggle and to receive assistance from other states in accordance with the purposes and principles of the UN Charter. This was a careful formulation that covered fundamental disagreement. Western states, in particular, specified that any assistance from other states must be of a non-military nature,²⁵ while other states argued that excluding military aid would run contrary to Article 2(4) of the Charter.²⁶ Given

the disagreement between states, it is questionable whether these provisions establish legal rights. Nonetheless, they did introduce an element of ambiguity into the interpretation of Article 2(4), which has divided legal commentators.²⁷

The connection between self-determination and a right to intervention raised a fundamental question as to the scope: Which peoples were entitled to such assistance? The Declaration on Friendly Relations referred to the subjection of peoples to alien subjugation, domination, and exploitation, without elaborating on how such peoples may be identified. A subsequent resolution, the General Assembly's Definition of Aggression (1974), was slightly more specific, citing "peoples under colonial and racist régimes or other forms of alien domination."²⁸ This explicitly extended application from overseas territories to sovereign states; South Africa was an established state and UN member. It also referred ambiguously to peoples under other alien domination, which could imply minorities within states, a point taken up by Australia: "A dissident group—and what State could claim that there was no such group within its borders—need only invoke the right to self-determination to gain entitlement to use force and to call on and receive assistance from outside sources."²⁹ Indeed, subsequent statements by some states showed a belief that military assistance was justified for groups struggling against a state's government. For example, Pakistan has repeatedly referred to Indian Kashmir;³⁰ Albania in 1998 cited Kosovo, then part of Yugoslavia;³¹ and Armenia, in the same year, raised the issue of Nagorno-Karabakh in Azerbaijan.³²

The Declaration on Friendly Relations also contained an innovative attempt to define the relationship between self-determination and territorial integrity. Instruments regarding self-determination typically contain self-determination within the framework of the territorial integrity of states. However, this poses a problem of legitimacy. Aside from states' obvious interest in avoiding challenges to their integrity, why should territorial integrity prevail over self-determination? After all, the rationale behind self-determination, both from a liberal and a nationalist perspective, is that states are artificial institutions the structure of which should be determined by the population they represent. Thus, for the containment of self-determination by territorial integrity to be legitimate, it must also appear reasonable. Such an approach was attempted in the Declaration in paragraph seven of principle five.

Paragraph seven was an exception to the previous provisions on self-determination. Nothing in the previous paragraphs was to be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sov-

foreign and independent states which conducted themselves in compliance with the principle of equal rights and self-determination and thus possessed a government representing the whole people of the territory without distinction as to race, creed, or colour. This appears to connect a state's territorial integrity with a government representing its people. Nonetheless, this formula was not accompanied by any significant consideration, much less endorsement, of a secession option.³³

Rather, paragraph seven arguably represents an attempt to strengthen the protection of territorial integrity by leaving a remedial option open, which can be seen as reasonable. The provision originated in drafts by the United States, the United Kingdom, and Italy, and by equating self-determination with representative government,³⁴ they sought to limit the right on its own terms: by satisfaction rather than arbitrary restriction. This also related to the liberal-nationalist balance in self-determination, shifting the satisfaction of self-determination towards the liberal criterion of representative government and away from nationalism, which states with minorities found problematic. However, the drafts were "not intended to encourage or condone secessionist movements."³⁵ The Declaration can be seen as supporting remedial secession only by implication and as leaving the possibility open without any specific endorsement.

The implications of tying territorial integrity to the representativeness of government are not limited to internal challenges, but also open possibilities for intervention. An amendment to the Italian draft by Lebanon added the formula of governments representing without distinction as to "race, creed or colour."³⁶ This formula was not used in later instruments, such as the Vienna Declaration 1993 and the UN Fiftieth Anniversary Declaration 1995, which referred to "a government representing the whole people belonging to the territory without distinction of any kind."³⁷ However, in the context of the time, the inference of the formula was that governments that discriminated on those grounds (in other words, racist regimes) could be subject to outside intervention. South Africa was recorded to complain that its delegation

wished to express its reservation regarding the seventh paragraph of the same principle, which implied that the rule that a State might not violate the territorial integrity of other States would not apply where that State maintained that the other States did not possess governments representing the whole people. His delegation was unable to accept such qualifications of the rule of the inviolability of territorial integrity. In fact they rendered that principle nugatory giving every State discriminatory powers to take action against another State to which it was hostile on the pretext that the peoples of the latter State were entitled to its support or that the government of that State was not representative of the whole people.³⁸

This, its delegate continued, “could only encourage subversive activities.”³⁹ However, for many other states in the General Assembly, this was, presumably, the intention.⁴⁰ Thus, the provision that opened a possibility for remedial secession also advanced outside intervention on behalf of a self-determination movement.

Remedial Secession and Humanitarian Intervention

The relationship between legal principles concerning humanitarian intervention differs from the relationship between principles in remedial secession. Whereas self-determination is normally interpreted in light of its interaction with other legal principles, there is significantly greater reluctance to treat the prohibition on the use of force in a similar way. This might be accounted for by the different impact of the relationship between the principles. In the balance between self-determination and territorial integrity, self-determination, without any accepted definition, remains ambiguous. Territorial integrity gives the principle of self-determination an element of form and stability, as it must work within the structures of the state. On the other hand, the prohibition on the threat or use of force in Article 2(4) is intended to have an unconditional clarity: Its simplicity and inflexibility is considered its strength.⁴¹ The introduction of humanitarian considerations creates ambiguity, undermining its core strength. Other legal obligations may, however, conflict with the prohibition of force. For instance, the Genocide Convention 1948 establishes a legal obligation on states to prevent the crime of genocide.⁴² The Security Council⁴³ and General Assembly⁴⁴ affirmed similar obligations for war crimes, crimes against humanity, and ethnic cleansing. States also have obligations to respect human rights and international humanitarian law.

Nonetheless, the tendency has been for Article 2(4) to be treated as a rule, which requires the development of a specific exception for humanitarian intervention. So far no explicit exception has emerged, but other articles of the UN Charter have been used to facilitate humanitarian intervention. Article 2(4) contains a rules-based exception, with the inherent right of states to self-defence contained in Article 51 of the Charter and customary international law. Self-defence is an element that is frequently mixed with humanitarian intervention. India’s intervention in Bangladesh was, in its initial stages, designated an act of self-defence against an attack by the Pakistani Air Force.⁴⁵ Russia claimed that its intervention in South Ossetia was in self-defence of its peacekeeping troops and its nationals.⁴⁶ Nonetheless, self-defence requires a proportionate

response to an attack, and in both these instances the interventions that followed were disproportionate to the attacks to which they were responding.

The UN Charter, of course, provides a legal mechanism for reconciling these two sets of principles: the Security Council. Under Chapter VII of the Charter, the Council can determine an internal crisis “a threat to international peace and security” and authorize measures on that basis. The Security Council demonstrated its ability to engage with self-determination movements. During the process of decolonization, the Security Council supported self-determination struggles by imposing sanctions on Southern Rhodesia,⁴⁷ imposing an arms embargo on South Africa,⁴⁸ and calling for sanctions over its apartheid system and occupation of Namibia.⁴⁹ East Timor, a Portuguese non-self-governing territory, was invaded and annexed by Indonesia in 1975. Following a protracted struggle for independence, the Security Council established the United Nations Mission in East Timor (UNAMET) in June 1999 to organize and oversee a plebiscite on East Timor’s status.⁵⁰ When the East Timorese voted against remaining in Indonesia, the pro-Indonesian militias launched devastating attacks on East Timor, which destroyed much of the country’s infrastructure. The Council issued resolutions (with Indonesian consent) to dispatch a multinational force to restore security⁵¹ and the United Nations Transitional Administration in East Timor (UNTAET), which developed self-government towards independence in 2002.⁵²

The Security Council’s establishment of the United Nations Mission for the Referendum in Western Sahara (MINURSO) to oversee a plebiscite in 1991 was less successful.⁵³ Like East Timor, Western Sahara was a non-self-governing territory, whose self-determination was thwarted by the intervention of Morocco in 1976. In 1988, Morocco and the Western Sahara liberation movement, POLISARIO, reached an agreement to hold a referendum in the territory, and, in 1991, MINURSO was established to organize it. Nonetheless, while MINURSO has been working on requirements for a plebiscite, its ongoing efforts have been undermined by fundamental disagreement between the parties on how that vote should be conducted. Notably, while East Timor was, and Western Sahara is, a self-governing territory, their annexation by neighbouring states renders these situations factually closer to secessionist conflicts than decolonization.

Kosovo, unlike East Timor or Western Sahara, was not a non-self-governing territory. Instead, it had the position of an autonomous province within Serbia, which, after the break-up of the Socialist Federal Republic of Yugoslavia, had formed a smaller union with Montenegro, known as the Federal Republic of Yugoslavia. When conflict between the Serbian government and the ethnic Albanian guerrilla movement, the

Kosovo Liberation Army, led to mass atrocities against ethnic Albanian civilians, the Security Council did not authorize an intervention, due to disagreement between the United States, France, the United Kingdom, and Russia. Instead, NATO intervened against Yugoslavia without a UN mandate. In UNSC resolution 1244 (1999), the Security Council established an international security presence, the Kosovo Force (KFOR), and a civil administration, the United Nations Interim Administration Mission in Kosovo (UNMIK). UNMIK was to provide an international administration for Kosovo by which people could enjoy substantial autonomy within Yugoslavia and establish provisional democratic self-governing institutions to allow that autonomy to be exercised.⁵⁴ The ultimate status of Kosovo was to be determined by a final settlement arrived at through negotiation. Despite a reference to the Kosovan “people,”⁵⁵ the resolution did not explicitly provide for self-determination. Attempts to negotiate a final status for Kosovo under UN auspices at Vienna in 2006 resulted in deadlock between the sides. Proposals for supervised independence put forward by the UN Secretary-General’s Special Envoy for Kosovo, and supported by Kosovan leaders, were rejected by Serbia and Russia. Further negotiations in 2007 saw no compromise between the parties on the alternatives of Kosovan independence and Serbian sovereignty.⁵⁶ In this context, the autonomous institutions, established by UNMIK, provided the framework for Kosovo’s disputed declaration of independence on February 17, 2008.

The veto of the five permanent members imposes a structural limitation on the Security Council, which has had two particular implications on intervention in secessionist conflicts. First, two permanent members, Russia and China, remain resistant to intervention in states’ internal affairs, which can be connected to their own separatist problems, specifically in Chechnya and Tibet. Second, the five permanent members have themselves been prominently involved in claims of unilateral humanitarian intervention involving secessionist movements. The United States, the Soviet Union, and China were not directly involved in the Bangladeshi secession in 1971, but took positions according to their Cold War alliances.⁵⁷ Ultimately, the only action the Council was able to take was to refer the matter to the General Assembly,⁵⁸ which voted overwhelmingly (104 to 110, 11 abstentions) for a ceasefire and a withdrawal (essentially by India).⁵⁹ The United States, the United Kingdom, and France were involved in the NATO intervention in Kosovo in 1999. Russia’s veto protected it from condemnation on its intervention in South Ossetia and its recognition of South Ossetia and Abkhazia in 2008. In 2009, it used its veto to end the United Nations Observer Mission in Georgia (UNOMIG), which monitored the ceasefire line between Georgia and Abkhazia.⁶⁰

The primary concerns underpinning the relationship between the principles involved in both remedial secession and humanitarian intervention are stability and abuse. Concern about stability and abuse has provided the main justifications for territorial integrity prevailing over both self-determination and humanitarian obligations. However, the perspectives from which the two doctrines do so are different: secession represents an internal challenge to territorial integrity, while intervention is a challenge from an external actor.

Concerning self-determination, international bodies have continuously presented secession as fundamentally destabilizing. The Rapporteurs in the *Aaland Islands* case presented it as reckless and selfish: that minorities withdrawing for their mere “wish or good pleasure” would “destroy order and stability within States and ... inaugurate anarchy in international life.”⁶¹ This recurring theme continued with the Canadian Supreme Court considering that separatism threatened “the stability of relations between sovereign states,”⁶² and more vividly in the “fratricidal struggles” suggested by the International Court of Justice (ICJ) in the *Burkina Faso/Mali* case.⁶³ The notion of instability is frequently presented in the domino—or “Balkanization”—scenario, in which secession invariably leads to a string of state break-ups. This argument was raised, for example, by Togo over Bangladesh: “[O]ur Organization, which has 131 members today, might have more than 600 members tomorrow.”⁶⁴ It was invoked again by China during NATO’s Kosovo intervention:

There are nearly 200 countries and over 2,500 ethnic groups all over the world. The majority of countries are home to multiple ethnic groups, and many countries have ethnic problems ... we are opposed to any act that would create division between different ethnic groups and undermine national unity.⁶⁵

Indeed, states that face secessionist movements are often quick to remind other states of their own fragility. Referring to the Bangladeshi secession, Pakistan noted: “[M]any States Members of the United Nations are not homogeneous States ... many of them claim to be pluralistic societies or multi-national States.”⁶⁶ Yugoslavia stated that the Kosovo intervention “set a dangerous precedent for the international community and a great encouragement to separatist and terrorist groups all over the world.”⁶⁷

This connection between secession and instability is prevalent among international bodies, but they have not explored it in any significant depth. The relationship between secession and international stability is a complicated one. On the one hand, the break-up of some states has been

consensual, ordered, and non-violent: an example of this was Czechoslovakia's Velvet Divorce. Nonetheless, the new states that emerged have faced ethnic challenges.⁶⁸ On the other hand, the collapse of Yugoslavia fulfilled expectations of "Balkanization." However, the causes of these conflicts relate as much to the actions of individual politicians and neighbouring states as to the secession process itself.

There are also subtle contradictions in the stability argument. While bolstering territorial integrity, stability ultimately appeals to the same humanitarian values that underpin remedial secession, namely the protection of individuals and their rights. Thus, the Russian Constitutional Court in the *Chechnya Case* defended territorial integrity on the grounds that it was "one of the guarantees of their [the Russian people's] constitutional rights and freedoms."⁶⁹ However, this assumes that people can enjoy those freedoms within a state. Likewise, the Chinese argument that Kosovo's secession would lead to "Balkanization" still assumed a duty of states to treat minorities in a non-discriminatory way: "We are not in favour of discrimination against or oppression of any ethnic group."⁷⁰ Thus, following its own rationale, the stability and abuse argument behind territorial integrity still lends weight to remedial secession if a state perpetrates violence against its own people.

Stability and abuse are similarly prevalent in legal principles on military intervention. In this case, instability is caused by an external actor intervening in the internal affairs of a state. A similar domino effect is presented for intervention. But in this case, the structure of international law is damaged, replacing its core principle of the equality of sovereign states with a situation where powerful states can intervene against weaker ones. This was outlined notably by the International Court in *Corfu Channel*:

[T]he alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to the most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law. Intervention ... would be reserved for the most powerful States, and might easily lead to perverting the administration of international justice itself.⁷¹

The accusation that powerful states abuse their strength and exercise their own subjective notions of justice, tainted by national interests, is a potent one in humanitarian intervention discourse. A prominent charge levelled at states arguing for humanitarian intervention is the lack of purely humanitarian motives behind their actions. For example, the strategic advantages of India's intervention in Bangladesh were obvious: It allowed India to split its regional rival Pakistan in two, more than

halving its population and challenging the very idea of a Muslim nation on the subcontinent.⁷²

An alternative approach may be to consider the humanitarian element by the effects of the intervention.⁷³ If interventions are assessed on their humanitarian outcomes, India's intervention in East Pakistan may be considered to have fulfilled a humanitarian purpose, preventing further attacks when three million people had already been killed and allowing ten million people to return to their homes.⁷⁴ NATO intervention stopped Serbian military action against Kosovan Albanians, which had led to the deaths of 10,000 people, and allowed the return of 500,000 internally displaced persons and 800,000–1.1 million refugees in neighbouring countries.⁷⁵ On the other hand, Russia's alleged humanitarian motives for its intervention in South Ossetia are undermined by claims of Georgian "genocide" which did not take place. Independent investigations found that 162 South Ossetians died in the conflict,⁷⁶ as opposed to the 2,000 initially cited by Russia.⁷⁷ In addition, Russia allowed South Ossetian militias to ethnically cleanse Georgian villages in South Ossetia, creating a large-scale humanitarian crisis rather than resolving one.⁷⁸

If humanitarian intervention may encompass political expediency, this has also been reflected in dramatic and opportunist legal arguments from the states involved. At the time of its intervention in Bangladesh, India submitted radical arguments in favour of the Bangladeshi secession, extending the concept of a non-self-governing territory to a region within a state.⁷⁹ Previous to this, and then again after the secession, India's position was that self-determination did not apply within states.⁸⁰ Moreover, during NATO's action in Kosovo, India rejected a doctrine of humanitarian intervention: "[W]e have been told that the attacks are meant to prevent violations of human rights. Even if that were so, it does not justify unprovoked military aggression. Two wrongs do not make a right."⁸¹

In cases of humanitarian intervention in support of secessionist movements, concerns over internal and external threats to territorial integrity reinforce each other. For both doctrines, the combination of internal and external threats is an aggravating factor. There are four reasons why this is the case.

First, while humanitarian intervention is generally perceived as outside the letter of the law, it is still seen to be guided by a fundamental sense of justice. However, essential to this legitimacy is that objectives are achieved by doing as little harm as possible. Alignment with a secessionist movement provides a temporary intervention with permanent consequences: the potential dismemberment of a state. These permanent consequences can undermine the legitimacy of the humanitarian element.⁸²

Second, since most states have ethnic minorities, they provide a convenient general excuse for intervention, which has historically been associated with notorious abuses, as discussions about the Nazi “intervention” in neighbouring countries during the drafting of the UN Charter underline.⁸³ In addition, intervening states have, prior to their intervention, supported secessionist movements, allowing ethnic conflicts to continue or escalate. Months before India intervened in East Pakistan, it provided Bengali guerrillas with arms, training, and funding, as well as sanctuary and an operational base in Indian territory.⁸⁴ Russia provided significant military support for secessionists in Abkhazia and South Ossetia, both in terms of equipment and direct intervention, allowing them to carve out their own *de facto* states in the early 1990s.⁸⁵

Third, from the perspective of instability, another state’s intervention changes the nature of a conflict from an internal one to an international one. States have tended to treat secessionist movements as internal matters. Even if separatists control a territory, and do so for a substantial period of time, such as in Somaliland, Transnistria, or Nagorno-Karabagh, other states have been willing to ignore the separatist movements behind a façade of territorial integrity. External intervention by another state transforms those conflicts both legally and politically, creating greater risks of escalation. As intervention tends to involve more powerful states, it typically takes place within a context of competing spheres of influence. The deployment of NATO troops into Kosovo was pre-empted by a move by Russia to send troops to occupy Pristina airport without any prior consultation.⁸⁶ When Russia intervened in South Ossetia, American warships were sent to Georgian waters.⁸⁷ In both cases there was potential for a serious inter-state conflict.

Fourth, the legitimacy of the claim of secessionist movements to self-determination rests on being seen to be representative of a people. External intervention or support may distance an independence movement from its national and/or popular base. The Bangladeshi movement, represented by the Awami League, was denounced in the UN as “neokwisting,”⁸⁸ “a puppet government,”⁸⁹ and a “fifth column”⁹⁰ for its associations with India, despite its convincing win in the Pakistani elections in December 1970.⁹¹

Conclusion

Remedial secession and humanitarian intervention share a number of common features. Both challenge the sovereignty and territorial integrity of states by appealing to the liberal values that underlie modern state-

hood. As a consequence, neither can be seen to be accepted in positive international law, but nonetheless remain resiliently on its margins. In the case of remedial secession, the balancing of principles within international law has ensured that the possibility of remedial secession is often referred to, even if there appears little will to apply it. Humanitarian intervention, on the other hand, functions essentially as an alternative basis to clearly defined rules, so that action may be outside the law but legitimate in a broader sense.

While humanitarian intervention and remedial secession have a common base, they do not necessarily coincide. Many humanitarian interventions do not concern secessionist conflicts and secession could be accomplished without outside intervention. The potential for overlap arises where nationalist elements in self-determination generate conflict between separatist and state governments. Where both doctrines may be applicable, they can function to undermine each other. The legitimacy of humanitarian intervention lies in minimizing its impact and maximizing the demonstration of its benefits. However, a successful secession creates permanent consequences, with the dismemberment of a state. Conversely, outside intervention may undermine the legitimacy of a nationalist movement and raise concerns among states about their own security in relation to their minorities.

Nonetheless, humanitarian intervention and remedial secession have successfully supported each other. Bangladesh remains the most notable example and the only seceding entity to become a member of the United Nations. Kosovo is not a direct example of remedial secession, but of “remedial autonomy,” in which self-governing institutions were established to protect an oppressed minority group, but within formal respect for the territorial integrity of a state. The Rambouillet negotiations of February 1999, the failure of which led to NATO airstrikes, sought to (re-) establish autonomy for Kosovo within Yugoslavia,⁹² and the mandate of the UNMIK administration established after NATO’s intervention was also autonomy within Yugoslavia, pending agreement on a final status.⁹³ Nonetheless, this autonomy, in the context of the subsequent failure of parties to agree a final status for Kosovo, provided the institutional basis for secession in 2008. Presently Kosovo remains divisive: A third of UN members recognize the state, but two-thirds do not and it is the subject of an advisory opinion by the International Court of Justice. The Russian intervention in South Ossetia, on the other hand, may be seen as reflecting the view in *Corfu Channel* that a right of intervention may lend itself to abuse by powerful states. ■

¹ See John Locke, *Two Treatises of Government*, 2nd ed. (Cambridge: Cambridge University Press, 1967), bk. 2, chap. XIX.

² Allen Buchanan has referred to “(1) large-scale persistent violations of basic human rights, (2) unjust annexation of the territory of a legitimate state, and (3) states’ persistent, serious, and unprovoked violations of intrastate autonomy agreements.” Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004), 364.

³ *Reference re Secession of Quebec* (1998) 161 DLR (4th) 385 (Supreme Court of Canada) (“*Re Quebec*”) [126], [134]–[135]. See also Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1995), 111–21; David Raïć, *Statehood and the Law of Self-Determination* (The Hague: Kluwer, 2002), 451.

⁴ See Frederic L. Kirgis Jr., “The Degrees of Self-Determination in the United Nations Era,” *American Journal of International Law* 88, no. 2 (1994): 304–10.

⁵ See Christine Chinkin, “Kosovo: A ‘Good’ or ‘Bad’ War?” *American Journal of International Law* 93, no. 4 (1999): 841–7, 846; Christine D. Gray, *International Law and the Use of Force*, 3rd ed. (Oxford: Oxford University Press, 2008), 33.

⁶ In particular, both doctrines apparently contravene the prohibition on the threat or use of force against territorial integrity in Article 2(4) of the United Nations Charter. However, this blanket prohibition, which makes no allowance for motive and intent, may conflict with the UN purposes in promoting self-determination in Article 1(2) and human rights in Article 1(3).

⁷ See Alexis Heraclides, *The Self-Determination of Minorities in International Politics* (London: Frank Cass, 1991), 156–7; Lee C. Buchheit, *Secession: The Legitimacy of Self-Determination* (New Haven, CT: Yale University Press, 1978), 207.

⁸ UNSC (UN Security Council) Resolution 1244 (June 10, 1999) UN Doc S/RES/1244 (“UNSC Res 1244”).

⁹ See Statement of the Ministry of Foreign Affairs of the Russian Federation (August 25, 2009).

¹⁰ See France, UNSC Verbatim Record 5961 (August 19, 2008) UN Doc S/PV/5961 (“UNSC Verbatim Record 5961”), 9; Italy, UNSC Verbatim Record 5961, 10; Panama, UNSC Verbatim Record 5961, 11; United Kingdom, UNSC Verbatim Record 5961, 11–12; Costa Rica, UNSC Verbatim Record 5961, 12–13, 20; Croatia, UNSC Verbatim Record 5961, 13; Indonesia, UNSC Verbatim Record 5961, 13–14; United States, UNSC Verbatim Record 5961, 14–16; Belgium, UNSC Verbatim Record 5961, 16.

¹¹ On humanitarian intervention, see International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), para. 6.17; Louis Henkin, “Kosovo and the Law of ‘Humanitarian Intervention,’” *American Journal of International Law* 93, no. 4 (1999): 824–8, 824; Thomas M. Franck, “Interpretation and Change in the Law of

Humanitarian Intervention," in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, eds. J. L. Holzgrefe and Robert O. Keohane (Cambridge: Cambridge University Press, 2003), 204–31, 230; Nico Krisch, "Legality, Morality and the Dilemma of Humanitarian Intervention after Kosovo," *European Journal of International Law* 13, no. 1 (2002): 323–35, 325; Gray, *International Law and the Use of Force*, 51. On secession in general, see James Crawford, "State Practice and International Law in Relation to Unilateral Secession," in *Self-Determination in International Law: Quebec and Lessons Learned*, ed. Anne F. Bayefsky (The Hague: Kluwer, 2000) 31–61, 42–3, 57; Allen Buchanan, "Democracy and Secession," in *National Self-Determination and Secession*, ed. Margaret Moore (Oxford: Oxford University Press, 1998), 14–33, 15; Daniel Philpott, "Self-Determination in Practice," in *National Self-Determination and Secession*, ed. Moore, 79–102, 86; Diane F. Orentlicher, "International Responses to Separatist Claims: Are Democratic Principles Relevant?" in *Secession and Self-Determination*, eds. Stephen Macedo and Allen Buchanan (New York: New York University Press, 2003), 19–49, 19; Dietrich Murswiek, "The Issue of a Right of Secession—Reconsidered," in *Modern Law of Self-Determination*, ed. Christian Tomuschat (Dordrecht: Martinus Nijhoff, 1993), 21–39, 23–4, 37.

¹² Antonio Cassese, "Ex Iniuria Ius Oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?" *European Journal of International Law* 10, no. 1 (1999) 23–30, 25; Jane Stromseth, David Wippman, and Rosa Brooks, *Can Might Make Rights? Building the Rule of Law after Military Interventions* (Cambridge: Cambridge University Press, 2006), 19.

¹³ See Independent International Fact-Finding Mission on the Conflict in Georgia, *Report*, (2009) vol I [1] ("Report").

¹⁴ *Re Quebec* (n 3) [135].

¹⁵ Christian Tomuschat, "Self-Determination in a Post-Colonial World," in *Modern Law of Self-Determination*, 1–20, 9. See also Allen Buchanan, "The Quebec Secession Issue: Democracy, Minority Rights, and the Rule of Law," in *Secession and Self-Determination*, eds. Stephen Macedo and Allen Buchanan (New York: New York University Press, 2003), 238–71, 242.

¹⁶ See James Summers, *Peoples and International Law: How Nationalism and Self-Determination Shape a Contemporary Law of Nations* (Leiden: Brill, 2007), 31–3.

¹⁷ See Buchanan, *Justice*, 372.

¹⁸ League of Nations, "Report of the International Commission of Jurists, Legal Aspects of the Aaland Islands Question," Official J (special supp 3, 1920) 5.

¹⁹ The Aaland Islands Question: Report by the Commission of Rapporteurs (April 1921) League of Nations Doc B7 [C] 21/68/106, 28.

²⁰ "Katangese Peoples' Congress v Zaire, Communication No. 75/92" in Rachel Murray and Malcolm Evans (eds), *Documents of the African Commission on Human and Peoples' Rights* (Hart, Oxford 2001) ("Katangese Peoples") 389.

²¹ *Re Quebec* (n 3) [134].

²² According to the jurists, “[it] certainly does not apply to the case under consideration”: *Report* (n 13) 5; “The population of Quebec cannot plausibly be said to be denied access to government”: *Re Quebec* (n 3) [136]; Katangese Peoples (n 20) 389.

²³ Rapporteurs, *Report* (n 13) 34.

²⁴ See, e.g., UNGA (UN General Assembly) Res 2506 (XXIV) (November 21, 1969) (South Africa); UNGA Res 2508 (XXIV) (November 21, 1969) (Portuguese Territories); UNGA Res 2508 (XXIV) (November 21, 1969) (Southern Rhodesia).

²⁵ E.g., United States, UN Special Committee on Principles of International Law concerning Friendly Relations and Cooperation among States (UN Special Committee concerning Friendly Relations) Record 114 (September 1, 1970) UN Doc A/AC.125/SR.114.

²⁶ E.g., Cameroon, UN Special Committee concerning Friendly Relations 70 (December 4, 1967) UN Doc A/AC.125/SR.70, 14.

²⁷ See Georges Abi-Saab, “The Third World and the Future of the International Legal Order,” *Revue Egyptienne de Droit International* 29 (1973): 27–66, 47–8; Antonio Tanca, “The Prohibition of Force in the U.N. Declaration on Friendly Relations of 1970,” in *The Current Legal Regulation of the Use of Force*, ed. Antonio Cassese (Dordrecht: Martinus Nijhoff, 1986), 397–412, 407; Stephen M. Schwebel, “Aggression, Intervention and Self-Defence in Modern International Law,” *Recueil des Cours* 136 (1972): 11, 411–97, 486; Malvina Halberstam, “The Evolution of the United Nations Position on Terrorism: From Exempting National Liberation Movements to Criminalizing Terrorism Wherever and by Whomever Committed,” *Columbia Journal of Transnational Law* 41 (2003): 573–84; Richard L. Griffiths, “International Law, the Crime of Aggression and the *Ius Ad Bellum*,” *International Criminal Law Review* 2, no. 4 (2002): 301–73, 360.

²⁸ UNGA Res 3314 (XXIX) (December 14, 1974).

²⁹ Australia, UN Special Committee on Defining Aggression Record 95 (1972) UN Doc A/AC.134/SR.95, 33.

³⁰ Pakistan, UN Doc A/AC.240/1995/L.13/Rev.1, 11.

³¹ Albania, UN Conference on the Establishment of an International Criminal Court 4 (1998) UN Doc A/CONF.183/SR.4 [11].

³² Armenia, UN Conference on the Establishment of an International Criminal Court 3 (1998) UN Doc A/CONF.183/SR.3 [84].

³³ An exception was the Netherlands which did consider that it might allow secession in some extreme cases: Netherlands, UN Special Committee concerning Friendly Relations 107 (1969) UN Doc A/AC.125/SR.107, 85.

³⁴ United States, UN Special Committee concerning Friendly Relations Record 107 (1967) UN Doc A/AC.125/SR.68, 5; United Kingdom, UN Special Committee concerning Friendly Relations (1967) UN Doc A/AC.125/SR.69, 19; Italy, UN Special Committee concerning Friendly Relations Record 114 (1970) UN Doc A/AC.125/SR.114, 45.

- ³⁵ United Kingdom, UN Special Committee concerning Friendly Relations (1967) UN Doc A/AC.125/SR.69, 19.
- ³⁶ Lebanon, UN Doc A/AC.125/L.81 (A/8018) [64].
- ³⁷ UNGA Res 50/6 (October 24, 1995) UN Doc A/RES/50/6.
- ³⁸ South Africa, UNGA Sixth Committee 1183 (September 28, 1970) UN Doc A/C.6/SR.1184 [15].
- ³⁹ South Africa, UNGA Sixth Committee 1183 (n 38) [15].
- ⁴⁰ See Michla Pomerance, *Self-Determination in Law and Practice: The New Doctrine of the United Nations* (The Hague: Martinus Nijhoff, 1982), 39; Hurst Hannum, "Rethinking Self-Determination," *Virginia Journal of International Law* 34 (1994): 1-69, 17; Patrick Thornberry, "Self-Determination, Minorities, Human Rights: A Review of International Instruments," *International and Comparative Law Quarterly* 38, no. 4 (1989): 867-89, 876-7.
- ⁴¹ See Bruno Simma, "NATO, the UN and the Use of Force: Legal Aspects," *European Journal of International Law* 10, no. 1 (1999): 1-22, 2-3.
- ⁴² Convention on the Prevention and Punishment of the Crime of Genocide (adopted December 9, 1948, entered into force January 12, 1951) art 1. See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* ICJ Rep (International Court of Justice) (February 26, 2007) [428]-[438].
- ⁴³ UNSC Res 1674 (April 28, 2006) UN Doc S/RES/1674 [4].
- ⁴⁴ UNGA Res 60/1 (September 16, 2005) UN Doc A/RES/60/1 [138]-[139].
- ⁴⁵ India, UNSC Verbatim Record 1608 (December 6, 1971) UN Doc S/PV/1608 ("UNSC Verbatim Record 1608") [272].
- ⁴⁶ Russia, UNSC Verbatim Record 5952 (August 8, 2008) UN Doc S/PV/5952, 5; S/2008/545.
- ⁴⁷ UNSC Res 217 (November 20, 1965) UN Doc S/RES/217; UNSC Res 253 (May 29, 1968) UN Doc S/RES/253; UNSC Res 277 (March 18, 1970) UN Doc S/RES/277; UNSC Res 409 (May 27, 1977) UN Doc S/RES/409.
- ⁴⁸ UNSC Res 418 (November 4, 1977) UN Doc S/RES/418.
- ⁴⁹ UNSC Res 566 (June 19, 1985) UN Doc S/RES/566.
- ⁵⁰ UNSC Res 1246 (June 11, 1999) UN Doc S/RES/1246.
- ⁵¹ UNSC Res 1264 (September 15, 1999) UN Doc S/RES/1264.
- ⁵² UNSC Res 1272 (October 25, 1999) UN Doc S/RES/1272.
- ⁵³ UNSC Res 690 (April 29, 1991) UN Doc S/RES/690.
- ⁵⁴ UNSC Res 1244 (n 8) [10].
- ⁵⁵ UNSC Res 1244 (n 8) [10].

- ⁵⁶ See Marc Weller, *Contested Statehood: Kosovo's Struggle for Independence* (Oxford: Oxford University Press, 2009), 191–239.
- ⁵⁷ See USSR, UNSC Verbatim Record 1607 (December 5, 1971) UN Doc S/PV/1607 (“UNSC Verbatim Record 1607”) [121], UNSC Verbatim Record 1608 (n 45) [48]; China, UNSC Verbatim Record 1607 [217]; United States, UNSC Verbatim Record 1606 (December 4, 1971) UN Doc S/PV/1606 (“UNSC Verbatim Record 1606”) [194]–[200]; USSR, UNSC Verbatim Record 1606 [371].
- ⁵⁸ UNSC Res 303 (December 6, 1971) UN Doc S/RES/303.
- ⁵⁹ UNGA Res 2793 (XXVI) (December 7, 1971).
- ⁶⁰ Russia, UNSC Verbatim Record 6143 (June 15, 2009) UN Doc S/PV/6143, 2–3.
- ⁶¹ Rapporteurs, *Report* (n 13) 28.
- ⁶² *Re Quebec* (n 3) [127].
- ⁶³ ICJ Reports (1986) 565 [20].
- ⁶⁴ Togo, UNGA Verbatim Record 2003 (December 7, 1971) UN Doc A/PV/2003 (“UNGA Verbatim Record 2003”) [202]–[203].
- ⁶⁵ China, UNSC Verbatim Record 4011 (June 10, 1999) UN Doc S/PV/4011 (“UNSC Verbatim Record 4011”), 8–9.
- ⁶⁶ Pakistan, UNSC Verbatim Record 1607 (n 57) [146].
- ⁶⁷ Yugoslavia, UNSC Verbatim Record 4011 (n 65) 6.
- ⁶⁸ Slovakia, with its large ethnic Hungarian population, could potentially have faced a serious irredentist conflict if its borders had not been guaranteed.
- ⁶⁹ *Chechnya Case, Statutes and Decisions: The Laws of the USSR and its Successor States* 31:5 (1995): 48–94, 51–2.
- ⁷⁰ China, UNSC Verbatim Record 4011 (n 65) 8–9.
- ⁷¹ ICJ Rep (1949) 35.
- ⁷² See Heraclides, *Self-Determination*, 154, 158.
- ⁷³ See Peter Hilpold, “Humanitarian Intervention: Is there a Need for a Legal Reappraisal?” *European Journal of International Law* 12, no. 3 (2001): 437–68, 464.
- ⁷⁴ See Leo Kuper, *The Prevention of Genocide* (New Haven, CT: Yale University Press, 1985), 48.
- ⁷⁵ See Weller, *Contested Statehood*, 166.
- ⁷⁶ *Report* (n 13) 21, 26.
- ⁷⁷ Russia, UNSC Verbatim Record 5953 (August 10, 2008) UN Doc S/PV/5953, 8.
- ⁷⁸ *Report* (n 13) 27.
- ⁷⁹ India, UNSC Verbatim Record 1606 (December 4, 1971) UN Doc S/PV.1606 [185].

⁸⁰ India, UN Special Committee concerning Friendly Relations Record 68 (1967) UN Doc A/AC.125/SR.68, 10; India, UN Report to the Human Rights Committee UN Doc CCPR/10/Add.8, 343.

⁸¹ India, UNSC Verbatim Record 3988 (March 23, 1999) 15–16.

⁸² See ICISS, *Responsibility to Protect*, para. 5.23.

⁸³ Belgium, UN Committee I/1 (May 14, 1945) 12; Rapporteur, UN Committee I/1 (May 15, 1945) 12; Rapporteur, UN Committee I/1 (June 1, 1945), 17.

⁸⁴ See Heraclides, *Self-Determination*, 156; Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), 57–8.

⁸⁵ See Thomas Goltz, “Letter from Eurasia: The Hidden Russian Hand,” *Foreign Policy* 92 (1993): 92–116, 104–5; Stephen Jones and Robert Parsons, “Georgia and the Georgians,” in *The Nationalities Question in the Post-Soviet States*, ed. Graham Smith (London: Longman, 1996), 291–314, 308–9; Valery Tishkov, *Ethnicity, Nationalism and Conflict in and After the Soviet Union* (London: Sage, 1997), 226; David E. Mark, “Russia and the New Transcaucasus,” *Foreign Policy* 105 (1996–7): 141–59, 151; Anatol Lieven, *Chechnya: Tombstone of Russian Power* (New Haven, CT: Yale University Press, 1998), 33–4, 59, 244.

⁸⁶ See Alex J. Bellamy, *Kosovo and International Society* (Basingstoke: Palgrave Macmillan, 2002), 200–1.

⁸⁷ See Richard Beeston, “Echo of Cold War as US Flexes its Muscles in the Russia/Georgia Conflict,” *The Times*, August 14, 2008.

⁸⁸ China, UNSC Verbatim Record 1608 (n 45) [120].

⁸⁹ Albania, UNGA Verbatim Record 2003 (n 64) [110].

⁹⁰ Portugal, UNGA Verbatim Record 2003 (n 64) [264].

⁹¹ See Buchheit, *Secession*, 203.

⁹² See Weller, *Contested Statehood*, 109.

⁹³ See Paul R. Williams and Francesca Jannotti Pecci, “Earned Sovereignty: Bridging the Gap between Sovereignty and Self-Determination,” *Stanford Journal of International Law* 40 (2004): 1–40, 12–3.

Remedial Secession in International Law: Theory and (Lack of) Practice

37

JURE VIDMAR

ABSTRACT

It is generally accepted in international legal scholarship that the right of self-determination is limited by the principle of territorial integrity of states. Yet the inverted reading of the elaboration of this principle in the Declaration on Principles of International Law suggests that a state may not avail itself of the principle of territorial integrity if it does not possess a government representing the whole people belonging to its territory. Such an interpretation has some notable support in judicial writings and even some limited support in jurisprudence. It is suggested that secession may be the last resort for ending oppression. This doctrine is often referred to as remedial secession. The article considers the theory and practice of remedial secession and points out that its theoretical foundations are rather weak. It concludes that secession is never an entitlement, not even in a situation of severe oppression. Yet it may well be that international recognition is more likely to be granted when oppressed peoples try to create their own state. Thus, although not an entitlement, remedial secession may be given effect through recognition. In the United Nations (UN) Charter era, the secessions of Bangladesh and Kosovo and the dissolutions of the Soviet Union and Yugoslavia are sometimes invoked as situations upholding the remedial secession doctrine. The article analyses these situations and concludes that none of them proves that state practice accepts remedial secession as a legal entitlement. Therefore, the remedial secession doctrine not only has weak theoretical foundations, but also no support in state practice.

Introduction

The operation of the right of self-determination is not limited to the process of decolonization.¹ Yet, the exercise of this right has different implications in colonial versus non-colonial situations. In the colonial context “the only territorial relationship to be altered was that with the metropolitan power. Achieving independence ... did not come at the expense of another sovereign state’s territory or that of an adjacent colony.”² However, in non-colonial situations the right of self-determination collides with the principle of territorial integrity. Since self-determination is not an absolute right, the territorial integrity of states limits its scope of operation.³ Therefore, outside of the process of decolonization, the exercise

Jure Vidmar, “Remedial Secession in International Law: Theory and (Lack of) Practice,” *St Antony’s International Review* 6, no. 1 (2010): 37–56.

of the right of self-determination does not usually result in the creation of a new state.

In non-colonial situations, secession can only take place with the approval of the parent state. Such approval may be given by the constitution of the parent state, or in some other form, either prior to the declaration of independence or following an initial unilateral declaration.⁴ In either event, due to the requirement of parent-state approval, there cannot be said to be a right to secession as such under international law.⁵

Yet, the right of states to territorial integrity might not be absolute and unqualified. The development of international human rights law has in many respects limited the concept of state sovereignty. In particular, for our purposes here, the theory of so-called remedial secession suggests that gross and systematic human rights violations can lead a state to lose a part of its territory if oppression is directed against a specific people.⁶

While the principle of territorial integrity limits the right of self-determination, it is precisely the elaboration of this principle in the Declaration on Principles of International Law which gives rise to the remedial secession theory:

Nothing in the foregoing paragraphs [concerning the right of self-determination] shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.⁷

An inverted reading of this provision would suggest that a state which does not possess “a government representing the whole people belonging to the territory without any distinction” is not entitled to invoke the principle of territorial integrity when limiting the right of self-determination. Still, it is questionable whether remedial secession has enough support in legal doctrine and state practice to be considered an actual entitlement under international law.

This article aims to clarify the theory and practice of remedial secession. It initially considers whether international law provides oppressed peoples with the right to secession without approval of the parent state. It then examines the practice of new state creation in a series of situations which are commonly cited as supportive of the remedial secession doctrine: the secession of East Pakistan, the dissolution of the Soviet Union, the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY), and the secession of Kosovo. The article is generally sceptical

The Theory of Remedial Secession

Perhaps the most prominent judicial pronouncement which underpins the theory of remedial secession is that of the Supreme Court of Canada in the *Quebec case*. In its 1998 judgement, the Court affirmed that there exists no right to unilateral secession in international law. However, this statement was not unqualified:

The recognized sources of international law establish that the right to self-determination of a people is normally fulfilled through internal self-determination—a people's pursuit of its political, economic, social and cultural development within a framework of an existing state. A right to external self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances.⁸

Reference to “the most extreme cases,” which may justify a unilateral secession, is to be read against the background of the above-cited provision on self-determination and territorial integrity expressed in the Declaration on Principles of International Law. This provision has been referred to as the “safeguard clause.” The Supreme Court of Canada seems to have upheld the inverted reading of the safeguard clause by arguing: “The other clear case where a right to external self-determination accrues [apart from colonial situations] is where a people is subject to alien subjugation, domination or exploitation outside a colonial context.”⁹ The Court, however, held that these circumstances were not met in the case of Quebec,¹⁰ and the pronouncement remained an *obiter dictum*, i.e., a remark by the Court which was not necessary for reaching the decision.

In the 1997 case of *Loizidou v Turkey*, before the European Court of Human Rights, Judges Wildhaber and Ryssdal argued:

In recent years a consensus has seemed to emerge that peoples may also exercise a right to self-determination if their human rights are consistently and flagrantly violated or if they are without representation at all or are massively under-represented in an undemocratic and discriminatory way. If this description is correct, then the right to self-determination is a tool which may be used to re-establish international standards of human rights and democracy.¹¹

The two concurring judges did not make a reference to secession. Yet this omission is not too significant. The right of self-determination is applicable to all peoples and there is no need for this to be specifically af-

firmed in a concurring opinion.¹² Yet, the exercise of the right of self-determination in the form of secession is another question and the context suggests that this is what Judges Wildhaber and Ryssdal had in mind. Their concurring opinion obviously adopts the remedial secession argument and accepts the possibility of secession in situations where peoples are oppressed by and/or not adequately represented within the political structures of their parent states.

The support for remedial secession in jurisprudence is therefore limited to an *obiter dictum* and to a concurring opinion of two judges; no judicial body has accepted secession as an entitlement in any particular case. The concept nevertheless has some support among writers.¹³ The main argument of the academic proponents is well-captured by Allen Buchanan:

If the state persists in serious injustices toward a group, and the group's forming its own independent political unit is a remedy of last resort for these injustices, then the group ought to be acknowledged by the international community to have the claim-right to repudiate the authority of the state and to attempt to establish its own independent political unit.¹⁴

The academic proponents of remedial secession thus tend to see secession as a “qualified right” which is triggered by oppression.¹⁵ At the same time, it is viewed as an exceptional, last-resort solution.¹⁶

However, as James Summers points out, most writers express their support for remedial secession rather cautiously by claiming that such a right “perhaps” or “possibly” exists, or by giving a circular reference to “a number of commentators,” without taking a firm stance on whether this right exists or not.¹⁷ Malcolm Shaw further argues that a theory based on an inverted reading of the safeguard clause is problematic:

Such a major change in legal principle cannot be introduced by way of an ambiguous subordinate clause, especially when the principle of territorial integrity has always been accepted and proclaimed as a core principle of international law, and is indeed placed before the qualifying clause in the provision in question.¹⁸

The relevant judicial decisions and academic writings do not, therefore, provide sufficient evidence to suggest that in international legal doctrine, remedial secession is a universally-accepted entitlement of oppressed peoples. But, as will be discussed next, the idea underlying remedial secession—the last resort for ending the oppression of a certain people—can still influence the recognition policies of states.

The absence of a right to unilateral secession does not imply that such an act is illegal. Indeed, "secession is neither legal nor illegal in international law, but a legally neutral act the consequences of which are regulated internationally."¹⁹ In the era of the UN Charter, it is very unlikely that an attempt at unilateral secession would result in the creation of a new state, but such an outcome is not excluded. In the *Quebec case*, the Supreme Court of Canada held that:

The ultimate success of ... a [unilateral] secession would be dependent on recognition by the international community, which is likely to consider the legality and legitimacy of secession having regard to, amongst other facts, the conduct of Quebec and Canada, in determining whether to grant or withhold recognition.²⁰

This position of the Court suggests that (1) the success of a unilateral secession depends on international recognition; and (2) the conduct of the parent state toward the independence-seeking entity will be taken as a major consideration when states decide on granting recognition. The judgement therefore implies that remedial secession could be given effect through recognition—indeed, it falls close to Shaw's argument that "recognition may be more forthcoming where the secession has occurred as a consequence of violations of human rights."²¹

Any argument suggesting that recognition could create states needs to be taken with caution, as it could be problematic in light of the general perception in contemporary international law that recognition is a declaratory and not a constitutive act. This is indeed true in situations where the emergence of a new state is not disputable—when statehood criteria are met and there is no claim to territorial integrity by a parent state. Yet, in cases concerning the recognition of an entity with ambiguous legal status, recognition itself can "have the effect of providing crucial evidence of an entity's status."²² Furthermore, where recognition is granted almost universally to such an entity, it is difficult to separate collective recognition from collective state creation.²³ For these reasons it is possible to accept that remedial-secession claims could be realized through recognition.

But there is an important limitation on giving effect to remedial secession via recognition. While, in a situation of oppression, states might be able to grant recognition to a secession-seeking entity without offending the territorial integrity of its parent state,²⁴ there are no circumstances that create an international legal obligation to grant such

recognition.²⁵ The actual position of remedial secession in international law may therefore be as follows: that, as a consequence of oppression, the parent state's right to territorial integrity becomes weaker; foreign states might then decide not to observe this right of the parent state and to recognize the secession-seeking entity; however, remedial secession is not an entitlement of oppressed peoples and oppression creates no obligation for foreign states to grant recognition. It now needs to be considered whether remedial secession has been given any prominence in state practice.

Remedial Secession in State Practice

In the UN Charter era, non-colonial state creations have been predominantly consensual, with the emergence of the new states not constrained by claims of territorial integrity by parent states.²⁶ However, there are also examples of state creations in this period that might potentially be said to correspond to the logic of remedial secession, including the creation of Bangladesh,²⁷ the dissolutions of the SFRY and of the Soviet Union,²⁸ and the secession of Kosovo.²⁹ This section will consider whether the theory of remedial secession is also reflected in state practice.

East Pakistan (Bangladesh)

In 1947, Pakistan was created from the provinces of British India and Indian states in which the majority of the population was Muslim.³⁰ Its territory was geographically divided into two parts, separated by around one thousand miles of Indian territory. In East Pakistan, most of the population spoke Bengali, a language not spoken in West Pakistan—“[t]he only aspect of social life which the two populations shared was that of Islam.”³¹ East Pakistan “suffered relatively severe and systematic discrimination from the central government based in Islamabad.”³²

At general Pakistani elections in December 1970, the Awami League, an autonomy-seeking East Pakistani party, won 167 out of the 169 seats allocated to the eastern part of the state in the Pakistani Parliament. This result meant a solid majority in the 313-seat Pakistani legislature. In response to the dominance of the Awami League, the central government suspended the Parliament and introduced a period of martial rule in East Pakistan, “which involved acts of repression and even possibly genocide and caused some ten million Bengalis to seek refuge in India.”³³

On April 17, 1971, the Awami League proclaimed the independence of East Pakistan. At that time, East Pakistani combatants were already

in armed conflict with Pakistani forces.³⁴ On December 3, 1971, India intervened in support of East Pakistan, fighting Pakistani armed forces on both eastern and western sides. On December 6, India recognized the independence of the eastern territory of Bangladesh. On December 17, Pakistani forces surrendered and India declared ceasefire in the west. In the east, with help from Indian forces, the Awami League exercised substantial control over the territory. Within weeks, Bangladesh was explicitly recognized by twenty-eight states. Recognition by Pakistan was granted on February 22, 1974.³⁵

While the case of Bangladesh could serve as a precedent which supports the view that remedial secession is a legal entitlement of oppressed peoples, a different interpretation is also plausible. It may well be that “the withdrawal of the Pakistan[i] Army after the ceasefire ... merely produced a *fait accompli*, which in the circumstances other States had no alternative but to accept.”³⁶ The creation of Bangladesh would, therefore, not be a clear precedent in support of the remedial secession theory. Indeed, Bangladesh became universally recognized only after Pakistan had given consent to its independence. This suggests that the international community did not see secession as an entitlement.

The Soviet Union

Regarding the dissolution of the Soviet Union, two separate occurrences must be examined: the first is the regaining of independence by Estonia, Latvia, and Lithuania; the second is the establishment of the Commonwealth of Independent States (CIS).

In the interwar period, Estonia, Latvia, and Lithuania were independent states and members of the League of Nations.³⁷ As a consequence of the Molotov-Ribbentrop Pact, signed in 1939, the three Baltic States came to be annexed by the Soviet Union in 1940. While “[t]he international community almost uniformly refused to grant *de jure* recognition to the 1940 Soviet annexation of the Baltic States,”³⁸ it was accepted that they were *de facto* constitutive republics of the Soviet Union.³⁹

On March 11, 1990, Lithuania declared independence. Estonia’s declaration of independence followed on August 20, 1991, and Latvia’s a day later. Subsequently, on September 6, 1991, the Soviet Union formally recognized the three Baltic States.⁴⁰ Thus, the consent of the parent state was given for the creation of the three independent states.

Some other states granted recognition to the Baltic States prior to their recognition by the Soviet Union. Notably, the member states of the European Community (EC) recognized the independence of Esto-

nia, Latvia, and Lithuania on August 27, 1991.⁴¹ However, due to different interpretations of the legal status of these states, it remains arguable whether their independence from the Soviet Union was a case of their pre-Second World War status being restored, or if they were to be regarded as new state creations. While many states accept the continuity of the Baltic States with their international personalities in the interwar period, such acceptance is not universal.⁴² As Colin Warbrick concludes, “[f]rom a purely legal point of view, the outcome [on this question] will depend to an extent on what view is taken of the legality of the [Molotov–Ribbentrop Pact] and the subsequent incorporation of the territories into the USSR.”⁴³

Estonia, Latvia, and Lithuania were admitted to the United Nations on September 17, 1991.⁴⁴ It remains significant that “[t]he Security Council did not consider the applications for recognition made by the Baltic States until September 12, 1991, six days after the Soviet Union had agreed to recognize them.”⁴⁵ According to James Crawford, this implies that “the position of the Soviet authorities was treated as highly significant even in a case of suppressed independence.”⁴⁶ It must also be noted that Lithuania declared independence more than seventeen months before the EC extended recognition, and moreover held a referendum six months before recognition. Lithuania may thus be an example of a state creation where a unilateral declaration of independence was subsequently acknowledged by the parent state. On the other hand, Estonia and Latvia declared independence after a period of negotiations with Soviet authorities and in a more favourable political situation.⁴⁷ Estonia and Latvia, unlike Lithuania, were recognized as states and received approval from the parent state virtually immediately after the declaration of independence.

Given the suppression of independence, it might be possible to argue that the Baltic States (re-)gained their independence based on the remedial secession doctrine.⁴⁸ When they were admitted to the UN, “[i]ndividual Member States [of the UN] emphasized that, since the independence of the Baltic States had been unlawfully suppressed, they had the right of self-determination.”⁴⁹ Yet, as pointed out above, the right of self-determination does not mean a “right to unilateral secession,” and even in the example of the Baltic States, the applicability of the right of self-determination did not automatically result in secession.⁵⁰ In the end, the secession of all three Baltic States was consensual.

After the Baltic States became independent, the Soviet Union continued to exist as a federation of twelve republics. However, on December 8, 1991, the presidents of Belarus, Russia, and Ukraine signed the Agreement on the Establishment of the Commonwealth of Independent

States (CIS),⁵¹ which contains the following statement: “We, the Republic of Belarus, the Russian Federation ... and Ukraine, as founder states of the Union of Soviet Socialist Republics and signatories of the Union Agreement of 1922 ... hereby declare that the Union of Soviet Socialist Republics as a subject of international law and a geopolitical reality no longer exists.”⁵²

On December 21, 1991, a protocol to the Minsk Agreement was adopted by the remaining Soviet Republics—with the exception of Georgia—which extended the CIS to these territories.⁵³ On the same day, eleven Soviet Republics, again in the absence of Georgia, adopted the Alma Ata Declaration which declared: “With the establishment of the Commonwealth of Independent States, the Union of Soviet Socialist Republics ceases to exist.”⁵⁴

Although the political situation in the Soviet Union in 1991 was rather complicated, from a legal perspective the dissolution of the Union was a consensual act supported by all republics, including Russia. In light of the Minsk Agreement and its attendant protocol, the dissolution of the Soviet Union cannot be a matter of remedial secession. Indeed, there was no secession in question.⁵⁵

The Socialist Federal Republic of Yugoslavia

On June 25, 1991, Slovenia and Croatia declared independence. Both republics advanced remedial secession arguments. Slovenia’s reference to this doctrine, however, only appears in the preamble to the Foundational Constitutional Instrument on Sovereignty and Independence of the Republic of Slovenia. A section of the preamble states: “[T]he SFRY does not function as a state governed by the rule of law and allows grave violations of human rights, rights of peoples, as well as rights of republics and autonomous provinces.”⁵⁶

This preambulatory proclamation suggests that Slovenia only made a political assertion to remedial secession, and did not claim to have any legal rights under this doctrine. On the other hand, Croatia’s claim to remedial secession had a much more prominent legal quality. When declaring independence, Croatia referred to Article 140 of its constitution,⁵⁷ which provides:

The Republic of Croatia shall remain a constitutive part of the SFRY until a new agreement of the Yugoslav republics is achieved or until the Assembly of the Republic of Croatia decides otherwise. Shall an act or procedure of a federal body or of a body of another republic or province member of the federation constitute a violation of territorial integrity of the Republic of Croatia, or *shall she be brought into an unequal position in the federation*, or shall her interests be threatened, the

organs of the Republic shall, stemming from the right of self-determination and the sovereignty of the Republic of Croatia, affirmed by this Constitution, deliver necessary decisions, regarding the protection of sovereignty and interests of the Republic of Croatia.⁵⁸

Importantly, Article 140 did not declare that Croatia had a “right to secession” by virtue of the right of self-determination alone. Its claim to independence was qualified by a reference to “unequal position in the federation.” Croatia thus notably adopted the language of remedial secession. Yet it is questionable whether this argument was really accepted by the international community.

After Slovenia and Croatia declared independence, the crisis in the SFRY escalated.⁵⁹ The EC tried to find a peaceful solution. As part of this involvement, on August 27, 1991, the EC and its member states founded the Conference on Yugoslavia, under whose auspices the Arbitration Commission, widely known as the Badinter Commission, was established.⁶⁰ The mandate of the Commission and the scope of its decisions were not clearly defined.⁶¹ In the end, “[m]inority rights, use of force, border changes, the rule of law, state succession, and recognition all eventually fell within the Commission’s brief.”⁶²

Subsequently, at the Council of Ministers meeting on December 16, 1991, the EC adopted two documents in which it expressed its recognition policy with regard to the new states emerging in the territories of the SFRY and of the Soviet Union, respectively:⁶³ the EC Guidelines and the EC Declaration.⁶⁴ These documents were part of broader EC involvement in the processes of dealing with the disintegration of the two federations—efforts that were for a great part motivated by the desire to stop ongoing conflicts and to prevent future armed conflict in the respective territories.⁶⁵ The two documents expressed requirements for recognition of the newly emerged states; the EC Declaration also established a mechanism for recognition of new states emerging on the territory of the SFRY. Under this mechanism, Yugoslav republics wishing to become states were required to submit an application for recognition. This application was then referred to the Badinter Commission, which advised EC member states on matters of recognition.⁶⁶ Although the opinions of the Badinter Commission were not legally binding, they were generally followed by the entire international community.⁶⁷

In its Opinion 1, the Badinter Commission expressed the view “that the Socialist Federal Republic of Yugoslavia is in the process of dissolution.”⁶⁸ The Commission based its reasoning on the following set of arguments: four out of six republics of the SFRY (Slovenia, Croatia, Bosnia-Herzegovina, and Macedonia) had declared independence;⁶⁹ and

the “composition and workings of the essential organs of the Federation ... no longer [met] the criteria of participation and representatives inherent in a federal state.”⁷⁰

This reasoning implies that the SFRY was no longer representative of its peoples; therefore, Opinion 1 may suggest that the Badinter Commission had adopted the remedial secession doctrine. However, the Commission expressly held that the SFRY was in the process of dissolution, and consequently, there were no cases of unilateral secession.⁷¹ If there is no secession, there can be no remedial secession.

This view can certainly be criticized, since the dissolution, unlike in the situations of the Soviet Union or Czechoslovakia, was not consensual, but was rather a result of a series of attempts at unilateral secession. John Dugard and David Raič therefore argue that the example of the SFRY suggests that “secession and dissolution are not mutually exclusive.”⁷² Yet it is significant that no state recognized any of the independence-seeking Yugoslav republics before the Badinter Commission held that the SFRY was in the process of dissolution. As individual attempts at unilateral secession were not recognized, Croatia’s claim to remedial secession was not explicitly accepted by the international community.⁷³

The view that the situation in the SFRY ultimately led to dissolution (albeit as a result of a chain of attempts at secession) was subsequently affirmed by state practice and the practice of UN organs when dealing with the question of the continuity of the international personality of the SFRY.⁷⁴ From the legal point of view, it was universally accepted that developments in the SFRY resulted in the dissolution of the federation. Such a perception removed the possibility of a claim to territorial integrity: The SFRY could not make such a claim because it no longer existed, while the Federal Republic of Yugoslavia (FRY) could not make such a claim because it was itself a new state creation, limited to the territories of Serbia and Montenegro. New states emerged in the absence of relevant competing claims to territorial integrity; they were not a result of an unequivocal international acceptance of the remedial secession argument.

Kosovo

In the 1974 constitution of the SFRY, Kosovo had the status of an autonomous province within the framework of the Republic of Serbia. This autonomous status was reflected in the existence of Kosovo’s self-governing organs.⁷⁵ In 1989, the autonomous status was suspended by extra-constitutional means.⁷⁶ In response, Kosovo Albanians requested the creation of the Republic of Kosovo within the SFRY, but the dissolu-

tion of the SFRY resulted in demands by ethnic Albanians for Kosovo to become an independent state.⁷⁷ In 1991, Albanian political authorities in Kosovo even organized an unofficial referendum, at which independence was supported by an overwhelming majority of Kosovo Albanians. Subsequently, on September 22, 1991, the unofficial assembly of Kosovo Albanians declared independence of the Republic of Kosovo.⁷⁸ However, this declaration was ignored by the Badinter Commission and recognition was granted only by Albania.⁷⁹ The conflict escalated, as did discrimination against Kosovo Albanians. Writing in 1998, Noel Malcolm observed:

Every aspect of life in Kosovo has been affected. Using a combination of emergency measures, administrative fiat and laws authorizing the dismissal of anyone who had taken part in a one-day protest strike, the Serb authorities have sacked the overwhelming majority of those Albanians who had any form of state employment in 1990. Most Albanian doctors and health workers were also dismissed from the hospitals; deaths from diseases such as measles and polio have increased, with the decline in the number of Albanians receiving vaccinations. Approximately 6,000 school-teachers were sacked in 1990 for having taken part in protests, and the rest were dismissed when they refused to comply with a new Serbian curriculum which largely eliminated teaching of Albanian literature and history.⁸⁰

Subsequent developments in Kosovo have been thoroughly examined elsewhere.⁸¹ For the purposes of this article, it is important to stress that the grave humanitarian situation and gross violations of human rights led to military action by NATO (which is incompatible with the UN Charter) and to the establishment of an international territorial administration by Security Council Resolution 1244, adopted under Chapter VII of the UN Charter.⁸²

The preamble to Resolution 1244 reaffirms “the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and other states of the region.”⁸³ However, the Resolution’s operative paragraphs effectively created a situation in which the FRY exercised no sovereign powers in Kosovo. Indeed, the final legislative, executive, and judicial authority in Kosovo is vested in the United Nations Interim Administration Mission in Kosovo (UNMIK).⁸⁴ Kosovo’s self-governing organs were created under the auspices of the international territorial administration, but no sovereign powers were transferred back to Serbia.⁸⁵

When Kosovo declared independence on February 17, 2008,⁸⁶ the Declaration on Independence made reference to “years of strife and violence in Kosovo, that disturbed the conscience of all civilised people,”⁸⁷ and expressed its gratitude that “in 1999 the world intervened, thereby

removing Belgrade's governance over Kosovo and placing Kosovo under United Nations interim administration."⁸⁸ It declared Kosovo to be "a democratic, secular and multi-ethnic republic, guided by the principles of non-discrimination and equal protection under the law,"⁸⁹ welcomed "the international community's continued support of ... democratic development through international presences established in Kosovo,"⁹⁰ and stated that "independence brings to an end the process of Yugoslavia's violent dissolution."⁹¹

These proclamations in the Declaration of Independence may come close to remedial secession arguments. However, it is questionable whether the remedial secession explanation is plausible even here. Indeed, if remedial secession is understood as the last resort for ending oppression, this argument could only have been accepted if Kosovo had declared independence in 1999. It is difficult to see how secession in 2008 ended any oppression. At the time of the Declaration, Kosovo had been governed independently of Serbia for almost nine years.

The real difficulty with Kosovo was expressed by Martti Ahtisaari, the Special Envoy of the UN Secretary General, who wrote in his report:

For the past eight years, Kosovo and Serbia have been governed in complete separation. The establishment of the United Nations Mission in Kosovo (UNMIK) pursuant to resolution 1244 (1999), and its assumption of all legislative, executive and judicial authority throughout Kosovo, has created a situation in which Serbia has not exercised any governing authority over Kosovo. This is a reality one cannot deny; it is irreversible. A return of Serbian rule over Kosovo would not be acceptable to the overwhelming majority of the people of Kosovo. Belgrade could not regain its authority without provoking violent opposition. Autonomy of Kosovo within the borders of Serbia—however notional such autonomy may be—is simply not tenable.⁹²

It is not the purpose of this article to determine whether the irreversible reality caused by Resolution 1244 can justify Kosovo's secession. However, the Ahtisaari Report suggests that the reasoning behind the declaration of independence was not grounded in the remedial secession theory. Nevertheless, as of January 13, 2010, Kosovo has been recognized by sixty-five states.⁹³ In their recognition texts, many states recalled the oppression from before the adoption of Resolution 1244. Yet, these references were not made in the context of the remedial secession doctrine. Instead, some states invoked the *sui generis* character of the Kosovo situation, which was determined by the situation created by Resolution 1244.⁹⁴ References to prior developments were made in order to clarify the origins of the invoked special circumstances. Remedial secession was, however, referred to in some of the pleadings before

the International Court of Justice (ICJ) in the *Kosovo Advisory Opinion*.⁹⁵ It remains to be seen whether, and to what extent, the ICJ is willing to accept these arguments.

Overall, the practice of non-colonial state creation shows that there is no clear support for remedial secession in state practice. The secession of East Pakistan may well have ended oppression, but the remedial secession argument was not universally accepted. Similarly, while some states may have decided to recognize Kosovo because they saw no alternative to Kosovo's independence, this is not enough to make a plausible argument in favour of remedial secession. Kosovo's declaration of independence in 2008 was not the last resort for ending oppression. The cases of the Soviet Union and of the SFRY provide examples of dissolutions. Although the dissolution of the SFRY started as a chain of secessions, it was universally accepted that the international personality of the SFRY was extinguished. In such circumstances, new states emerge in the absence of a claim to territorial integrity by a parent state. Ultimately, the mode of state creation in this case was not secession, and where there is no secession there can be no remedial secession. This also applies to the dissolution of the Soviet Union, which was consensual.

Conclusion

Remedial secession, interpreted as the last resort of subjugated peoples for ending oppression, has received some support among writers. However, the foundations of the doctrine remain controversial both in theory and in practice. Theoretically, it is questionable whether remedial secession can be founded on the inverted reading of the provision on territorial integrity within the Declaration on Principles of International Law. It would appear that "[s]uch a major change in legal principle [concerning the territorial integrity of states] cannot be introduced by way of an ambiguous subordinate clause."⁹⁶ The doctrine has been given some attention in judicial decisions. Yet, no international judicial body has ever upheld the remedial secession argument in relation to a specific attempt at unilateral secession. Remedial secession was, at best, mentioned as an *obiter dictum* and, even then, not unequivocally as an entitlement.

The idea of remedial secession nevertheless has some merit, not least if it can be given effect through international recognition. Although recognition in contemporary international law is deemed to be a declaratory act, universal collective recognition can have the effect of collective state creation. It may be that, where oppressed peoples seek secession, the international community will be more willing to ignore the territo-

rial integrity of the parent state and grant recognition to the secession-seeking entity.

Although the explanation that remedial secession could be given effect through the act of recognition may be able to clarify the theoretical status of remedial secession in international law, there is a marked absence of state practice. This article shows that no single instance of non-colonial new state creation in the UN Charter era serves as a clear example of remedial secession. The international community of states has never accepted either the right of oppressed peoples to secession or the duty to grant recognition when oppressed peoples are trying to create their own state. ■

Notes

¹ See the United Nations Human Rights Committee (HRC) "General Comment 12" UN Doc HRI/GEN/1/Rev.1 (1984) [3], where the HRC stated that all states have duties under the right of self-determination. This is a clear pronouncement of the fact that the right of self-determination does not only apply in colonial situations. See also Dominic McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights* (Oxford: Clarendon Press, 1991), 247–68.

² Gregory H. Fox, "Self-Determination in the Post-Cold War Era: A New Internal Focus?" *Michigan Journal of International Law* 16, no. 3 (1995): 736.

³ See Robert McCorquodale, "Self-Determination: A Human Rights Approach," *International and Comparative Law Quarterly* 43, no. 4 (1994): 857–85, 875–6.

⁴ See David Raič, *Statehood and the Law of Self-Determination* (The Hague: Kluwer Law International, 2002), 314–5.

⁵ See *Reference re Secession of Quebec* [1998] 2 SCR 217 (Supreme Court of Canada) ("The Quebec case (1998)") [112].

⁶ See Raič, *Statehood*, 323–8, arguing that there exists "a qualified right to secession." Antonio Cassese argues that in order for the right to secession to be triggered, "there must be gross breaches of fundamental human rights, and, what is more, the exclusion of any likelihood for a possible peaceful solution within the existing state structure." Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1995), 119–20. Another possible approach is an extended definition of colonialism. Thomas Franck, for example, argues that where "a minority within a sovereign state ... [is] persistently and egregiously denied political and social equality and the opportunity to retain its political identity ... it is conceivable that international law will define such repression ... as coming within a somewhat stretched definition of colonialism. Such repression, even by an independent state not normally thought to be 'imperial' would then give rise to a right of 'decolonization'." Thomas Franck, "Postmodern Tribalism and the Right to

Secession," in *Peoples and Minorities in International Law*, eds. Christine Brölmann, R. Lefeber, and Marjoleine Zieck (Dordrecht: Martinus Nijhoff, 1993), 3–27, 13–4. The extended understanding of colonialism is also suggested by Buchheit, who argues that "[i]nternational law is ... asked to perceive a distinction between the historical subjugation of an alien population living on a different part of the globe and the historical subjugation of an alien population living on a piece of land abutting that of its oppressors. The former can apparently never be legitimated by the mere passage of time, while the latter is eventually transformed into a protected status quo." Lee Buchheit, *Secession: The Legitimacy of Self-Determination* (New Haven, CT: Yale University Press, 1978), 18. For more see section 2.

⁷ United Nations General Assembly (UNGA) The Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (October 24, 1970) UNGA Resolution 2625, annex, principle 5, [7] ("The Declaration on Principles of International Law").

⁸ The Declaration on Principles of International Law (n 7) [126].

⁹ *The Quebec case* (1998) (n 5) [133].

¹⁰ *The Quebec case* (1998) (n 5) [135].

¹¹ *Loizidou v Turkey* (1997) 23 EHRR 244 (European Commission of Human Rights), 535 (Judge Wildhaber concurring, joined by Judge Ryssdal).

¹² See International Covenant on Civil and Political Rights (adopted December 16, 1966, entered into force March 23, 1976) art 1; and International Covenant on Economic, Social and Cultural Rights (adopted December 16, 1966, entered into force January 3, 1976) art 1.

¹³ It is notable that, according to Article 38(1)(d) of the Statute of the International Court of Justice, academic writings can be referred to as a subsidiary source of international law.

¹⁴ Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004), 335. See also note 6. For a thorough account on the academic support for remedial secession, see Antonello Tancredi, "A Normative 'Due Process' in the Creation of States Through Secession," in *Secession: International Law Perspectives*, ed. Marcello G. Kohen (Cambridge: Cambridge University Press, 2006), 171–207, 176.

¹⁵ Raič, *Statehood*, 323.

¹⁶ On this aspect, academic writings follow early speculation on the possibility of a shift of sovereignty as a last resort, which appeared in the question of the Aaland Islands. *The Aaland Islands case* (1920) LNOJ Spec. Supp. 3 (The International Committee of Jurists) 21.

¹⁷ James Summers, *Peoples and International Law: How Nationalism and Self-Determination Shape a Contemporary Law of Nations* (Leiden: Martinus Nijhoff, 2007), 347.

¹⁸ Malcolm N. Shaw, "Peoples, Territorialism and Boundaries," *European Journal of International Law* 8, no. 3 (1997): 478–507, 483.

- ¹⁹ James R. Crawford, *The Creation of States in International Law*, 2nd ed. (Oxford: Oxford University Press, 2006), 390.
- ²⁰ *The Quebec case* (1998) (n 5) [155].
- ²¹ Shaw, "Peoples," 483.
- ²² Matthew Craven, "What's in a Name? The Former Yugoslav Republic of Macedonia and Issues of Statehood," *Australian Yearbook of International Law* 16 (1995): 199–240, 208.
- ²³ See Crawford, *Creation of States*, 501.
- ²⁴ See Buchanan, *Justice*, 335, arguing that where oppressed peoples try to create their own state, their parent state's "right to territorial integrity no longer encompasses the area in question, because the injustices the state has perpetrated have voided its claim to a part of the state's territory." At the same time, Buchanan is aware that in international law as it currently stands this "does not imply that states are obliged to recognize the entity in question as a ... state." *Ibid.*
- ²⁵ See Robert McCorquodale, "The Creation and Recognition of States," in *Public International Law: An Australian Perspective*, ed. Sam Blay, Ryszard Piotrowicz, and Martin Tsamenyi, 2nd ed. (Melbourne: Oxford University Press, 2005), 193.
- ²⁶ See Crawford, *Creation of States*, 560.
- ²⁷ See Crawford, *Creation of States*, 393.
- ²⁸ McCorquodale, "Self-Determination," 880.
- ²⁹ See notes 86–91 (references to Kosovo's Declaration on Independence).
- ³⁰ See Aleksandar Pavković and Peter Radan, *Creating New States: Theory and Practice of Secession* (Aldershot: Ashgate, 2007), 103.
- ³¹ *Ibid.*, 104.
- ³² Crawford, *Creation of States*, 140.
- ³³ *Ibid.*, 141.
- ³⁴ See Pavković and Radan, *Creating New States*, 102.
- ³⁵ See Crawford, *Creation of States*, 141.
- ³⁶ *Ibid.*, 393.
- ³⁷ See *ibid.*
- ³⁸ Susan Himmer, "The Achievement of Independence in the Baltic States and its Justification," in *The Baltic Path to Independence*, ed. Adolf Sprudz (Buffalo, NY: W.S. Hein, 1994), 323.
- ³⁹ See *ibid.*, 324.
- ⁴⁰ See Crawford, *Creation of States*, 394.
- ⁴¹ See Colin Warbrick, "Recognition of States," *International and Comparative Law Quarterly* 41, no. 2 (1992): 473–82, 474.

- ⁴² See Peter van Elsuwege, "State Continuity and its Consequences: The Case of the Baltic States," *Leiden Journal of International Law* 16, no. 2 (2003): 377–88, 384.
- ⁴³ Warbrick, "Recognition," 474.
- ⁴⁴ See UNGA Res 46/4 (September 17, 1991) UN Doc A/RES/46/4 (Estonia); UNGA Res 46/5 (17 September 1991) UN Doc A/RES/46/5 (Latvia); UNGA Res 46/6 (17 September 1991) UN Doc A/RES/46/6 (Lithuania).
- ⁴⁵ Crawford, *Creation of States*, 394.
- ⁴⁶ *Ibid.*
- ⁴⁷ See Ineta Ziemele, *State Continuity and Nationality: The Baltic States and Russia: Past, Present and Future as Defined by International Law* (Leiden: Martinus Nijhoff, 2005), 43.
- ⁴⁸ See Buchanan, *Justice*, 355, arguing that in such circumstances, "[t]he secessionists are simply taking back what is lawfully theirs, rectifying the injustice of the wrongful taking of what international law recognized as their territory."
- ⁴⁹ Crawford, *Creation of States*, 394.
- ⁵⁰ *Ibid.*, 395.
- ⁵¹ The Agreement on the Establishment of the Commonwealth of Independent States (1992) 31 Intl Legal Materials (ILM) 138 ("The Minsk Agreement").
- ⁵² The Minsk Agreement (n 51) preamble [1].
- ⁵³ See the Protocol to the Agreement Establishing the Commonwealth of Independent States signed at Minsk on December 8, 1991, by the Republic of Belarus, the Russian Federation (RSFSR), and Ukraine (1992) 31 ILM 147 ("The Alma Ata Declaration").
- ⁵⁴ The Alma Ata Declaration (1992) 31 ILM 147.
- ⁵⁵ For a different conclusion see Buchanan, *Justice*, 355.
- ⁵⁶ The Foundational Constitutional Instrument on Sovereignty and Independence of the Republic of Slovenia (own translation), *The Official Gazette of the Republic of Slovenia* (25 June 1991) 1/91-I preamble [3].
- ⁵⁷ The Constitutional Decree of the Assembly of the Republic of Croatia on Sovereignty and Independence of the Republic of Croatia, *The Official Gazette of the Republic of Croatia* (June 25, 1991) 31/1991.
- ⁵⁸ The Constitution of the Republic of Croatia (1990) (own translation) art 140 (emphasis added).
- ⁵⁹ See the Declaration of Independence of the Republic of Slovenia, *The Official Gazette of the Republic of Slovenia* (June 25, 1991) 1/91-I and the Declaration of Independence of the Republic of Croatia, *The Official Gazette of the Republic of Croatia* (June 25, 1991) 31/1991.
- ⁶⁰ The Arbitration Commission was chaired by the President of the French Constitutional Court, Robert Badinter ("The Badinter Commission"). See Alain Pellet, "The Opinions of the Badinter Arbitration Committee: A Second Breath for the

⁶¹ See Crawford, *Creation of States*, 396.

⁶² Thomas Grant, *The Recognition of States: Law and Practice in Debate and Evolution* (Westport, CT: Praeger, 1999), 156.

⁶³ See David Harris, *Cases and Materials on International Law* (London: Sweet & Maxwell, 2004), 147–52.

⁶⁴ EC Guidelines for the Recognition of New States in Eastern Europe and in the Soviet Union (December 16, 1991); Declaration on Yugoslavia (December 16, 1991).

⁶⁵ See Richard Caplan, *Europe and Recognition of New States in Yugoslavia* (Cambridge: Cambridge University Press, 2005), 15–6.

⁶⁶ See Declaration on Yugoslavia (December 16, 1991) [3].

⁶⁷ See Danilo Türk, "Recognition of States: A Comment," *European Journal of International Law* 4, no. 1 (1993): 66–71, 70.

⁶⁸ The Badinter Commission (n 60) Opinion I (November 29, 1991) [3].

⁶⁹ See The Badinter Commission (n 60) Opinion I (November 29, 1991) [3(a)].

⁷⁰ See The Badinter Commission (n 60) Opinion I (November 29, 1991) [3(b)].

⁷¹ See The Badinter Commission (n 60) Opinion I (November 29, 1991).

⁷² John Dugard and David Raič, "The Role of Recognition in the Law and Practice of Secession," in *Secession: International Law Perspectives*, ed. Kohen, 94–137, 128.

⁷³ For a different opinion, see *ibid.*, 123–30. See also Raič, *Statehood*, 363–4.

⁷⁴ See UN Security Council (UNSC) Res 757 (May 30, 1992) UN Doc S/RES/757 preamble; UNSC Res 777 (September 19, 1992) UN Doc S/RES/777 [1]; UNGA Res 47/1 (September 19, 1992) UN Doc A/RES/47/1.

⁷⁵ Constitution of the Socialist Federal Republic of Yugoslavia (1974) art 2. See also the Constitution of the Socialist Autonomous Province of Kosovo (1974), translated in *Kosovo: Law and Politics, Kosovo in Normative Acts Before and After 1974* (Belgrade: Helsinki Committee for Human Rights in Serbia, 1998), 41–5. [Hereinafter *Kosovo in Normative Acts*.] Kosovo, for example, had its own presidency, assembly and judicial system. At the same time, Kosovo also had representatives in the federal collective presidency, in the federal assembly, and in the federal constitutional court. Kosovo's self-governing competencies were therefore in many respects elevated to the level of the competencies of federal republics.

⁷⁶ See *Kosovo in Normative Acts*, 49; Noel Malcolm, *Kosovo: A Short History* (London: Macmillan, 1998), 344.

⁷⁷ See Miranda Vickers, *Between Serb and Albanian: A History of Kosovo* (London: Hurst, 1998), 251.

⁷⁸ See Vickers, *Between Serb and Albanian*, 251.

⁷⁹ See Crawford, *Creation of States*, 408.

⁸⁰ Malcolm, *Kosovo*, 48.

⁸¹ See, for example, Marc Weller, *Contested Statehood: Kosovo's Struggle for Independence* (Oxford: Oxford University Press, 2009); and Jure Vidmar, "International Legal Responses to Kosovo's Declaration of Independence," *Vanderbilt Journal of Transnational Law* 42, no. 3 (2009), 779–851.

⁸² See UNSC Res 1244 (June 10, 1999) UN Doc S/RES/1244.

⁸³ UNSC Res 1244 (n 82) preamble [10].

⁸⁴ See UN Reg 1999/1 (July 25, 1999) UNMIK/REG/1999/1 sect 1.

⁸⁵ See UN Reg 2001/9 (May 15, 2001) UNMIK/REG/2001/9 ("The Constitutional Framework").

⁸⁶ See Assembly of Kosovo, "Kosovo Declaration of Independence," <http://www.assembly-kosova.org/?cid=2,128,1635> (accessed February 27, 2010).

⁸⁷ Assembly of Kosovo (n 86) preamble [7].

⁸⁸ Assembly of Kosovo (n 86) preamble [8].

⁸⁹ Assembly of Kosovo (n 86) [2].

⁹⁰ Assembly of Kosovo (n 86) [5].

⁹¹ Assembly of Kosovo (n 86) [10].

⁹² UNSC Report of the Special Envoy of the Secretary-General (March 26, 2007) UN Doc S/2007/168 [7].

⁹³ See "Who Recognized Kosova as an Independent State," <http://www.kosovothanksyou.com> (accessed January 24, 2010).

⁹⁴ These include the United States, Australia, Germany, and the United Kingdom.

⁹⁵ See the oral statements of Albania, ICJ Verbatim Record, *Accordance with International Law of the Unilateral Declaration of Independence by Provisional Institutions of Self-government of Kosovo* (Request for Advisory Opinion) CR 2009/26 (December 2, 2009), <http://www.icj-cij.org/docket/files/141/15714.pdf>, [2]–[15]; and the United Kingdom, ICJ Verbatim Record, CR 2009/32 (December, 10 2009), <http://www.icj-cij.org/docket/files/141/15734.pdf>, [29]–[30]. Interestingly, Russia did not argue against the concept of remedial secession as such; it only held that it is not applicable in the situation of Kosovo. See ICJ Verbatim Record, CR 2009/30 (December 8, 2009), <http://www.icj-cij.org/docket/files/141/15726.pdf>, [19]–[22] (all accessed February 27, 2010).

⁹⁶ Shaw, "Peoples," 483.

Determining the Legitimacy of Claims for Self-Determination: A Role for the International Court of Justice and the Use of Preconditions

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ABSTRACT

There is no denying the legal status of self-determination, yet the international community lacks structures to deal with these claims, and has only rarely intervened to assist peoples in their realisation. Thus, with important exceptions such as Canada in the case of Quebec, most national governments simply attempt to repress secessionist movements, often by force. This situation leaves peoples with only one realistic option: violence. This article focuses on external claims for self-determination (namely, claims for independent statehood) and argues that contrary to popular belief an Advisory Opinion provided by the International Court of Justice (ICJ) can make a contribution, specifically in the formation of preconditions that can enable a finding of whether a claim for self-determination is legitimate, and thus enable a peaceful resolution of these matters. Some may doubt whether states, especially those with potential self-determination claims, would accept the use of preconditions or the involvement of the ICJ. Accordingly, this paper begins by outlining why states could be persuaded to accept the involvement of the ICJ and will then examine the following preconditions: (1) that the claimants respect international law; (2) that the claimants accept the inviolability of international borders; (3) that the free will of the people be examined through a supervised plebiscite; (4) that the people have been denied a democratic government; (5) that the people claiming self-determination are subject to foreign or alien subjugation; and (6) that they are capable of forming a state as defined in international law. Choosing such preconditions, and arguing that the ICJ does have a role in resolving claims to self-determination, reinforces the argument that self-determination is a norm of international law, and that the rule of law plays an important role in international relations.

The phrase [self-determination] is simply loaded with dynamite. It will raise hopes which can never be realized. It will, I fear, cost thousands of lives. In the end it is bound to be discredited, to be called the dream of an idealist who failed to realize its danger until too late to check those who attempt to oust the principle in force. What a calamity that the phrase was ever uttered. What misery it will cause!

Andrew Coleman, "Determining the Legitimacy of Claims for Self-Determination: A Role for the International Court of Justice and the Use of Preconditions," *St Antony's International Review* 6, no. 1 (2010): 57-78.

Robert Lansing's oft-quoted denunciation of self-determination provides a chilling warning about the dangers of the unrealistic expectations associated with the idea of self-determination as an unqualified right.² It is often mooted that if self-determination really were unqualified, the floodgates would open and the international community would come to be comprised of literally thousands of micro-states.³ In addition, claims for self-determination stand in tension with other norms of international law—that of territorial integrity and that of non-intervention.

However, there is no denying the legal status of self-determination.⁴ Many states, like India, have benefited from the principle of self-determination as a result of decolonization after World War II.⁵ However, the international community lacks structures to deal with self-determination claims, and has only rarely intervened to assist peoples in the realisation of these claims. Thus, the vast majority of contemporary self-determination claims are left to the protagonists to resolve. Indeed, with important exceptions, such as Canada in the case of Quebec, most national governments simply attempt to repress secessionist movements, often by force. This situation leaves peoples with only one realistic option: violence.⁶ Some commentators have even described the international system as a "war system," in which warfare is the accepted manner by which states are "born."⁷ How *should* the international community respond to self-determination claims? Given the often violent consequences of these claims, and in order to prevent their escalation into threats to international peace and security, there is a necessity that "something else" replaces power as a means of resolving self-determination claims.⁸

This paper argues that one way of dealing with claims for self-determination is to use preconditions set by a legal tribunal such as the International Court of Justice (ICJ) as a means of determining whether a claim is legitimate. Despite some criticism of preconditions, which effectively turn self-determination into a remedial right,⁹ they have been used in a series of instances—in the attempt by the United Nations (UN) to resolve the Israeli-Palestinian Conflict, in the independence claim of Kosovo, and by the Badinter Commission in its establishment of guidelines for the European Commission.¹⁰ However, some may doubt whether states, especially those with potential self-determination claims, would accept the use of preconditions or the involvement of the ICJ. Accordingly, this paper begins by outlining why states could be persuaded to accept the involvement of the ICJ in the resolution of self-determination claims. It then examines whether the following preconditions could be

used to determine the legitimacy of contemporary and future claims of self-determination: (1) that the claimants respect international law; (2) that the claimants accept the inviolability of international borders; (3) that the free will of the people be examined through a supervised plebiscite; (4) that the people have been denied a democratic government; (5) that the people claiming self-determination are subject to foreign or alien subjugation; and (6) that they are capable of forming a state as defined in international law.

These preconditions have been chosen because some have been used previously, and appear to satisfy a consensus amongst commentators. They could also form the basis of a universal set of preconditions that could be used in determining the validity of all claims for self-determination. However, as explained below, not all of these—in particular (2) and (4)—are suitable as preconditions.

Persuading States

At first glance it would appear there might be little benefit to states in accepting third-party adjudication of self-determination claims, given that they potentially face losses of territory or prestige should claims be successful. However, I believe states could be persuaded to accept external judgements, for the following reasons. First, states may want to avoid the prospect of incurring the high costs, in both money and lives, associated with the pursuit of non-adjudicated solutions; research suggests that once a claim for self-determination becomes violent, the conflict can be expected to last on average fourteen years, and sometimes even twenty-five.¹¹ East Timor's "successful" claim took twenty-four years and cost an estimated one hundred thousand East Timorese lives.¹² Conflicts stemming from self-determination claims also impose a terrible financial burden on the state involved. These financial effects do not end with the conflict, but continue as the state seeks to recover.¹³

Second, self-determination conflicts almost invariably have significant "overspill" effects beyond national borders.¹⁴ For instance, many problems are caused by refugees fleeing conflicts,¹⁵ which may prompt the receiving states to intervene in the affairs of the source state, as in the 1994 US intervention in Haiti, or even to go to war—one of the reasons given by the Arab states for their attack on Israel in the Arab-Israeli War of 1948 was the plight of Palestinian refugees.¹⁶ States may also intervene to prevent human rights abuses, as in India's unilateral intervention of 1971 to help the Bengali people of East Pakistan, and in NATO's 1999 intervention in Kosovo to protect the Kosovar Albanians from Serbian

aggression, or indeed to placate groups within their own population who share the same ethnicity as one of the actors. For example, India's intervention in the Tamil conflict in Sri Lanka was motivated in part by internecine fighting between factions of India's Tamils in its Tamil Nadu province, caused by the conflict in Sri Lanka.¹⁷ When states act unilaterally on the basis of self-interest, they *interfere*, seeking to obtain some military or political advantage over their neighbour. This increases the probability of violence occurring or intensifying.¹⁸ Ethiopia provides one of many examples. The country supported and provided sanctuary to Anya Nya guerrillas fighting in Sudan in 1965, which was a reprisal for Sudanese support for Eritrean guerrillas fighting the Ethiopian government.¹⁹

Powerful states like China or Russia may not be significantly threatened by the potential for interference by neighbouring states.²⁰ However, for smaller, less powerful states, like Georgia, or many African states, such actions might pose a serious threat to their future well-being, if not their very existence. As a consequence, less powerful states in particular seem to have a strong incentive to find a lasting peaceful solution to self-determination claims, with minimal risk of overspill. Ted Robert Gurr's "Minorities at Risk" project indicated that without intervention by the international community, claims for self-determination were less likely to be resolved peacefully.²¹ The compelling nature of the anti-"overspill" argument in favour of accepting external assistance through the use of the ICJ and the UN can be strongly felt by considering the example of Eritrea, where successful international intervention came only after thirty years of conflict and misery.²² Eritrea achieved its independence from Ethiopia after an April 1993 referendum, with a 99.8 per cent vote in favour of independence.²³ Was it really necessary for such bloodshed to occur when ultimately the matter was resolved through a referendum? Moreover, would there have been an end to hostilities without intervention?

If it is accepted that self-determination claims are more likely to be resolved peacefully following intervention by the international community, a new set of questions is formed: What format should intervention take? And who should intervene? The advantages of intervention in the form of preconditions are discussed elsewhere,²⁴ but it is important to be reminded that their use promises to benefit states because they enable "illegitimate" or spurious claims to be rejected by an independent body. We should now ask why this body should be the ICJ rather than, for instance, an organ of the UN.

For centuries, states have recognised the benefit of using independent legal tribunals to resolve international disputes.²⁵ Many states expressed

this point clearly in their recent submissions to the Advisory Opinion regarding Kosovo's unilateral declaration of independence, which is currently before the ICJ.²⁶ The ICJ, therefore, with its well-established history of resolving border disputes²⁷ and other highly political matters,²⁸ is not influenced by the factors that dominate, and often paralyse, the political organs of the UN.²⁹ This paralysis is especially evident in the Security Council, which has the additional complication of veto power for permanent members.

The ICJ is also impartial. Some may question the extent of the Court's impartiality since judges will be appearing in matters that involve their own national government, and second, because states are entitled to appoint an *ad hoc* judge if none of the existing judges are one of their citizens. Many commentators have measured the voting patterns of judges of the ICJ in order to test the impartiality of the Court: none found any patterns of bias. The conclusion that commentators have drawn from such quantitative research is that it is more likely that judges are influenced by cultural values and other subtle influences that their legal training and experience have given them, rather than actually being guilty of voting in the national interest.³⁰ Impartiality is an important advantage over political institutions like the General Assembly, where political, strategic, and economic influences are crucial in determining the outcome of disputes. National governments have consistently used claims for self-determination as a political tool as they seek to obtain a real or even perceived strategic advantage.³¹ For instance, the Soviet Union championed the causes of African and Asian peoples in Western colonies, and during the Nigerian Civil War of 1967–70, Côte d'Ivoire actively supported the Biafran people's attempt to secede.³² The ICJ, unencumbered by such considerations,³³ can focus on the application of justice and fairness—perceptions of which may be essential to encourage actors to accept the outcome of a dispute, and, for that matter, to ensure long-term peace and security.³⁴

States value such impartiality highly. For example, the 1962 Punta del Este meeting of the Organization of American States (OAS) saw the adoption of many anti-Cuban resolutions. This led the Cuban representative to the Security Council to ask the Council to request an Advisory Opinion from the ICJ. The Soviet Union supported Cuba's recommendation because its representatives believed the Court was the most competent UN body and the only one that could provide a fast and impartial consideration of the legal matters that the resolutions raised.³⁵ Finally, states also value legitimacy, as evidenced by the desire of the international community to use international legal norms to justify the denial of statehood.³⁶ In the words of Franck, there is "power in legitimacy."³⁷

The ICJ is well placed to adjudicate on these issues since self-determination is a norm of international law. In fact, many commentators consider self-determination to hold *jus cogens* status.³⁸ Furthermore, claims for self-determination involve other fundamental international legal concepts such as territorial integrity³⁹ and *uti possidetis*, discussed below.⁴⁰ When a people claim self-determination they are seeking to change their legal status, as it were, from that of being part of a state to taking on statehood itself.⁴¹ Many commentators certainly regard the determination of the latter status as a legal question.⁴² As the principal judicial organ of the UN, the ICJ is the most desirable entity to resolve such questions, including any potential conflicts between norms of international law.⁴³ The ICJ would be better placed to consider and apply preconditions to self-determination claims than a political body such as the Security Council. We must now ask what preconditions should be used.

Suggested Preconditions

Various potential preconditions have been suggested by commentators, courts, ad hoc commissions, and international organisations.⁴⁴ Some of these, such as calls for UN monitored plebiscites, are already used regularly. Others reflect the requirements of individual situations. For example, Macedonia had a unique precondition: that it did not indulge in “hostile propaganda” that might encourage secession by the Greek province of the same name.⁴⁵

In this section the following preconditions will be examined: (1) that the claimants respect international law; (2) that they respect the inviolability of international borders; (3) that there is a UN monitored plebiscite; (4) that democratic government is denied; (5) that the people claiming self-determination are subject to foreign subjugation; and (6) that the people are capable of forming a state as defined in international law.

Respecting the Norms of International Law

This first suggested precondition is similar to ones used in previous concrete cases of self-determination. It was a precondition for the new state of Slovenia in 1992, for instance, that it protect its Hungarian and Italian minorities.⁴⁶ However, my suggestion has a broader application. A people's action must be consistent with the norms of international law and with the UN Charter,⁴⁷ and their pursuit of a claim for self-determination must comply with the norms that regulate both armed conflict and inter-

national humanitarian law.⁴⁸ Thus, this precondition would also include protection of human rights or an end to hostilities.⁴⁹

The suggestion of this precondition is justified by the acknowledgment that a legal right is always coupled with an appropriate legal responsibility, and by the belief that interaction of all members (including peoples⁵⁰) of the international community is subject to the norms of international law. This claim stands counter to the criticism made by some commentators that, unlike states or individuals, peoples can act with impunity.⁵¹ Also, compliance with the norms of customary international law and with the UN Charter is necessary if a people wish to seek membership of the UN as a state.⁵²

Respecting the Inviolability of Borders

This suggestion might have been subsumed within the previous section, but is deserving of individual treatment not only because of its extreme importance to the respective actors, but also because it raises the particular issue of whether the borders of the new state are determined by the norm of *uti possidetis juris*—originally a principle of Roman law that determined borders after territorial conquest.⁵³ In both Latin America and Africa, this norm was applied so that former colonies would retain their existing colonial boundaries on gaining independence.⁵⁴ It was subsequently adopted by the Organization of African Unity, whose members pledged to accept their borders as being those at the time of their independence.⁵⁵

As a consequence of this practice, and the Court's decision in the *Frontier Dispute*⁵⁶ (where the chamber of the ICJ held that *uti possidetis juris* would apply even if a treaty was silent as to how a border dispute was to be decided), it has been argued that self-determination is subordinate to *uti possidetis*.⁵⁷ The Badinter Arbitration Commission held that *uti possidetis* could apply to the break-up of the SFRY.⁵⁸ Indeed, the Commission's interpretation of *uti possidetis* has been heavily criticised by commentators who argue that the norm should only apply to colonial situations.⁵⁹ However, there is some merit in using *uti possidetis* as a starting point when negotiating international borders, even in non-colonial situations, as the norm can provide stability in an uncertain time.⁶⁰ Nevertheless, it should not be applied blindly as this could cause future instability, and sow the seeds for future problems.⁶¹ For instance, applying *uti possidetis* raises the question: Should pre-colonial states or empires be rebuilt?⁶² After all, it should be remembered that the peoples within these borders did not have an opportunity to participate in the establishment of

their frontiers.⁶³ The limits of Kosovo and Albania, for example, were established by the Great Powers, and not in accordance with the wishes of the population.⁶⁴ Furthermore, internal borders are established by a regime's need to govern, and accordingly are more than likely to be inconsistent with the needs of an international border.⁶⁵

A blind application of *uti possidetis* may create sizeable minorities that may not wish to become part of the new state. Failing to take the interests of potential new minorities into account can create problems. According to Lord Owen, former Co-Chairman of the Steering Committee of the International Conference on Yugoslavia, "[t]he refusal to make these [new international] borders negotiable greatly hampered the EC's attempt at crisis management."⁶⁶ Similar problems occurred in Georgia, Armenia,⁶⁷ Kosovo,⁶⁸ as well as in Africa.⁶⁹ In fact, the African Union (replacing the OAU) has revised the strict application of *uti possidetis*, and now prefers the protection of human rights to the stability of borders.⁷⁰

For all of these reasons, a more flexible approach should be taken regarding the establishment of international borders in order to ensure stability, peace, and security.⁷¹ A better and simpler precondition, therefore, is that the people must be able to satisfy the criteria for statehood as defined by international law.⁷² This suggestion is much more practical in nature, since a state's existence is not typically jeopardised even if its borders are subject to a degree of uncertainty, or are under negotiation.

Forming a State as Defined in International Law

This essential precondition is based on the criteria found in Article One of the Montevideo Convention of 1933.⁷³ The purpose of this Convention was to introduce objective "empirical" criteria for statehood that could be assessed without involving the political desires of states.⁷⁴ Article One lists four characteristics of a state:

- (1) a permanent population;
- (2) a defined territory;
- (3) a government;
- (4) a capacity to enter into relations with other states.

Whilst not all commentators accept the Montevideo criteria as identifying *all* the characteristics of statehood,⁷⁵ the criteria have been accepted as a convenient basis for the definition of the concept,⁷⁶ and have been discussed in detail elsewhere.⁷⁷ I would add that, as noted by James Crawford,⁷⁸ when a new state emerges through a successful claim to self-

determination it is important that it also proves its *independence*: namely that it is not subordinate to, or under the legal authority of, another state.⁷⁹

Internationally Monitored Plebiscite

The requirement for an internationally monitored plebiscite is also a necessity, since the very foundation of the right to self-determination is the freely expressed will of the people concerned.⁸⁰ A UN-monitored vote is the best tool in this case,⁸¹ as the organisation has overseen plebiscites in the past.⁸² The plebiscite must contain clearly expressed options or choices,⁸³ in particular the three choices contained in Principle VI of The Annex to the Declaration on Colonial Peoples, which clarifies what is meant by the phrase: “by virtue of that right they freely determine their political status.”⁸⁴ Principle VI states:

A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

- (a) Emergence as a sovereign independent State;
- (b) Free association with an independent State; or
- (c) Integration with an independent State.⁸⁵

Plebiscites could also be used in areas containing “new minorities” to ascertain whether they wish to be part of the new state or to remain with the parent state. Where feasible, this could provide a basis for the voluntary transfer of populations or territory.⁸⁶ Given the experience during the partition of India and Pakistan this may sometimes not be palatable.⁸⁷ However, if monitored by the UN, transfers could be managed with less bloodshed, and, it is argued, with greater benefits for long-term stability and security. The purpose of this proposal is to allow borders to be changed to avoid forming minority enclaves. Yet, it should only be encouraged where the area is geographically adjacent to the parent state so as to avoid the creation of new micro-states.⁸⁸

The Requirement of a Democratic Government

The requirement of a democratic government could in theory be taken as a precondition in two separate regards: first, as a requirement that the new state adopt a democratic government; and second, as a claim that a denial of democratic government is capable of triggering a right to claim self-determination in the first place. Both aspects rely on the argument

that there is a right to democracy,⁸⁹ which is itself supported by the expression, made in a number of international treaties and agreements, of the right to political participation through the electoral process.⁹⁰ Both are also based on the widespread view that democratic governments are more effective than the alternatives,⁹¹ and more likely to promote international peace and security.⁹²

A requirement for democratic government should not be a *universal* precondition, but can be rather useful in specific situations.⁹³ There is, in any event, some doubt regarding the existence of the right to democracy. The expression, “they freely determine their political status,” contained in the Annex to the Declaration on Colonial Peoples, does imply a *free* choice. However, it is unclear whether this entails an *ongoing* choice.⁹⁴ Rather, the choice referred to was whether or not to claim independence from a colonial power, as proven by: (1) State practice;⁹⁵ (2) the decision of the ICJ in the *Western Sahara Case*;⁹⁶ and, (3) the choices listed in Principle VI of the *Annex to the Declaration of Colonial Peoples*. Requiring a democratic government as a precondition also raises the argument of cultural imperialism.⁹⁷ Finally, the Montevideo criteria do not state what form the government should take.⁹⁸

The Canadian Supreme Court considered the question of whether a denial of democratic government legitimises a unilateral claim to self-determination. The Court held that this was only a possibility, and indeed was far from certain that such a norm existed.⁹⁹ Also, in the *Nicaragua Case*, the ICJ held that there was no right to intervene and enforce the adoption of a democratic government, and noted that the right to non-intervention also protected a state's choice of political system.¹⁰⁰ Thus, with the possible exception occurring when a democratic government is ousted by military force, such as in Haiti in 1994,¹⁰¹ I believe that a failure to have a democratic government in the Western liberal tradition does not provide a legal basis to claim self-determination. What is more important is whether the people have been subject to alien or foreign subjugation.

Alien and Foreign Subjugation

It is clear that the right to self-determination is available to colonised peoples. However, it is not so clear that it applies to subjugated peoples outside the colonial context. Although disputed by some commentators,¹⁰² as well as by some states,¹⁰³ there are many writers who argue that where a people is subject to alien and foreign subjugation, especially gross human rights abuses, it is entitled to a “remedial right” to independence.¹⁰⁴ These

arguments are based on what is referred to as the “safeguard clause” of the Declaration of Friendly Relations.¹⁰⁵ The origins of this right can be traced as far back as to the Opinion provided by the Commission of the Rapporteurs in the 1920 *Aaland Islands Case*.¹⁰⁶ More recently, this “remedial right” was mentioned in the Vienna Declaration,¹⁰⁷ and also by the Canadian Supreme Court, which stated:

A right to secession only arises under the principle of self-determination of peoples at international law where “a people” is governed as part of a colonial empire; *where “a people” is subject to alien subjugation, domination or exploitation*[.]¹⁰⁸

In situations where a people is suffering from serious human rights abuses, or where the very survival of a people is in question, there must be a right available to a people to unilaterally demand self-determination and to seek the assistance of the international community.¹⁰⁹ Such a precondition can be justified on the basis that it can influence the protagonists’ behaviour in a very positive manner. It encourages states to respect a people’s human rights and it prevents frivolous claims by a people. Thus, it should be a necessary precondition for situations in which a non-colonial people is seeking self-determination without the consent of the parent state.¹¹⁰

In response to a Request for an Advisory Opinion made by the UN General Assembly, the ICJ is currently considering the legality of the unilateral declaration of independence made by members of the Provisional Institutions of Self-Government of Kosovo in February 2008. It is not clear if the ICJ will simply analyse whether the declaration itself accords with international law, or if it will examine the wider issue of the legality of the Kosovars’ claim for self-determination. If the Court were to tackle the latter question, would the Kosovars’ claim satisfy the preconditions outlined above?

The Kosovars’ Claim for Self-Determination

The Kosovars’ claim for independence is problematic, and, at present, would not satisfy all the above preconditions. Whilst the unilateral declaration of independence evidenced a clear intention that an independent Kosovo would act as a law-abiding member of the international community,¹¹¹ there is a wider issue of whether the creation of the state of Kosovo breaches international law.¹¹² In addition, although a plebiscite supporting independence was held in September 1991, it was organised by the Kosovo Assembly, not the UN.¹¹³ This allowed concerns to be raised regarding the validity of the referendum, given the non-conciliatory at-

titudes of the protagonists.¹¹⁴ Kosovo may not satisfy the third precondition due to its lack of effective control over the territory, due to the international presence in Kosovo and the existence of parallel Serbian institutions.¹¹⁵ However, the international presence can be explained as part of a process known as “earned sovereignty,” a process whereby a third party, such as the UN, assists the emerging state to develop the necessary infrastructure to gain and maintain effective control.¹¹⁶ Thus, the presence of the UN is only temporary, and the Kosovars’ inability to exercise effective control could be just a matter of time. Indeed, statehood has not been denied in self-determination claims despite a lack of effective control, such as the Republic of the Congo in 1960 and Bosnia-Herzegovina in 1991.¹¹⁷

An interesting point was raised during the ICJ pleadings for the Kosovo Advisory Opinion:¹¹⁸ that the Kosovar Albanians are *currently* not victims of foreign subjugation or human rights abuses.¹¹⁹ While certain sources question the existence of a remedial right to secession,¹²⁰ another question asks whether these abuses must be current and ongoing.¹²¹ The Kosovars suffered serious human rights abuses during the 1990s and it does not seem morally justifiable to argue that these abuses must be current, as this implies that the right to self-determination may “lapse.” What needs to be considered is whether independence for the Kosovars is the only solution to ensure peace and stability. Special Envoy Martti Ahtisaari reached this conclusion,¹²² and it may be the decisive factor in determining the validity of the Kosovars’ claim.

Conclusion

I have argued that the ICJ, through the use of preconditions, could provide a useful structure for the international community to peacefully resolve self-determination claims. I believe that from the above six preconditions discussed, only four can serve as universal preconditions for a legitimate claim to self-determination:

- (1) The claimants are a distinct people subject to alien and foreign subjugation.
- (2) They have expressed their free will in an internationally monitored plebiscite to achieve statehood.
- (3) The people accept and agree to be bound by the terms of the *Charter of the United Nations* and the norms of international law.
- (4) The people are capable of forming a state as defined in international law.

The ICJ should be the body to apply these preconditions because the Court's advantages of impartiality, expertise, and freedom from political interference would enhance the chances of a long-term peaceful solution. ■

Notes

¹ Robert Lansing, Woodrow Wilson's Secretary of State is cited often, this time in Tal Becker, "Self-Determination in Perspective: Palestinian Claims to Statehood and the Relatively of the Right to Self-Determination," *Israel Law Review* 32 (1998): 301.

² This paper will focus on external self-determination, that is, independent statehood.

³ See, for example, Boutros Boutros-Ghali "An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping" Report of the Secretary-General (1992) UN Doc A/47/277 - S/241111.

⁴ See United Nations Charter arts 1(2), 55. See also common art 1 of the Covenants on Human Rights, for example, International Covenant on Economic, Social and Cultural Rights (adopted December 16, 1966, entered into force January 3, 1976) ("ICESCR"); Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (October 24, 1970) UN General Assembly (UNGA) Resolution 2625 ("Declaration on Friendly Relations"); Declaration on the Granting of Independence to Colonial Countries and People (December 2, 1986) UN Doc A/Res 41/41, art 2 ("Declaration on Colonial Peoples"); African Charter on Human and Peoples' Rights ("African Charter") (adopted June 27, 1981, entered into force October 21, 1986) (1982) 21 International Legal Materials (ILM) 58, art 20; Western Sahara (Advisory Opinion) [1975] Rep 23 (International Court of Justice); *East Timor (Portugal v Australia)* [1995] ICJ Rep 90; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion) [1971] ICJ Rep 16.

⁵ Self-determination and decolonization were important policies of the United Nations (UN) in the aftermath of World War II.

⁶ Ted Robert Gurr, *Why Men Rebel* (Princeton, NJ: Princeton University Press, 1970), 14, 60, 72, 327; Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1995), 385; Geoffrey Robertson, *Crimes Against Humanity: The Struggle for Global Justice* (London: Allen Press, 1999), 144.

⁷ Seyom Brown, *The Causes and Prevention of War*, 2nd ed. (New York: St Martin's Press, 1994), 18, 63, 65.

⁸ See Friedrich Kratochwil, "How Do Norms Matter?" in *The Role of International Law in International Politics: Essays in International Relations and International Law*, ed. Michael Byers (Oxford: Oxford University Press, 2000), 35, 39.

⁹ Since their use suggests that there is no primary or inalienable right to self-determination. The expression "all peoples" used in the UN Charter creates the impression that the right is not dependent upon any precondition at all. See Catriona Drew, "The Meaning of Self-Determination: 'The Stealing of the Sahara' Redux?" in *International Law and the Question of Western Sahara*, eds. Karin Arts and Pedro Pinto Leite (Leiden: International Platform of Jurists for East Timor, 2007), 87, 99; Wayne Norman, "The Ethics of Secession as the Regulation of Secessionist Politics," in *National Self-Determination and Secession*, ed. Margaret Moore (Oxford: Oxford University Press, 1998), 34, 41; Ian Brownlie, *The Rule of Law in International Relations*, 6th ed. (Oxford: Oxford University Press, 2003), 46–7.

¹⁰ US State Department, "A Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict" (Press Release April 30, 2003), <http://www.state.gov/r/pa/prs/ps/2003/20062.htm> (accessed October 19, 2008) ("Roadmap")—the preconditions are noted in Phase I; 'Comprehensive Proposal for the Kosovo Status Settlement' (February 2, 2007) <<http://pbosnia.kentlaw.edu>> accessed October 20, 2008 ("Ahtisaari Proposal"); European Community, Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union (1991) 31 ILM 1486 ("EC Guidelines").

¹¹ See Ted Robert Gurr, *Minorities at Risk: A Global View of Ethnopolitical Conflicts* (Washington, DC: USIP Press, 1993), 295–7 (especially Table 10.1).

¹² See Monty G. Marshall and Ted Robert Gurr, *Peace and Conflict 2003: A Global Survey of Armed Conflicts, Self-Determination Movements, and Democracy* (College Park, MD: Center for International Development and Conflict Management, 2003), 26.

¹³ See Saman Kelegama, "Economic Costs of Conflict in Sri Lanka," in *Creating Peace in Sri Lanka: Civil War and Reconciliation*, ed. Robert I. Rotberg (Washington, DC: Brookings Institution Press, 1999), 71, 78–9.

¹⁴ See Jacob Bercovitch, "Managing Internationalized Ethnic Conflict: Evaluating the Role and Relevance of Mediation," *World Affairs* 166, no. 1 (2003): 56–68.

¹⁵ See Ted Robert Gurr, "Minorities, Nationalists, and Ethnopolitical Conflict," in *Managing Global Chaos: Sources of and Responses to International Conflict*, eds. Chester A. Crocker and Fen Osler Hampson with Pamela Aall (Washington, DC: United States Institute of Peace Press, 1996) 53, 54; Alan Dowty and Gil Loescher, "Refugee Flows as Grounds for International Action," in *Nationalism and Ethnic Conflict*, eds. Michael E. Brown, Owen R. Coté, Jr., Sean M. Lynn-Jones, and Steven E. Miller, 305; Barry Posen, "Military Responses to Refugee Disasters," in *ibid.*, 334.

¹⁶ See Dowty and Loescher, "Refugee Flows," 325.

¹⁷ See Edgar O'Ballance, *The Cyanide War: Tamil Insurrection in Sri Lanka 1973–1988* (London: Brassey's, 1989), 124; Neil De Votta, *Blowback: Linguistic Nationalism, Institutional Decay, and Ethnic Conflict in Sri Lanka* (Stanford, CA: Stanford University Press, 2004), 6.

¹⁸ Bolivia, ICJ Written Statement, *Accordance with International Law of the Unilateral Declaration of Independence by Provisional Institutions of Self-Government of Kosovo* (Request for Advisory Opinion), <http://www.icj-cij.org/docket/index.php?pi=3&p2=4&code=kos&case=141&k=21> (accessed January 24, 2010) ("Request for Advisory Opinion"); Brown, *Causes and Prevention*, 36.

¹⁹ See A. Rigo Sureda, *The Evolution of the Right of Self-Determination: A Study of United Nations Practice* (Leiden: A. W. Sijthoff, 1973), 20.

²⁰ This said, the First Chechen War brought the fragile Russian economy to the brink of collapse. See Pontus Siren, "The Battle for Grozny," in *Russia and Chechnia: The Permanent Crisis. Essays on Russo-Chechen Relations*, ed. Ben Fowkes (Basingstoke: Palgrave Macmillan, 1998), 87, 130–1.

²¹ See Gurr, "Minorities," 13.

²² East Timor is another example.

²³ See Ted Gurr and Barbara Harff, *Ethnic Conflict in World Politics* (Boulder, CO: Westview Press, 1994), 4.

²⁴ See Norman, "Ethics of Secession," 41–2; Allen Buchanan, "Toward a Theory of Secession," *Ethics* 101, no. 2 (1991): 322–42, 337.

²⁵ See Shabtai Rosenne, *The World Court: What It Is and How It Works*, 5th completely rev. ed. (Dordrecht: Martinus Nijhoff, 1995), 3; Christian Reus-Smit, "Constructivism," in *Theories of International Relations*, eds. Scott Burchill, Richard Devetak, Andrew Linklater, Matthew Paterson, Christian Reus-Smit, and Jacqui True, 2nd ed. (Basingstoke: Palgrave, 2001), 209–30; Nagendra Singh, *The Role and Record of the International Court of Justice* (Dordrecht: Martinus Nijhoff, 1989), 7.

²⁶ For example, Republic of Burundi, ICJ Verbatim Record, Request for Advisory Opinion (n 18) [1]; Written Statement of the Argentine Republic, ICJ Written Statement, Request for Advisory Opinion (n 18) [2], [12].

²⁷ A total of eleven disputes concerning delimitation of borders or competing claims to territory have been heard by the ICJ, with one matter between Nicaragua and Colombia still pending; see International Court of Justice, "List of Cases Referred to the Court since 1946 by Date of Introduction," <http://www.icj-cij.org/docket/index.php?pi=3&p2=2> (accessed February 8, 2010).

²⁸ See Andrew Coleman, "The International Court of Justice and Highly Political Matters," *Melbourne Journal of International Law* 4 (2003): 29–75; Robertson, *Crimes Against Humanity*, 144. However, some commentators disagree, see, for example, Helmut Steinberger, "The International Court of Justice," in *Judicial Settlement of Disputes: International Court of Justice, Other Courts and Tribunals, Arbitration and Conciliation: An International Symposium*, ed. Max Planck Institute for Comparative Public Law and International Law (Berlin: Springer, 1974), 193, 207, 209; Sir Robert Jennings, "Presentation by Sir Robert Jennings," in *Increasing the Effectiveness of the International Court of Justice: Proceedings of the ICJ/UNITAR Colloquium to Celebrate the 50th Anniversary of the Court*, eds. Connie Peck and Roy S. Lee (The Hague: Martinus Nijhoff, 1997), 78, 81.

²⁹ See Elisabeth Zoller, "Contributions of the Court to the Resolution of International Tensions," in *Increasing the Effectiveness of the International Court of Justice*, eds. Peck and Lee.

³⁰ Researchers noted that ad hoc judges tended to find in favour of their nominating state/government, which is unsurprising given that national governments, prior to making their selection, are unlikely to choose a tribunal member that is opposed to their cause. However, there were times when ad hoc judges decided against the nominating state. Furthermore, judges are able to recuse themselves from hearings, maintaining impartiality. There have even been examples where the clerks of ICJ judges have recused themselves in order to avoid any suggestion of partiality. See Thomas R. Hensley, "National Bias and the International Court of Justice," *Midwest Journal of Political Science* 12, no. 4 (1968): 568–86, 568; Joaquin Tacsan, *The Dynamics of International Law in Conflict Resolution* (Dordrecht: Martinus Nijhoff, 1992), 138; Il Ro Suh, "Voting Behavior of National Judges in International Courts," *American Journal of International Law* 63, no. 2 (1969): 224–36, 226; Edith Brown Weiss, "Judicial Independence and Impartiality: A Preliminary Inquiry," in *The International Court of Justice at a Crossroads*, ed. Lori F. Damrosch (Dobbs Ferry: Transnational Publishers, 1987), 123; Adam M. Smith, "'Judicial Nationalism' in International Law: National Identity and Judicial Autonomy at the ICJ," *Texas International Law Journal* 40 (2004–5): 197–232; Vojin Dimitrijević and Marko Milanović, "The Strange Story of the Bosnian Genocide Case," *Leiden Journal of International Law* 21 (2008): 65–94, 65.

³¹ Malvina Halberstam, "Self-Determination in the Arab-Israeli Conflict: Meaning, Myth, and Politics," *International Law and Politics* 21 (1989): 465–88, 484.

³² See Herbert Howe, "Lessons of Liberia: ECOMOG and Regional Peacekeeping," in *Nationalism and Ethnic Conflict*, eds. Michael E. Brown, 399, 406.

³³ Some may question whether the Court is entirely free from all political influences, but the Court has consistently stated that it decides matters based upon legal norms and that political considerations do not and should not influence the outcome. This attitude is obvious in many of the Court's decisions. See, for example, *Corfu Channel Case (United Kingdom v Albania) (Merits)* [1949] ICJ Rep 4, 35, and in particular the Court's ability to hand down a decision in the *Bosnian Genocide Case* given the intensity of the attempts to derail or even sabotage the matter, the political manoeuvrings of the parties concerned, and the sheer emotion the events in Kosovo created; see Dimitrijević and Milanović, "The Strange Story," 66, 74–6, 86–7; Susan W. Tiefenbrun, "The Role of the World Court in Settling International Disputes: A Recent Assessment," *Loyola of Los Angeles International and Comparative Law Journal* 20 (1997–8): 1–27.

³⁴ See Longzhi Chen, *An Introduction to Contemporary International Law: A Policy-Oriented Perspective* (New Haven, CT: Yale University Press, 1989), 3.

³⁵ It could be argued that the former USSR's comments merely reflected their desire to prevail in the Cold War and their support for a fellow communist state. However, if the USSR wanted a favourable outcome, then surely this would have been more likely in the UN General Assembly, where the USSR could exert more influence. See Michla Pomerance, *The Advisory Function of the International Court in the League and UN Eras* (Baltimore, MD: Johns Hopkins University Press, 1973), 260.

³⁶ Examples include the “Bantustans,” Biafra, Katanga, Rhodesia, and Northern Cyprus.

³⁷ Thomas M. Franck, *The Power of Legitimacy Among Nations* (Oxford: Oxford University Press, 1990), 122.

³⁸ In accordance with art 53 of the Vienna Convention on the Law of Treaties (opened for signature May 23, 1969, entered into force January 27, 1980) 1155 UNTS 331. See UNHRC (Sub-Commission on Prevention of Discrimination and Protection of Minorities), ‘Report by Special Rapporteur Hector Gros Espiell on the Right to Self Determination: Implementation of United Nations Resolutions’ (1980) UN Doc E/CN.4/Sub.2/405/Rev.1.

³⁹ See S. K. N. Blay, “Self-Determination Versus Territorial Integrity in Decolonization,” *N.Y.U. Journal of International Law and Politics* 18 (1985–6): 441.

⁴⁰ “As you possess shall you continue to possess.”

⁴¹ *Western Sahara* (Advisory Opinion) (n 4) 169–72 (Judge Castro); James Crawford, *The Creation of States in International Law*, 2nd ed. (Oxford: Clarendon Press, 2006), 5; Blay, “Self-Determination Versus Territorial Integrity,” 462.

⁴² See Hersch Lauterpacht, *Recognition in International Law* (Cambridge: Cambridge University Press, 1947), 428; P. K. Menon, *The Law of Recognition in International Law: Basic Principles*, (Lampton: Edwin Mellen Press, 1994), 24; Crawford, *Creation of States*, 61.

⁴³ UN Charter, arts 1, 33(1); see Stephen C. Schlesinger, *Act of Creation: The Founding of the United Nations: A Story of Superpowers, Secret Agents, Wartime Allies and Enemies, and their Quest for a Peaceful World* (Boulder, CO: Westview Press, 2003), xv.

⁴⁴ See Buchanan, “Theory of Secession”; Daniel Philpott, “In Defense of Self-Determination,” *Ethics* 105, no. 2 (1995): 352–85, 382; see *In the Matter of a Reference by the Governor in Council Concerning Certain Questions Relating to the Secession of Quebec from Canada as Set Out in Order in Council P.C. 1996-1997* [1998] 2 SCR 217 (Supreme Court of Canada) (“Reference re Secession of Quebec”); see, for example, *Opinion No 6 & 7*, the Badinter Commission (n 45–6); for the European Community, see the EC Guidelines.

⁴⁵ *Opinion No 6 On the Recognition of the Republic of Macedonia by the European Community and its Member States* (January 11, 1992) (1992) 31 ILM 1507.

⁴⁶ *Opinion No 7 On the Recognition of the Republic of Slovenia by the European Community and its Member States* (January 11, 1992) (1992) 31 ILM 1512.

⁴⁷ See Oyvind Osterud, “Sovereign Statehood and National Self-Determination: A World Order Dilemma,” in *Subduing Sovereignty: Sovereignty and the Right to Intervene*, ed. Marianne Heiberg (London: Pinter, 1984), 18–32, 21; David Raič, *Statehood and the Law of Self-Determination* (The Hague: Kluwer Law International, 2002), 167, 452.

⁴⁸ See Elizabeth Chadwick, *Self-Determination, Terrorism, and the International Humanitarian Law of Armed Conflict* (The Hague: Martinus Nijhoff, 1996).

⁴⁹ See for example *Roadmap*, Phase 1.

⁵⁰ Although some commentators doubt the existence of “peoples’ rights”; see Philip Alston, “Introduction,” in *Peoples’ Rights*, ed. Philip Alston (Oxford: Oxford University Press, 2001), 1–6.

⁵¹ See Fergus Green, “Fragmentation in Two Dimensions: The ICJ’s Flawed Approach to Non-State Actors and International Legal Personality,” *Melbourne Journal of International Law* 9 (2008): 47–77, 70–1.

⁵² UN Charter, arts 4–6.

⁵³ See Peter Radan, “Post-Secession International Borders: A Critical Analysis of the Opinions of the Badinter Arbitration Commission,” *Melbourne University Law Review* 24, no. 1 (2000): 50–76, 59.

⁵⁴ See Cassese, *Self-Determination*, 69, 192–3; Peter Radan, *The Break-Up of Yugoslavia and International Law* (London: Routledge, 2002), 69; Steven R. Ratner, “Drawing a Better Line: *Uti Possidetis* and the Borders of New States,” *American Journal of International Law* 90, no. 4 (1996): 590–624; S. K. N. Blay, “Self-Determination: A Reassessment in the Post-Communist Era,” *Denver Journal of International Law and Policy* 22, no. 2 (1994): 275–316, 280.

⁵⁵ See Radan, “Post-Secession International Borders,” 59.

⁵⁶ *Frontier Dispute (Burkina Faso v Republic of Mali Case)* [1986] ICJ Rep 554, 557 (“Frontier Dispute Case”).

⁵⁷ *Frontier Dispute Case*, 565; see Cassese, *Self-Determination*, 69, 192; Blay, “Self-Determination: A Reassessment,” 280.

⁵⁸ *Opinion No 3 of the Arbitration Commission of the Peace Conference on Yugoslavia* (1992) 31 ILM 1499, 1500; *Opinion No 2 of the Arbitration Commission of the Peace Conference on Yugoslavia* (1992) 31 ILM 1497, 2.

⁵⁹ See Radan, “Post-Secession International Borders”; Michla Pomerance, “The Badinter Commission: The Use and Misuse of the International Court of Justice’s Jurisprudence,” *Michigan Journal of International Law* 20, no. 1 (1998): 31–58; Jochen A. Frowein, “Self-Determination as a Limit to Obligations under International Law,” in *Modern Law of Self-Determination*, ed. Christian Tomuschat (Dordrecht: Martinus Nijhoff, 1993), 211–24, 216.

⁶⁰ *Frontier Dispute Case*, 551; *Temple of Preah Vihear (Cambodia v Thailand)* [1962] ICJ Rep 6, 34; see Radan, “Post-Secession International Borders,” 58.

⁶¹ See Ratner, “Drawing a Better Line,” 617.

⁶² See Sureda, *Evolution*, 218.

⁶³ See Howard P. Willens and Deanne C. Siemer, *National Security and Self-Determination, United States Policy in Micronesia, 1961–1972* (London: Praeger, 2000), 2.

⁶⁴ See Zejnullah Gruda, “Some Key Principles for a Lasting Solution of the Status of Kosovo: *Uti Possidetis*, the Ethnic Principle, and Self-Determination,” *Chicago-Kent Law Review* 80, no. 1 (2005): 353–396, 388–91.

⁶⁵ See Radan, “Post-Secession International Borders,” 71.

⁶⁶ As cited in Radan, “Post-Secession International Borders,” 67.

⁶⁷ See Gruda, "Key Principles," 388–91.

⁶⁸ As cited in Radan, "Post-Secession International Borders," 67; see also *ibid.*, 51, 68.

⁶⁹ Katanga from the Congo in 1960–3; Biafra and Nigeria in 1967–70; Eritrea and Ethiopia in 1974–93.

⁷⁰ The Secretary-General of the OAU stated in 1977 that *uti possidetis* is not "sacro-sanct" and could be overruled on the basis of self-determination; see Radan, "Post-Secession International Borders," 51, 68, 70; Kathryn Sturman, "New Norms, Old Boundaries: The African Union's Approach to Secession and State Sovereignty," in *On the Way to Statehood: Secession and Globalisation*, ed. Aleksandar Pavković and Peter Radan (Aldershot: Ashgate, 2008), 67–84.

⁷¹ See Buchanan, "Theory of Secession," 327.

⁷² See Radan, *Break-up of Yugoslavia*, 245.

⁷³ The Montevideo Convention on the Rights and Duties of States (signed December 26, 1933, entered into force December 26, 1934) 135 LNTS 19 (League of Nations Treaty series) ("Montevideo Convention") was adopted by the United States and fifteen Latin American States at a meeting of the 7th International Convention of American States held in Montevideo.

⁷⁴ Montevideo Convention (n 73) art 3; see Raič, *Statehood*, 36; Osterud, "Sovereign Statehood," 18, 21–2.

⁷⁵ See for example: Thomas D. Grant, "Defining Statehood: The Montevideo Convention and its Discontents," *Colombia Journal of Transnational Law* 37, no. 2 (1999): 403–58, 434–57; Osterud, "Sovereign Statehood," 21–2; Crawford, *Creation of States*, 31–3; Raič, *Statehood*, 24; Ian Brownlie, *Principles of Public International Law*, 5th ed. (Oxford University Press: Oxford, 1998), 70.

⁷⁶ See David John Harris, *Cases and Materials on International Law*, 5th ed. (London: Sweet & Maxwell, 1998), 102; Crawford, *Creation of States*, 45; Grant, "Defining Statehood," 414, and the list of refines in *ibid.*, 425, note 51.

⁷⁷ See Crawford, *Creation of States*; Raič, *Statehood*.

⁷⁸ See Crawford, *Creation of States*, 61–3, 66.

⁷⁹ *Austro-German Customs Union Case (Advisory Opinion)* [1931] PCIJ (Permanent Court of International Justice) series A/B, No 1 (Judge Anzilotti, separate opinion); *Gur Corporation v Trust Bank of Africa Ltd* [1987] QB 599; *Carl Zeiss Stiftung v Rayner & Keeler Ltd* [1967] 1 AC 853; and also by the Appeals Chamber of the ICTY in relation to Republika Srpska's claim for statehood: see *Prosecutor v Tadić (Appeals Chamber)* Case No IT-94-I-A (July 15, 1999) [145]–[154].

⁸⁰ *Western Sahara (Advisory Opinion)* (n 4) 23; see Drew, "Meaning of Self-Determination," 87–109; Cassese, *Self-Determination*, 272; Radan, *Break-up of Yugoslavia*, 202.

⁸¹ However, note the criticism of the UN's supervision of the West Papuans' so-called referendum to join Indonesia; see Keith Suter, *East Timor, West Papua/Iran and Indonesia* (London: Minority Rights Group, 1997), 21; Michela Noonan, Peter King,

and John Wing, "Peace Building and Development in West Papua—Dialogue Versus Violence: Hearing Other Voices: A Report on Workshop IV, August 16–17, 2004, and Future Directions for the Project," Position Paper no. 5, University of Sydney, Centre for Peace and Conflict Studies, November 2004, 19–22.

⁸² See Gregory H. Fox, "The Right to Political Participation in International Law," *Yale Journal of International Law* 17, no. 2 (1992): 539–608, 541.

⁸³ See Malcolm N. Shaw, *International Law*, 5th ed. (Cambridge: Cambridge University Press, 2003), 231; Brownlie, *Principles of Public International Law*, 553.

⁸⁴ *Western Sahara* (Advisory Opinion) (n 4) 32.

⁸⁵ Annex to UNGA Res 1541 "Principles Which Should Guide Members in Determining Whether or Not an Obligation Exists to Transmit Called For in Article 73 (e) of the Charter of the United Nations" GAOR (General Assembly Official Records) 15th Session Supp 16 (December 15, 1960) UN Doc A/4684, 29 ("Annex to the Declaration on Colonial Peoples").

⁸⁶ See Radan, "Post-Secession International Borders," 75.

⁸⁷ Millions of people were displaced, and, although figures vary, approximately one million people were killed in fighting between Sikhs, Muslims, and Hindus during Partition. Barbara D. Metcalf and Thomas R. Metcalf, eds., *A Concise History of Modern India*, 2nd ed. (Cambridge: Cambridge University Press, 2006), xxxii, 217–23.

⁸⁸ Self-determination could be described as analogous to a "Babushka" or "Matryoshka" doll, with the increasingly smaller dolls nested inside one another. A good example is the former British colony of India, which, through self-determination, separated into India and Pakistan. Pakistan then separated into Pakistan and Bangladesh. Bangladesh is now faced with indigenous peoples seeking self-determination in the Chittagong Hill Tracts. Pakistan now faces other secessionist movements in Sind and Baluchistan, and India too with Kashmir. See Anjoo Upadhyaya, "Quest for Self-Determination in the Indian Subcontinent: The Recent Phase," in *Self-Determination: International Perspectives*, eds. Donald Clark and Robert Williamson, (Basingstoke: Macmillan, 1996).

⁸⁹ See Thomas M. Franck, "The Emerging Right to Democratic Governance," *American Journal of International Law* 86, no. 1 (1992): 46–91, 47; and generally Gregory H. Fox and Brad R. Roth, eds., *Democratic Governance and International Law* (Cambridge: Cambridge University Press, 2000).

⁹⁰ Universal Declaration on Human Rights (adopted December 10, 1948) art 21; International Covenant on Civil and Political Rights (adopted December 16, 1966, entered into force March 23, 1976) art 25(b); American Convention on Human Rights (adopted 1969, entered into force July 18, 1978) art 23; African Charter (n 4) art 13; First Protocol to the Convention on Human Rights (signed March 20, 1952) art 3. See Fox, "Right to Political Participation," 53.

⁹¹ *Conference on Security and Co-operation in Europe: Charter of Paris for a New Europe and Supplementary Document to Give Effect to Certain Provisions of the Charter* (November 21, 1991) 30 ILM 190, 193–4.

⁹² See John M. Owen, "International Law and the 'Liberal Peace'," in *Democratic Governance and International Law*, eds. Fox and Roth, 343–388, 343–85; *Conference on Security and Cooperation in Europe: Document of the Moscow Meeting on the Human Dimension, Emphasizing Respect For Human Rights, Pluralistic Democracy, The Rule of Law, and Procedures for Fact-Finding*, October 3, 1991, 30 ILM 1670, 1671–2.

⁹³ Such as with the former republics of the FSRY, see Crawford, *Creation of States*, 153.

⁹⁴ See Cassese, *Self-Determination*, 52–5; Andrew Coleman and Jackson Maogoto, "Democracy's Global Quest: A Noble Crusade Wrapped in Dirty Reality?" *Suffolk Transnational Law Review* 28, no. 2 (2005): 175–242; Andrew Coleman, "The Right to Democracy and Freedom from Repression," *Alternative Law Journal* 28, no. 3 (2003): 110–13.

⁹⁵ See Helen Quane, "The United Nations and the Evolving Right to Self-Determination," *International and Comparative Law Quarterly* 47, no. 3 (1998): 537–72, 548–58.

⁹⁶ "The principle of self-determination as a right of peoples, and its application for the purpose of bringing all colonial situations to a speedy end.": *Western Sahara* (Advisory Opinion) (n 4) 31 [55] (emphasis added).

⁹⁷ See Ann Elizabeth Mayer, "Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?" *Michigan Journal of International Law* 15, no. 2 (1994): 307–404, 318; Jim Mann, "Policy-Makers Race to Keep Up with New Asia," *L.A. Times*, July 12, 1993.

⁹⁸ Although see: Ingrid Detter Delupis, *International Law and the Independent State* (Brookfield, VT: Gower, 1974), 41.

⁹⁹ *Reference re Secession of Quebec* (n 44) 222, 287.

¹⁰⁰ *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v United States of America*) (1986) ICJ Rep 14, 133 [263]–[264]. ('*Nicaragua Case*')

¹⁰¹ See Andrew Field, "The Legality of Humanitarian Intervention and the Use of Force in the Absence of United Nations Authority," *Monash University Law Review* 26, no. 2 (2000): 339–61, 354.

¹⁰² See Marcelo G. Kohen, "Introduction," in *Secession: International Law Perspectives*, ed. Marcelo G. Kohen (Cambridge: Cambridge University Press, 2006), 1–20, 14.

¹⁰³ *Argentine Republic, ICJ Written Statement, Request for Advisory Opinion* (n 18) [85], [97].

¹⁰⁴ See Norman, "Ethics of Secession," 41; Buchanan, "Theory of Secession," 331; Lea Brilmayer, "Secession and Self-Determination: A Territorial Interpretation," *Yale Journal of International Law* 16, no. 1 (1991): 177–202, 189; Philpott, "Defense of Self-Determination," 382; Michael P. Scharf, "Earned Sovereignty: Juridical Underpinnings," *Denver Journal of International Law and Policy* 31, no. 3 (2003): 373–86, 382.

¹⁰⁵ See Kohen, "Introduction," 14; *Reference Re Secession of Quebec* (n 44) [134]–[135].

¹⁰⁶ “Report of the International Committee of Jurists Entrusted by the Council of the League of Nations with the Task of Giving an Advisory Opinion upon the Legal Aspects of the Aaland Islands Question” [1920] *League of Nations Official Journal* (Spec Supp) 3.

¹⁰⁷ *United Nations World Conference on Human Rights, Vienna Declaration and Programme of Action* (June 25, 1993), 32 ILM 1661, 1665.

¹⁰⁸ *Reference re Secession of Quebec* [1998] 2 SCR 217, [154] (emphasis added).

¹⁰⁹ See Philpott, “Defense of Self-Determination,” 378.

¹¹⁰ Buchanan would disagree; see Buchanan, “Theory of Secession,” 342.

¹¹¹ Kosovo, ICJ Verbatim Record, Request for Advisory Opinion (n 18) [17].

¹¹² This issue concerns the norm of territorial integrity and the role of UNSC Res 1244 (June 10, 1999) UN Doc S/RES/1244.

¹¹³ Written Statement of the Republic of Albania, Request for Advisory Opinion [10].

¹¹⁴ A similar concern was expressed by the Badinter Commission regarding Bosnia-Herzegovina, see Radan, *Break-Up of Yugoslavia*, 220.

¹¹⁵ This presence was authorized and created by UN Security Council Resolution (UNSC) 1244: see (n 3) [10].

¹¹⁶ See Scharf, “Earned Sovereignty,” 374.

¹¹⁷ Bosnia-Herzegovina and Congo are examples. See UNSC Resolution 142 General Assembly Official Records 15th Session (July 7, 1960) UN Doc S/RES/142; UNGA Res 1480 (XV) “Admission of the Republic of the Congo (Leopoldville) to Membership in the United Nations” GAOR 15th Session (September 20, 1960) UN Doc A/RES/1480; see Raič, *Statehood*, 64–5.

¹¹⁸ Request for Advisory Opinion (n 18).

¹¹⁹ Republic of Cyprus, ICJ Written Statement, Request for Advisory Opinion (n 18) [139]–[148]; Republic of Serbia, ICJ Verbatim Record, Request for Advisory Opinion [5]–[8]. Note however that Argentina argued that human rights abuses were in fact continuing: Argentine Republic, ICJ Written Statement, Request for Advisory Opinion (n 18) [83].

¹²⁰ Argentine Republic, ICJ Written Statement, Request for Advisory Opinion (n 18) [84].

¹²¹ Romania, ICJ Verbatim Record, Request for Advisory Opinion (n 18) [29].

¹²² Special Envoy Martti Ahtisaari, Report of the Special Envoy of the Secretary-General on Kosovo’s Future Status (March 26, 2007) UN Doc S/2007/168 [10].

China and the Principle of Self-Determination of Peoples

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ANONYMOUS

ABSTRACT

There are major differences between the Chinese Communists' pre-1944 and post-1944 policies with regard to the rights of non-ethnic Chinese. In recent years, the Chinese government has moved toward accepting the two International Covenants on human rights. Although these explicitly endorse the principle of peoples' right to self-determination (not to be confused with independence), the way that the Chinese government views its attendant obligations is inconsistent with the plain language of the operative legal instruments. The problem is complicated by the fact that the generally relied-upon Chinese versions of the relevant international instruments, which the Chinese government claims to accept in principle, are in certain crucial respects at variance from what the authentic versions actually say. There is also a disconnect between the way Chinese and Central Asians tend to view questions of territorial sovereignty. Some Central Asian peoples have gained their independence (from China and Russia), and some of China's subject peoples appear willing to accept present arrangements. For the others, the struggle continues. This article contextualizes the self-determination question in terms of Chinese territory and ideology. It also examines Chinese responses to modern international law and how China operates within the United Nations system and responds to UN values. It discusses China's perception of self-determination elsewhere, including the dissolution of federal and unitary states, and explores some of the implications of China's stand. The authors also suggest some possible alternative paths for effecting self-determination.

Introduction

The founding of the United Nations (UN) was, in part, to prevent or rectify victimization that comes about through aggression or threat of aggression.¹ The two international human rights covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR), explicitly endorse the principle that all peoples have the right of self-determination.² However, as we demonstrate below, China tries to rely on inauthentic versions of these treaties that deny the right of peoples

to self-determination. Though it has not always been their position, the Chinese Communists now reject the idea that any portion of the territory they control is entitled to self-determination. They have grown accustomed to thinking of China, in its present delineation, as the product of historic necessity and geographic logic. The country is seen as comprising a multi-ethnic family inhabiting a self-defining geographic area. Many Central Asians, on the other hand, see current boundaries as arbitrarily attaching or dividing their nations, and view the present situation as one phase in their long struggle for nationhood and independence from China and/or Russia. Some of these peoples have been successful. For the others, including some now contained within the People's Republic of China (PRC), the struggle continues.

The existing situation lacks any semblance of self-determination, despite the fact that various ethnic minority areas in China have been designated "autonomous" province-level jurisdictions (or, within other provinces, sub-province-level jurisdictions). In Chinese, "autonomy" is 自治 (*zìzhì*), which literally means "self-rule." Although some cultural differences are accommodated in this system, China is still a unitary state. The so-called autonomous areas actually have even less political autonomy than the non-autonomous areas. For example, in normal provinces, the people's congresses are authorized to enact laws on their own authority; they need merely report them to Beijing after the fact. Autonomous regions, on the other hand, must receive *advance permission* to enact legislation, and such authorization is often withheld. Furthermore, the heavy hand of the Chinese military and national security apparatus is more in evidence in the "autonomous" areas than in non-autonomous areas.³ There is widespread dissatisfaction with this arrangement. Secession, however, is not the only alternative to the status quo; other options that we will discuss are worth considering.

Contextualizing Self-Determination in China

After the Chinese overthrew their Manchu rulers in 1911, the Chinese Republic claimed all the lands that had been part of the Manchu empire. Although at first this seemed like empty rhetoric, the Republic (1911-1949) was eventually to sustain its claim in many areas. This was in part a consequence of the country's association with the victorious powers in World War II. In the meantime, China's left took a different line. In 1920, just before he joined the Communist Party, Mao Zedong argued against national unification. Instead, he maintained that, not only ought the non-Han regions to be independent, but *all* of China's provinces should

become separate sovereign countries.⁴ In the 1930s, there was no more discussion of fragmenting the ethnic Chinese community, but when it came to other peoples, the Communists—eager to distance themselves from the ruling Guomindang (Nationalist) government—largely echoed Mao's 1920 line.

Thus, Article 14 of the 1931 Communist state constitution recognized “the right of self-determination of the national minorities in China, their right to complete separation from China, and to the formulation of an independent state for each national minority.” Specifically, “all Mongolians, Tibetans, Miao, Yao, Koreans, and others living on the territory of China shall enjoy the full right to self-determination, i.e., they may either join the Union of Chinese Soviets or secede from it and form their own state as they may prefer.”⁵ By 1944, this policy had changed, with Mao now insisting that “all nationalities should have an equal and fraternal relationship under a united government of all.”⁶ Five years later, the Communists assumed power, and the 1931 pledge was completely abandoned.⁷ From then on it was insisted that the boundaries of the Chinese state would include all non-ethnic-Chinese peoples then under Chinese control as well as Tibet.

Today, with few if any exceptions, all countries accept China's claims to territorial sovereignty over the territory it controls,⁸ including the larger part of the PRC where non-ethnic-Chinese predominate. Most countries also accept its claim to sovereignty over Taiwan. There are problem areas: China is not satisfied with having mere *de jure* sovereignty over Taiwan, and it insists that in due course this sovereignty be made manifest.⁹ Despite these issues, China's sovereignty over the territories and peoples it controls goes unchallenged by foreign governments, if not always by international public opinion.

Chinese Responses to International Law

Overwhelming state recognition for a given territorial status is sometimes considered a powerful indicator of that status in international law. The question arises: should places like Tibet, Xinjiang, and Taiwan be treated differently? To answer this, it is necessary to consider the meaning of sovereignty and to examine the international legal principle of self-determination (a concept not to be confused with independence¹⁰), and the facts of China's involvement with these outlying territories. In brief, our position is that although international recognition is indicative of the (political) opinions of the recognizing governments,¹¹ this has involved no judicial determination—for example, of the kind that has been made

82 in relation to some territories elsewhere by the International Court of Justice.¹² Therefore, international recognition cannot override the right to self-determination under international law if it can be shown that in a given case the relevant facts and the applicable law support the applicability of that right.

Under the traditional theory of state sovereignty, which has underpinned international law for more than three hundred years, the rulers of states determined among themselves which territories they would rule. This process, inaugurated by the Treaty of Westphalia in 1648, did not give any role to subjects. If sovereignty was not determined by conquest, it was decided by mutually agreed cession. More recently, the basic requirements of sovereign nationhood were spelled out in Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States. According to this Convention, a sovereign state should have a permanent population, a defined territory, a government, and the capacity to enter into relations with other states.

However, all this must now be supplemented, and (in any case of conflict of principles) superseded, by the right of self-determination. This principle has received such widespread recognition in the years since the Second World War, notably through its inclusion in the two international human rights covenants, that it may be regarded as having the status of international customary law, even for countries which are not parties to the covenants.¹³ Furthermore, the Montevideo Principles are a normative statement of the expected attributes of a sovereign state, and thus appear to be minimum criteria. Therefore, they cannot be taken to mean that if the four Montevideo criteria are met (for example, by an imperial state in relation to a dependent territory), sovereignty over the subject peoples becomes unchallengeable and immutable, inasmuch as that would be inconsistent with the right to self-determination. In addition, the “defined territory” criterion is unsatisfactory since it begs the questions of who defines the territory and to what extent challenges to a government’s definition of its territory undermine the claim to territorial sovereignty.

Nonetheless, it is worth noting that the Montevideo principles could be applied to our areas of concern. If one leaves aside the “defined territory” problem, Tibet and Taiwan seem to have met the Montevideo criteria in 1949.¹⁴ Large parts of Xinjiang¹⁵ and all of the other territories populated by non-ethnic Chinese may not have done so in modern times. However, it is our argument that this is not determinative of whether these territories had or have a right to self-determination, as this depends not on whether they meet the Montevideo criteria, but

on whether they are capable of meeting the separate criteria for self-determination discussed below.

Modern international law was largely a Western invention. This applies particularly to the doctrine of state sovereignty. It is, therefore, not surprising that China's explanation of its claim to outlying territories tends to be based less on international law than on history—albeit history “with Chinese characteristics.” The histories of these areas are too complex to be handled adequately in a short article, but to begin with, any objective account would have to highlight the following two facts: (1) China's northern border is largely the product of agreements between the Manchus and Russians, and later between China and the Soviet Union. These agreements tended to be at the expense of the other nations sandwiched between the two. (2) Most of Tibet came under Chinese rule only in the 1950s, through a combination of actual and threatened military invasion; before then that country basically met the four requirements of the Montevideo Convention. We will return to Taiwan and Xinjiang later.

No Westphalia-type system existed in Asia until well into the nineteenth century, when the concept of state sovereignty began to find favour there. However, as elsewhere, the concept came into conflict with nationalist aspirations and with a new idealism that held that peoples should have the right to determine their national status. At the Paris Peace Conference after World War I, US President Woodrow Wilson pushed for a peace settlement based on the principle that “every territorial settlement in this war must be made in the interest and for the benefit of the populations concerned, and not as a part of any mere adjustment or compromise of claims amongst rival states.”¹⁶ In the end (contrary to Wilson's intent), this principle was applied selectively, usually where it coincided with the interests of major players. Often it was flagrantly ignored, for example in the transfer of the former German treaty port of Qingdao to Japan against the wishes of its Chinese inhabitants.¹⁷

By the end of World War II the overall situation had changed. When the United Nations was established it was accepted in principle that peoples had the right of self-determination. This was expressly stated in the UN Charter (Art. 2.1). All states that became members of the United Nations have, by virtue of their ratification of its Charter, accepted that there is a right of self-determination of peoples. As this right represented a potential challenge to the European colonial empires that still existed in the late 1940s, such countries were generally reluctant to reiterate it, and it was not mentioned in the 1948 Universal Declaration of Human Rights. In the years that followed, many new Asian and African states lost interest in self-determination, feeling either that the battle had been

won, or that their fragile countries' gains—in terms of freedom from foreign domination—might be at risk of being undone by disintegration brought about by separatist movements.

This latter consideration partially explains the Chinese Communists' aforementioned shift in policy and was one of the reasons why, in 1955, the Bandung (Indonesia) conference of Third World countries enshrined the principle of non-interference in other countries' internal affairs.¹⁸ An objective of many of the thirty countries that participated at Bandung was to ensure that their own ethnic minorities should not be able to call on external assistance in any effort to secure their perceived rights. To this end, governments were willing to agree that they would not interfere by assisting any separatist movements in other countries. Some calculation of this kind seems to have influenced India's change of position in the 1950s in relation to Tibet. Whereas in 1950 the Indian position had been that Tibetans had the right of self-determination,¹⁹ by the time of Bandung, India was prepared to acquiesce in China's occupation.

Despite these setbacks, the idea of self-determination of peoples did not die, not least because there were still active decolonization struggles in many parts of the world. In the early 1960s, the United Nations agreed that there was an international obligation to recognize the right of self-determination and, in 1966, wrote it into the very first articles in the two human rights covenants (hereafter "Joint Article 1"). Unfortunately there has been no consensus about what the right means. To its champions it means what it says. To Communists and Soviet-influenced countries, it generally means the right to have a form of government that is "socialist" in the political sense. The governments of the larger, newly established, multi-ethnic nations—including China—considered themselves exempt, viewing the right as being directed solely against European and Japanese colonialism. But many continue to reject this exemption as morally objectionable and legally untenable. Indeed, the 1975 Helsinki Declaration reaffirmed that the right of self-determination is not limited to peoples who were colonized in such a narrow sense of the word.²⁰

China in the United Nations: System and Values

For the first quarter century after its establishment in 1949, the Chinese government showed little concern for the finer points of international law. However, within five years of the PRC's 1971 admission to the United Nations, the two international human rights covenants were ratified by enough countries for them to enter into force. The Chinese

第一條

一、所有民族均享有自決權，根據此種權利，自由決定其政治地位及自由從事其經濟、社會與文化之發展。

二、所有民族得為本身之目的，自由處置其天然財富及資源，但不得妨害因基於互惠原則之國際經濟合作及因國際法而生之任何義務。無論在何種情形下，民族之生計，不容剝奪。

Reproduced above is the authentic text of the first two paragraphs of Article 1 of the International Covenant on Economic, Social and Cultural Rights. Note that *minzu* (ethnic groups) are given the right of self-determination, whereas later there would be an attempt to substitute the term *renmin* (citizenries).

found themselves confronted with the norm they thought they had successfully avoided by virtue of the 1955 Bandung agreement. Terms like “nationalities” and “peoples,” which in China had taken on “Chinese characteristics,” were cropping up in new contexts among peoples who did not accept Chinese definitions.

Although the term “peoples” is never altogether precise, it definitely has ethnic connotations.²¹ The Chinese-language versions of the authentic covenants acknowledge this fact, with the word “peoples” correctly rendered 民族 (*minzu*), literally meaning ethnic groups.²² Until recent times the term *minzu* was generally translated into English as “nationalities.”²³ However, by the 1970s, Beijing was becoming alarmed at the notion that its fifty-five²⁴ officially recognized nationalities (not to mention all the unrecognized ones) might be entitled to self-determine. Eventually, in a process that is still not fully understood, China managed to effect, or at any rate take advantage of, a change in UN and popular parlance stemming from a disparity between the covenants and widely available revisionist versions of those covenants. The covenants are actually long quintrilingual documents that were approved by the UN General Assembly in 1966.²⁵ Most of the discrepancies between the authentic and revisionist Chinese versions are not relevant to the subject of the present paper,²⁶ but one is crucial.

These days the English word “peoples” is usually rendered by the Chinese as 人民 (*renmin*), having the same meaning as the plural word “people,” or perhaps “citizenry”; it is not the equivalent of “a people” or “peoples.” *Renmin* has no ethnic connotation. All citizens of China (including, in the PRC’s view, the Taiwanese) comprise a single, indivisible *renmin*. China has since “ratified” such an adulterated version of the ICESCR and signed (but not ratified) a similarly adulterated version of the other covenant—the ICCPR. For our purposes, the details of this little-studied and, in terms of Chinese domestic law, perhaps unnecessary²⁷ *léger de main* are not too important. What is important is the question of whether China has actually ratified (or signed) the covenants, or whether they merely ratified (or signed) a spurious set of instruments that *purport* to be the covenants. The latter appears to be the case.²⁸

Although the term *renmin* in this context is widely used,²⁹ to this day the authentic, if rarely referenced, versions of the covenants use the term *minzu*, not *renmin*.³⁰ Some may argue that the term *renmin* cannot be challenged because it has gained such currency in UN Chinese-language discourse. This notion, which we reject, would leave the Chinese and non-Chinese translations substantively different—in each case the Chinese and non-Chinese covenants simply would not comprise the same treaty. At any rate, no one seeking redress under a treaty has to rely on a version in any particular language; China’s peoples could select, for example, the official French version.³¹

The Charter of the United Nations presents special problems. The Chinese translation was carried out by Chinese Nationalist representatives at San Francisco in 1945. It is now accepted that it contains errors,³² but no changes have been made to the official document. On the self-determination question, it is stated in Article I, Section 2 that one of the purposes of the organization is “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples [*renmin*], and to take other appropriate measures to strengthen universal peace” (发展国际间以尊重人民平等权利及自决原则为根据之友好关系，并采取其他适当办法，以增强普遍和平). There are two possible ways of viewing this use of *renmin*. One is that it was simply a mistake in translation. An alternative, less-likely explanation is that in 1945 the use of the term *renmin* was deliberate,³³ and that the use of the term *minzu* in 1965 marks a legal shift. Neither explanation would detract from our argument that not only does international law give peoples (*minzu*) the right of self-determination, but that this principle is not compromised by the various Chinese versions of the international instruments. If there were any discrepancies, the covenants, being more recent, would supersede the Charter.

In 1960 (before the PRC held the China seat at the UN, and also before the covenants were finalized), the UN General Assembly took up the issue of self-determination in the context of colonial territories, resulting in the passage of the Declaration on the Granting of Independence to Colonial Countries and Peoples.³⁴ Article 1 of this declaration states: "The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation." It is important to note that the declaration insists not only on independence of colonial "countries," but also of "peoples." This is an important distinction. Contrary to the PRC position, it is not only countries but also *minzu* which have a right of self-determination. For their part, the covenants say nothing about the self-determination of *countries*. A 1970 resolution further stated that "alien subjugation, domination and exploitation are a violation of the principle of self-determination, as well as a denial of fundamental human rights, and is contrary to the Charter."³⁵

These two General Assembly Resolutions have been applied extensively. The concept of alien domination has been treated at the UN as applicable to, *inter alia*, the occupation of Arab territories by Israel; Cambodia by Vietnam; Grenada by the United States; East Timor by Indonesia; Kuwait by Iraq; and Estonia, Latvia, Lithuania, and later Afghanistan by the Soviet Union.³⁶ Thus, even before the two human rights covenants came into force, the rule that alien subjugation, domination, and exploitation breach a people's right to self-determination already formed part of international customary law. Today, when both covenants are in force and have been very widely ratified, it is established that where a people is subject to alien subjugation, domination, and exploitation, the situation is one where the principle of self-determination applies. Furthermore, although in this paper we do not make the case for the actual *secession* of China's autonomous regions, those who do can cite the doctrine of "remedial secession" to advance their argument.³⁷

However, Beijing does not accept any international responsibility to honour peoples' right of self-determination. Indeed, the dubious claim of the Chinese government is that former countries such as Tibet and Xinjiang are inalienable parts of China and have been so for hundreds (Tibet³⁸) or thousands (Xinjiang) of years.³⁹ PRC citizens who question the official stance are regularly attacked in the official Chinese media in vitriolic terms as "splittists" (分裂分子, *fenlie fenzi*) and anti-Chinese; foreigners who raise such issues are accused of improperly meddling in what is a purely domestic matter. Nonetheless, even in China there

is a small but growing number of people who question the official position.⁴⁰ Certainly many outside China consider these issues unresolved.

It is true that the application of the self-determination principle can present difficult problems. Since the covenants came into force in 1976, there has been widespread concern that, if Joint Article 1 were applied everywhere, it could lead to the break-up of many existing states. This applies particularly to Africa (where national boundaries are mostly colonial-era constructs) but also to numerous other states where ethnic minority populations form a majority in their regions. In order to avoid this consequence, there have been widely supported attempts to devise a definition of self-determination that is narrower than the bare words in the covenants. According to Antonio Cassese, the covenants' right to self-determination is applicable only where an entire population resides in a state that has achieved independence,⁴¹ or the entire population of a territory has yet to receive independence,⁴² or the territory is under foreign military occupation.⁴³ This is a restrictive definition, which excludes numerous groups who would ordinarily be regarded as "peoples."⁴⁴ However, the second and third of Cassese's categories could arguably be held as applying to some of China's ethnic minorities.

The Territorial Implications of China's Position

Having maintained that international law and human rights principles are essentially irrelevant to these issues, China bases its territorial claims largely on history. Although it is our view that the covenants are binding and supersede other considerations, we nevertheless now proceed to examine the merits of the historic claims, in view of China's emphasis on the East Asian international experience.

Taiwan: Unrecognized Republic

Historically, this island had been under the rule of Chinese mainland governments only for short periods. The first period of rule by a mainland-based government was the decade between 1885 (when it was declared a province and much of the island was effectively governed by a Chinese governor) and 1895 (when it was ceded to Japan). The second such period was from 1945 to 1949. According to the peace treaties that formally ended the War, Japan "renounced all right, title and claim to Taiwan (Formosa) and Penghu (the Pescadores)."⁴⁵ Beyond that, there was no explicit transfer of sovereignty to either Chinese government. Over the next few decades, most of the international community came

to acknowledge Taiwan as belonging to the People's Republic. Still, even if *de jure* part of China, Taiwan remains *de facto* independent. It has even incorporated into domestic law the human rights covenants—the authentic ones passed by the UN General Assembly.⁴⁶

The Guomindang, which now governs Taiwan, has long considered the island part of China (see note 33), but Taiwan's opposition Democratic Progressive Party disputes this. Public opinion is strongly opposed to the island being governed by authorities in Beijing, but beyond that consensus, there is deep division. While a large minority are in favour of independence, most people are willing to settle for the status quo. Given China's intention to wage war to prevent outright independence, they prefer to leave the situation ambiguous and unresolved. Although Taiwan enjoys very little international space in which to operate diplomatically, it is a thriving economic entity.⁴⁷

The Tibetan Plateau

China claims that it has exercised sovereignty over Tibet for the seven centuries. In reality, during those years, at the times when China was ruled by ethnic Chinese (Ming [1368–1644] and Republic), it did not control Tibet; often it showed little interest in the country. Otherwise, China was itself ruled by foreigners—the Mongols in the thirteenth century, and the Manchus from 1644 to 1911. These “dynasties,” in reality great international empires, were rightly seen by the Chinese as alien regimes. Ultimately they broke up into their constituent parts. During the Qing dynasty the relationship between a Manchu emperor and his contemporary Dalai Lama was generally that of a patron and a religious leader; it would be an anachronism to think of the relationship as having been between sovereign and subject. True, the Qing invaded Tibet several times, but military occupation is not a basis for sovereignty claims and, at any rate, these occupations were generally short-lived.⁴⁸

Notwithstanding occasional Qing interference, Tibet was generally politically independent. Thus all China's claims to sovereignty based on the relationship between the Dalai Lama and the Manchu emperors, and similar claims based on the earlier relationship between the Mongol emperors and Tibet, are spurious, since they involve so much historical distortion. Neither the Mongols nor the Manchus ever maintained that their relationship with Tibet made the country an integral part of China. Even current Chinese explanations describe the relationship as one of dependency, which, in modern language, denotes a colonial relationship. From

this, one might conclude that on some level China understands that Tibet was a colony and thus is entitled to self-determination.

During the Republic era there was little in the way of a relationship—either similar to that between Tibet and the Qing dynasty or congruent with the modern concept of international relations based upon sovereignty of states. In 1913 the thirteenth Dalai Lama formally stated that the relationship between the Chinese emperor and Tibet had been that of patron and priest and not based on the political subordination of one to the other. Although the Chinese Republic responded to this statement by laying claim to Tibet, it never exercised any control over much of it. Certainly the area of the present truncated Tibet Autonomous Region was entirely independent of the Chinese Republic.

Thus, China's actual control over Tibet dates from the 1950s. After the Chinese army attacked and surrounded the Tibetan army, the Tibetan government was told that to avoid a forcible takeover it must acknowledge Chinese sovereignty. Accordingly, the fourteenth Dalai Lama, then a teenager, did so in 1951 by agreeing to the so-called "Seventeen Points."⁴⁹ Today, Tibetans challenge the legality of this agreement. For disinterested observers, common sense would place the Seventeen Points in the same category as the many "unequal" agreements China considers illegitimate. Furthermore, although the Seventeen Points contained many guarantees of Tibetan autonomy, over time the Chinese paid them less and less regard. The Chinese steadily tightened their grip until, at the end of the decade, there was a revolt, which was crushed by the People's Liberation Army. The UN General Assembly thereupon adopted a resolution condemning the Chinese occupation of Tibet as an abuse of human rights.⁵⁰ In 1961, a General Assembly further stated that "these events [the Chinese occupation] violate the fundamental human rights and freedoms set out in the Charter of the UN and the Universal Declaration of Human Rights, including the principle of the self-determination of peoples and nations."⁵¹ However, Tibet has since been effectively under the rule of the Communist Party, backed by the military. The Dalai Lama has presided over an India-based government in exile.⁵²

Aside from the historical argument, China has also attempted to justify its takeover of Tibet and other "minority areas" on the grounds that these societies were "backward"⁵³ and that the peasants and "serfs" needed to be liberated from feudal domination—an argument similar to that once invoked by Europeans and Japanese in defence of colonialism. Scholars agree that most of these areas were backward, as was almost all of China.⁵⁴ One aspect of Tibet's backwardness was its failure to appoint ambassadors to other countries or to make timely application to join the United Nations. To put the issue in the terms of the Montevideo Conven-

tion, the country failed to exercise its capacity to enter into relations with other states. (However, the Convention only requires that a state *have* the capacity, not that it exercise it. See note 14.)

These mistakes were due to tradition-bound governance and a lack of any clear sense that in these modern times a state needed to maintain formal diplomatic relations with other states. However, the fact that a country is backward cannot justify invading it or denying it sovereignty.

Xinjiang: Ethnic Dilution

The histories of the northern and southern regions of the Xinjiang Uyghur Autonomous Region (XUAR) are quite different. In the north, Zungaria came under Sino-Manchu rule by virtue of one of the world's most effective genocides; in 1756 the Zungars were simply wiped out.⁵⁵ The depopulated area thus became ripe for settlers from outside. Most early settlers were Turkic Turanchis from the south, whom Communists would later label "Uyghurs."⁵⁶ The Republic was not able to control the area. In the Ili region a Moslem state was established in 1944 that lasted until the Communist takeover in 1949.⁵⁷ In the south, the scattered oases known collectively as Eastern Turkestan came under Manchu rule by military means, with the defeat of local efforts to establish a nation-state. Again, the Republic was never able to control the area.

For their part, the Communists have had an explicit policy of promoting immigration from east China to Xinjiang, a migration greatly facilitated by the Xinjiang Production and Construction Corps.⁵⁸ Thus, in contrast with Tibet, where ethnic Chinese immigration is viewed as a sensitive issue and is shrouded in secrecy, the Chinese have been quite open about promoting immigration into Xinjiang, fully aware of how provocative this would be. ("There will be some conflicts and clashes."⁵⁹) As a result, Uyghurs, who once comprised the overwhelming majority in the region, are now an underprivileged minority. They are deeply frustrated, and there is a small underground movement to establish an independent East Turkestan. On occasion there have been violent eruptions. The Chinese deal with perceived troublemakers in a heavy-handed way, often claiming that they are terrorists; executions are not infrequent.⁶⁰

Inner Mongolia: The Lost Cause

The Mongols of the Inner Mongolian Autonomous Region are a clearly defined ethnic group, of the same general ethnicity as the inhabitants of independent ("Outer") Mongolia and—in terms of culture, economics,

and lifestyle—are very distinct from the Han (ethnic Chinese). Inner Mongolia and Mongolia used to be one country. The difficulty facing any Mongol inhabitant of Inner Mongolia seeking self-determination is that today almost ninety per cent of the territory's inhabitants are Han. By any realistic standard, the demographic change has gone too far for Mongol self-determination to be realizable.

Alternative Paths to Self-Determination

It is important to bear in mind that there are viable options between the extremes of unitary state and outright secession. Self-determination need not mean independence. Autonomy within a larger nation-state often offers the best of both worlds, combining the benefits of being part of a large state in terms of defence, foreign relations, and economic opportunity, while fostering the preservation of local laws, customs, and culture, free from outside interference. Although they were denied the right of self-determination, Hong Kong and Macao are areas where China has allowed a measure of autonomy. Elsewhere in the world, examples of self-determination without independence abound.⁶¹ Some Chinese dissidents advocate remaking the country into a federation or confederation, although the expression of such views is an imprisonable offence.⁶²

The Dalai Lama has repeatedly announced that he favours autonomy for Tibet within the PRC—provided that the autonomy is genuine and that “Tibet” includes almost all of the plateau.⁶³ Such is the Dalai Lama's authority among the Tibetan people that they would probably embrace any autonomy agreement if he expressed support for it. However, the Chinese claim that this would be independence in disguise, and they fear that genuine autonomy would lead inexorably to secession. It appears that meaningful autonomy is not going to be available to Tibetans (or any other ethnic group) in the near future. This is unfortunate. It is difficult to imagine the Chinese ever being given a better offer from a legitimate leader of the Tibetan people than that available now from the moderate Fourteenth Dalai Lama, who is in his mid-seventies.

China's Perception of Self-Determination Elsewhere

Decolonization

The Chinese have always insisted that Japan and European colonial powers should be shorn of their colonies. However, China rejects the application of the principle of self-determination to minorities within es-

tablished states. "About 3,000 ethnic groups live in over 200 countries and regions in today's world. The overwhelming majority of countries are inhabited by multi-ethnic groups."⁶⁴ The Chinese government views their country in this context, and not as a case of colonialism. Tibetans would doubtless argue that their statehood was as well established as East Timor's was when the former Portuguese enclave was invaded by Indonesia in 1975. Unlike East Timor, Tibet issued passports and had its own currency in addition to other trappings of statehood. East Timor's initial independence in 1975 was ephemeral, lasting only nine days. In the Chinese view, East Timor's background had been tainted by European and Japanese colonialism, and apparently that made all the difference. Thus, China roundly condemned the Indonesian takeover as "a naked act of aggression."⁶⁵

From the perspective of the Chinese government, legitimate acts of self-determination are limited to such narrowly-defined colonial situations. China appears unimpressed by the fact that self-determination is a common phenomenon and that peoples occasionally gain independence from well-established states.⁶⁶ It recently explained to the International Court of Justice: "Although the principle of self-determination has become a basic principle of international law, it applies within specific limits, primarily restricted to situations of colonial rule or foreign occupation. The right to self-determination is different in nature from the so-called right of secession. The exercise of the right of self-determination shall not undermine the sovereignty and territorial integrity of the State concerned."⁶⁷

The Dissolution of Federal and Unitary States

Provided that there is no foreign interference, China has on occasion grudgingly acquiesced in the dissolution of what are regarded as federal states—for example, the USSR and Yugoslavia. The demise of the latter was difficult to accept because the previous Yugoslav government had opposed the breakup. The dissolution of the USSR, which was accepted by the Soviet government, was even more threatening to China because of its proximity and the kinship of many of the new states to China's minority populations. In general, China has opposed secession even in the context of federal dissolution, flatly stating (in the context of Kosovo's secession from the Federal Republic of Yugoslavia⁶⁸) that "secession is not recognized by international law and has always been opposed by the international community of states."⁶⁹ It seems to be even more opposed to the dissolution of what it regards as unitary states—of which

China is an example.⁷⁰ Thus when South Ossetia and Abkhazia declared their independence from Georgia in 2008, China refused to recognize them—as indeed did most countries of the world.⁷¹

Conclusion

The Chinese are accustomed to thinking of their country in its present delineation as the product of historic necessity and geographic logic. In the words of ethnologist Ma Rong, the country is seen as comprised of an “ethnic family” living in a relatively closed geographic area. “This area has deserts and snow forests to the north (Mongolia Steppe and Siberia), seas and ocean to the east, jungles in its south (Burma and Indo-China), [and] the highest mountains and plateau in its west and southwest (Himalayas and Pamirs).”⁷²

Central Asians are more apt to see current boundaries as arbitrarily dividing their nations. Some of these peoples have been successful in their quests for independence from China (Mongolia) and now even from Russia (Central Asian states). For the others, the struggle to recapture their nationhood continues. They deem their causes worthy of support from the United Nations, which was expressly intended to prevent the kind of victimization that has taken place through aggression or the threat of aggression. After all, the inclusion in Joint Article 1 of the right of *all* peoples to self-determination was intended to prevent whole ethnic communities from being ruled indefinitely against their will by alien powers.

The claim that the People’s Republic of China is entitled to all the territory that was ever controlled by the Manchus comes into question because of the substantial portions of that empire whose separation from China has been accepted. Although Chinese logic would lead to the conclusion that eastern Kazakhstan, Mongolia, Tanutuva, the Russian Maritime provinces, and possibly even Uzbekistan⁷³ all belong to the PRC, China in fact makes no such claims. Even the independence of Mongolia, whose statehood the Republic of China only briefly acknowledged in 1945, has been accepted. Accordingly, there is no logical reason to deny Tibet and Xinjiang the right of self-determination—especially in view of international obligations and the Communists’ pre-1944 promises.

Granted, there are differences between situations in Tibet and Xinjiang. In Tibet, the great majority of inhabitants have always been Tibetan. The country was relatively homogenous ethnically, and the Tibetans fit the description of a people occupying a defined territory. Xinjiang, on the other hand, was home to a variety of ethnic groups—albeit with

the Uyghurs, until recently, in the majority. It is far from clear that the aggregated non-Han peoples of Xinjiang can be described as “a people” for the purposes of Joint Article 1. The Kazakhs, for example, live mainly in northern Xinjiang while the Turanchis/Uyghurs traditionally lived in the south. To be sure, these divisions are not clear-cut, nor are the boundaries between southern and northern Xinjiang. Nevertheless, the scale of the alien domination, subjugation, and exploitation of the Uyghurs by China, combined with the vast difference between Uyghur and Han culture, is such that the Uyghurs could probably make a legal case for self-determination as a people, at least in the areas in which they were the overwhelming majority before the Chinese takeover in 1949.

But the Chinese authorities have rejected the covenants’ principle that “all peoples have the right to self-determination.” The first article of the bogus “International Covenant on Economic, Cultural and Social Rights” that China “ratified” essentially reverses the meaning of the actual covenant. After all, to say that only the entire citizenry of a state (the *renmin*) has the right of self-determination is to effectively deny the right of self-determination to the state’s ethnic components—its peoples. For some of these peoples time may be running out. Often their areas have either been inundated with ethnic Chinese (Inner Mongolia), or are in the process of being inundated (Xinjiang). Taiwan appears to have some chance of converting its *de facto* independence into *de jure* statehood, but lately the political will of the Taiwanese appears to be flagging. The great unknowable is the future of Tibet, which is still predominately inhabited by Tibetans and maintains a strong sense of national identity. At least in the short term, Tibet appears to have little prospect of meaningful self-determination. Unless China succeeds in gaining official acceptance for its revisionist versions of the covenants, however, all peoples will remain entitled to this right by international law. ■

Notes

Editorial Note: This article was submitted by two authors who wish to remain anonymous. They are grateful to the various people who provided suggestions for this paper.

¹ According to the Preamble of the United Nations Charter, the organization was “to reaffirm faith in fundamental human rights ... in the dignity and worth ... of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained”: UN Charter (June 26, 1945) 3 Bevans 1153, 59 Stat 1031, TS 993 (entered into force October 24, 1945).

² Both these covenants were adopted by the United Nations General Assembly in 1966 and came into force in 1976 on receiving the required number of ratifications by governments. Both have now been ratified by 160 or more countries.

³ For more discussion of this, see Human Rights in China, "China: Minority Exclusion, Marginalization and Rising Tensions," Report commissioned by Minority Rights Group International, <http://www.hrichina.org/public/PDFs/MRG-HRIC.China.Report.pdf> (accessed March 14, 2010), 13.

⁴ Mao said: "既然全国的总建设在一个时期内完全无望, 那么最好的办法, 是索性不谋总建设, 索性分裂去谋各省的分建设, 22个行省3特区两藩地合共27个地方, 最好分为27个国。" "湖南建设问题的根本问题——湖南共和国"。Hunan Da Gong Bao大公报, September 3, 1920. We are grateful to Maochun Yu for calling our attention to this material.

⁵ Constitution of the Chinese Soviet Republic (art. 14), adopted in Ruijin, Jiangxi, 1931, translation adapted from Conrad Brandt, Benjamin Schwartz, and John K. Fairbank, *A Documentary History of Chinese Communism* (New York: Atheneum, 1966), 223.

⁶ Translation adapted from Guenther Stein, *The Challenge of Red China* (New York: McGraw-Hill, 1945), 243–5.

⁷ According to the 1949 Common Programme of the Chinese People's Political Consultative Conference: "each national autonomous area is an inseparable part of the People's Republic of China The People's Republic of China will become a big fraternal and cooperative family composed of all its nationalities (*minzu*)."⁷ Article 18 of the 1949 Organic Law of the Central People's Government of the People's Republic of China assigned responsibility for ethnic matters to a new Commission on the Affairs of Nationalities, which was apparently reportable to the State Administrative Council.

⁸ In addition to Taiwan, China also has claims to territories that it does not physically control, notably parts of India's Arunachal Pradesh Province, the South China Seas islets, and the latter's surrounding waters.

⁹ The United States was among the last to officially recognize China's sovereignty over Tibet; it did so in 1966: "Relations of the United States with Tibet," *Report mandated by US Public Law 103-236 s 536(a)(2), Foreign Relations Authorization Act (Fiscal Years 1994-5)*. At least until recently, the United Kingdom recognized only China's "suzerainty" over Tibet, a subtle evasion that happens to have been fairly close to the actual situation of Tibet in relation to China during the late nineteenth century. But recently the United Kingdom seems to have fallen into line on this issue. See Robert Barnett, "Did Britain Just Sell Tibet?" *New York Times*, November 24, 2008.

¹⁰ "Independence" means secession from the previously controlling state; "self-determination" carries no presumption as to what outcome the people would choose. Most of China's ethnic minorities would probably opt to continue as part of China, albeit with some meaningful autonomy.

¹¹ To put it in international-law terms, such statehood is "constitutive," rather than "declarative" (based on objective criteria). James R. Crawford, *The Creation of States in International Law*, 2nd ed. (Oxford: Clarendon Press, 2006), esp. 15–24. Craw-

ford argues that, in terms of establishing statehood, recognition by governments is not significant.

¹² See, e.g., *The Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion) (1971) ICJ Rep 16 (International Court of Justice); *Western Sahara* (Advisory Opinion) [1975] ICJ Rep 12.

¹³ China is not a party to the International Covenant on Civil and Political Rights because it has only signed, not ratified, it. We explain below that China's ratification of the International Covenant on Economic, Social and Cultural Rights may be defective because the ratified version is inauthentic.

¹⁴ The remaining question regarding Tibet involves the requirement of "capacity to enter into relations with other states." It should be noted, however, that there is no requirement that such relations actually exist, only that there be "capacity." Tibet's pre-1950 governmental structure would appear to have met this requirement. Indeed, Tibet often did enter into agreements with other countries, such as the treaties with Nepal in 1856 and Mongolia in 1913.

¹⁵ Any historic claim on the part of southern Xinjiang would cite the state of Kashgaria (established by its amir Yaq'ub Beg between 1865 and 1870 and reconquered by the Qing after Yaq'ub's death in 1877) and the East Turkestan Republic, which lasted only from 1933 to 1934. The northwest could point to another East Turkestan Republic (1944-1949).

¹⁶ See Woodrow Wilson's "Four Principles" speech to Joint Session of Congress, February 11, 1918. The quotation is widely available on the Internet, and in Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1995), 20.

¹⁷ See Margaret MacMillan, *Paris 1919: Six Months that Changed the World* (New York: Random House, 2001), 233-346.

¹⁸ On the Asian-African or Afro-Asian Conference of April 18-24, 1955, see Encyclopædia Britannica, "Bandung Conference," <http://www.britannica.com/EB-checked/topic/51624/Bandung-Conference> (accessed March 14, 2010).

¹⁹ "The last voice in regard to Tibet should be the voice of the people of Tibet and nobody else." Prime Minister Jawaharal Nehru to Parliament, 1950, quoted in Byron N. Tzou, *China and International Law: The Boundary Disputes* (New York: Praeger, 1990), 25.

²⁰ Final Act, Conference on Security and Cooperation in Europe (August 1, 1975) art VIII: "The participating States will respect the equal rights of peoples and their right to self-determination ... All peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development. The participating States reaffirm the universal significance of respect for and effective exercise of equal rights and self-determination of peoples for the development of friendly relations among themselves as among all States; they also recall the importance of the elimination of any form of violation of this principle."

²¹ The *Oxford English Dictionary* gives this meaning and explanation for “peoples” (as a plural countable noun): “Nations, races. [Examples:] a1382 Bible (Wycliffite, E.V.) (Bodl. 959) 1 Paralip. xvi. 24 Tellefithfl in gentiles his glorie, in alle pupilis his merueiles [marvels]. ?c1425 (c1380) Isaiah xxxiv. 1 Draw near, O ye nations, and hearken; And attend to me, O ye peoples! 1877 J. Morley Crit. Misc. 2nd Ser. 345 All our English-speaking peoples. 1910 Encycl. Brit. I. 326/2 The desert regions yield support only to nomadic peoples, such as the Tuareg. 1999 N.Y. Rev. Bks. 22 Apr. 54/3 The Ruthenians are a part of the family of east Slavic peoples.”

²² UN General Assembly (UNGA) Document *Lianheguo Dahui* (January 12, 1967) UN Doc A/RES/2200(XXI) (in Chinese). In one respect, the term *minzu* is not precise because it includes one religious subgroup, the widely scattered Islamic Hui. They do not comprise an ethnic group in any other sense. Most Hui speak Chinese, though some speak Tibetan, Uyghur, Kazakh, Kyrgyz, Uzbek, or Tartar. Other religious groups are not considered *minzu*. The Hui are not a “people” within the meaning of Joint Article 1.

²³ Today the Chinese authorities frown on the use of this English word, and *minzu* is either translated as “ethnic groups” or transliterated instead of being translated. One Chinese ethnologist argues that it is another term, 族群 *zuqun*, that should be rendered as “ethnic groups” since the term *minzu* is hopelessly confusing. See Ma Rong, *Ethnic Relations in China* (Beijing: China Tibetology Publishing House, 2008), 68.

²⁴ Altogether, the government recognizes fifty-six ethnic groups, one of which is the majority Han. Another is the various aboriginal peoples of Taiwan (counted as a single ethnic group), only a tiny number of whom are found on the Mainland.

²⁵ There is a procedure for correcting translation errors. It has been used only once with respect to the Chinese language portion of the documents, namely the changes made and accepted in 2001 and 2002 pertaining to the Chinese term for “covenant” (appropriately changed from 盟約 to 公約). See depositary notification C.N.782.2001.TREATIES-6 (October 5, 2001) (Proposal of correction to the original of the Covenant—Chinese authentic text); depositary notification C.N.8.2002.TREATIES-1 (January 3, 2002) (Rectification of the original of the Covenant—Chinese authentic text); see also note 28.

²⁶ They are discussed in Sun Shiyan, “The International Covenant on Civil and Political Rights: One Covenant, Two Chinese Texts?” *Nordic Journal of International Law* 75, no. 2 (2006), 187–209. Unaccountably, Sun does not discuss the issue at hand, the *renmin* / *minzu* problem. Perhaps he overlooked it or did not attach special significance to it. If he omitted discussion because of the sensitivity of the issue, one wonders what other subjects may have been avoided.

²⁷ Joseph Wang informs us that, under PRC domestic law, the constitution and laws passed by the PRC are superior to treaties, and that the ban on secession would overrule rights that anyone would purport to assert under the ICESCR.

²⁸ According to the UN’s procedure for correcting translation errors, if a country wishes to correct such a mistake, it submits the revised version and gives public notice; if there is no objection, the revision stands. However, a major substantive change cannot be effected by this means. See n. 25.

²⁹ The main exception is Taiwan. Otherwise, even the versions available from the highly respected and widely used University of Minnesota Human Rights Library uses the term *renmin*. See *id.*, “Human Rights Documents and Materials,” <http://www1.umn.edu/humanrts> (accessed March 14, 2010).

³⁰ For the full text in all languages, see United Nations, “International Covenant on Economic, Social and Cultural Rights,” New York, December 16, 1966, http://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch_IV_3p.pdf (accessed March 14, 2010).

³¹ “Article premier; 1. Tous les peuples ont le droit de disposer d’eux-mêmes”—meaning the same as other originals (but see n. 39).

³² On this, see Sun Biqu, 孫碧奇, 滄海浮生記 (Memoirs of Being Afloat in the Blue Sea) (Taipei: 傳記文學出版社, 1973). Sun participated in the translation process. An internal UN document also discusses these issues: Ye Shen, 憲章中文本球此 (Looking for Flaws in the Chinese Texts of the Charter), 1979.

³³ Territories claimed by the Communists today have always been claimed by the Nationalists, who also claim Mongolia and Tanu Tuva.

³⁴ This declaration was inspired in large measure by the independence struggle of the Algerians. It will be recalled that in the mid-1950s, the French position was that Algeria was not a colony but an integral part of metropolitan France. This line was similar to China’s position regarding the “autonomous regions”; for the English text (we are not aware of any Chinese text), see UNGA Resolution 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples (December 14, 1960), <http://www2.ohchr.org/english/law/independence.htm> (accessed March 21, 2010).

³⁵ UNGA Res 2625, Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (October 24, 1970) <http://www.unhcr.org/refworld/docid/3ddarf104.html> (accessed March 21, 2010).

³⁶ For a full list, see Cassese, *Self-Determination*, 94.

³⁷ On remedial secession, see Michael P. Scharf, “Earned Sovereignty: Judicial Underpinnings,” *Denver Journal of International Law and Policy* 31, no. 3 (2003): 373–87, especially 373, 379–81.

³⁸ For a more detailed account of the historical relationship between China and Tibet, see Tsering Shakya, *The Dragon in the Land of Snows: A History of Modern Tibet since 1947* (New York: Columbia University Press, 1999).

³⁹ This stand is similar to the French position in the mid-1950s regarding Algeria, but different from the position of the Soviet Union, which acknowledged the various republics’ right to secede (USSR constitutions of 1924, 1936, and 1977). It is therefore ironic that the Article 1 of the Russian portion of the ICESCR does not use either of the Russian terms for peoples (*natsionalnosti*, *narodnosti*), but rather *narody*, which usually means “people” and is the equivalent of the Chinese *renmin*. Thus the Russian portion is inconsistent with all the other languages, but is consistent with the revisionist Chinese version. Because it was out of step with the official Soviet

line, the use of *narod*y may very well have been a mistake. Certainly, in the end, the right of self-determination of the non-Russian republics was honored.

⁴⁰ See Cao Changqing and James D. Seymour, eds., *Tibet through Dissident Chinese Eyes: Essays on Self-Determination* (White Plains, NY: M. E. Sharpe, 1997); and Wang Lixiong and Tsering Shakya, eds., *Struggle for Tibet* (London: Verso, 2009).

⁴¹ This point is developed in Cassese, *Self-Determination*, 59–62.

⁴² This point is developed in Cassese, *Self-Determination*, 146–7.

⁴³ See, e.g., Cassese, *Self-Determination*, 59.

⁴⁴ This construction excludes African tribes whose populations may be concentrated in one part of a state or parts of more than one state. This is to avoid encouraging the occasional tendency of African states to fragment. More problematically, it excludes some peoples with a long history of struggle for independence, such as the Kurds, who are spread across parts of Turkey, Iran, Iraq, Azerbaijan, Armenia, and Syria.

⁴⁵ Sino-Japanese Peace Treaty (Japan–Republic of China) (signed April 28, 1952, entered into force August 5, 1952), <http://www.taiwandocuments.org/taipei01.htm> (accessed March 21, 2010).

⁴⁶ Taiwan (i.e., the Republic of China) held the China seat when the covenants were drawn up and still relies on the authentic Chinese version. No longer being a member of the UN, Taiwan cannot be a formal party to the covenants. For this reason, in December 2009, special “implementing rules” were instituted to make the covenants the law of the land notwithstanding the absence of any recognized treaty affiliation.

⁴⁷ According to UN figures (based, in Mainland China’s case, on PRC-supplied data), Taiwan’s “human development index” stands at 0.91, higher than any province-level jurisdiction on the mainland. Hong Kong is 0.92; China as a whole is 0.76 (2003 figures). See United Nations Development Programme (UNDP), “Human Development Report 2003,” <http://hdr.undp.org/en/reports/global/hdr2003> (accessed March 14, 2010).

⁴⁸ Forces of the Kangxi Emperor occupied Tibet in 1720. After his death in 1722, this occupation continued under his successor, the Yongzheng emperor, until 1728. There were further Chinese invasions in 1750 and 1792. However, after each of the later invasions, the Chinese armies withdrew and Tibet was essentially independent.

⁴⁹ Annotated text of the “Seventeen Point Agreement for the Peaceful Liberation of Tibet” appears in Melvyn C. Goldstein, *A History of Modern Tibet, 1913–1951: The Demise of the Lamaist State* (Berkeley, CA: University of California Press, 1989), 763–9.

⁵⁰ See UNGA Res 1353 (XIV) (October 21, 1959).

⁵¹ UNGA Res 1723 (XVI) (December 20, 1961).

⁵² See Ann Frechette, “Democracy and Democratization among Tibetans in Exile,” *Journal of Asian Studies* 66, no. 1 (2007): 97–127.

⁵³ On Tibet's previous backwardness, see Information Office of the State Council, "Fifty Years of Democratic Reform in Tibet," *Beijing Review*, March 19, 2009, http://www.bjreview.com/special/Human_Rights_Action_Plan_2009-2010/2009-03/04/content_232384_3.htm (accessed March 14, 2010).

⁵⁴ But even some Chinese scholars question the government line that Tibet's rural population are appropriately deemed to have been "serfs." See Open Constitution Initiative 公盟法律研究中心, 藏区3.14事件社会、经济成因调查报告 "An Investigative Report Into the Social and Economic Causes of the 3.14 Incident in Tibetan Areas" (2009), available in English and Chinese at <http://www.savetibet.org>. For their part, the Communists do not argue that the "serfs" were inherently unequal, only that they were at an earlier stage of development and thus in need of being "liberated" by outsiders.

⁵⁵ See Peter C. Perdue, *China Marches West: The Qing Conquest of Central Eurasia* (Cambridge, MA: Harvard University Press, 2005), ch. 7.

⁵⁶ It was actually the Soviets who came up with the term, derived from a large and powerful khanate that, from the mid-eighth to the mid-ninth centuries, had dominated what later became greater Mongolia (and areas to the west).

⁵⁷ See Linda Benson, *The Ili Rebellion: The Moslem Challenge to Chinese Authority in Xinjiang, 1944-1949* (London: M. E. Sharpe, 1990).

⁵⁸ See James D. Seymour, "Making China's Northwest Safe for the Han: The Role of the Xinjiang Production and Construction Corps" (forthcoming, in a book edited by Simon Shen).

⁵⁹ Li Dezhu in *Qiushi*, June 2, 2000, quoted in Nicolas Becquelin, "Staged Development in Xinjiang," *China Quarterly* 178 (2004): 358-78, 360. Li was head of the State Ethnic Affairs Commission.

⁶⁰ In a 1996 article, Dru Gladney cites estimates of 1.8 executions per week, mostly of Uyghurs. He does not indicate the source. See id., "Ethnic Conflict Prevention in the Xinjiang Uyghur Autonomous Region: New Models for China's New Region," <http://www.incore.ulst.ac.uk/publications/pdf/xuar.pdf>. See also Amnesty International, "Hasty Executions in China Highlight Unfair Xinjiang Trials," November 10, 2009, <http://www.amnesty.org/en/news-and-updates/news/hasty-executions-china-highlight-unfair-xinjiang-trials-20091110> (both accessed March 14, 2010).

⁶¹ E.g., Scotland, Greenland, Puerto Rico, American Samoa, American Indian reservations, Aaland Islands, Catalonia, and Anguilla.

⁶² Most recently, the now-imprisoned Liu Xiaobo advocated that China be transformed into a Federal Republic of China. Even some senior members of the Party have argued that it was not legitimate to prosecute Liu on grounds of subversion over this issue, given that it was similar to an earlier Communist policy. 老干部质疑定罪刘晓波依据合法性, http://www.boxun.com/hero/201001/xianzhang/139_1.shtml. Their letter can be found at http://chinesepen.org/Article/sxxy/201001/Article_20100117004353.shtml (both accessed March 14, 2010). See also an earlier work, Yan Jiaqi 嚴家其, 連邦中國構想 *The Structure of a Federal China* (Hong Kong: Mingbao chuban she, 1992).

⁶³ The basic statement is "Strasbourg Proposal: The Dalai Lama's Address to the Members of the European Parliament," June 15, 1988, http://www.claudearpi.net/maintenance/uploaded_pics/1988StrasbourgProposal.pdf (accessed March 14, 2010).

⁶⁴ Preface to 2009 White Paper on Ethnic Policy, available at http://www.china-daily.com.cn/china/2009-09/27/content_8743072_2.htm (accessed March 14, 2010).

⁶⁵ Wayne Bert, "Chinese Policy Toward Burma and Indonesia: A Post-Mao Perspective," *Asian Survey* 25, no. 9 (1985): 963–80, 976.

⁶⁶ Note the emergence of such countries as Bangladesh, Slovakia, and Singapore.

⁶⁷ People's Republic of China, ICJ Written Statement, *Accordance with International Law of the Unilateral Declaration of Independence by Provisional Institutions of Self-Government of Kosovo* (Request for Advisory Opinion) (April 16, 2009) <http://www.icj-cij.org/docket/files/141/15611.pdf> (accessed March 21, 2010) ("Request for Advisory Opinion") [III].

⁶⁸ This is the name the country usually used since 1992; beginning in 2006, it officially styled itself the State Union of Montenegro and Serbia. In 2006 Montenegro seceded, followed by Kosovo in 2008, leaving only Serbia. Kosovo is recognized by sixty-four UN members and by the Republic of China (Taiwan).

⁶⁹ People's Republic of China, ICJ Written Statement, Request for Advisory Opinion (n 67) [III(d)].

⁷⁰ Any distinction between "federal" and "unitary" is technical and theoretical. The reality was that the USSR and Yugoslavia were unitary states, ruled by Leninist parties (as is China). On paper they were deemed federations, but constitutionally China also appears to be federation-like, with the so-called autonomous regions granted "self-government" 自治.

⁷¹ David Gosset, "An Unnecessary Quarrel," *Beijing Review*, http://www.bjreview.com/quotes/txt/2008-12/16/content_170115.htm (accessed March 14, 2010).

⁷² Rong, *Ethnic Relations*, 14.

⁷³ Samarkand marked the west end of the Silk Road, which linked it with China. However, Chinese influence in the region was weak. The lingua franca of the central Asian Silk Road was a version of Persian, not Chinese.

Tillyan Footprints Beyond Europe: War-Making and State-Making in the Case of Somaliland

DOMINIK HELLING

ABSTRACT

While international recognition has been a long time coming, the Republic of Somaliland that “seceded” from Somalia on May 18, 1991 constitutes not only a *de facto* state, but also one of the rare cases of effective secession in sub-Saharan Africa. Close to two decades after declaring independence, Somaliland enjoys relative peace, stability and security, contrasting starkly to general developments in South-Central Somalia. Past attempts to explain this divergent outcome frequently focused on unequal colonial trajectories in North and South Somalia and their respective consequences on the traditional elders’ (in)ability to negotiate peace and stability. This article casts a critical eye on such ‘traditional peace’ accounts, and advances an alternative “bellicose peace” argument in their stead. Investigating the explanatory power of the Tillyan “war makes states” dictum, it is suggested that Somaliland’s project of state formation is—by and large—to be attributed to its particular experience of war. The proposition is advanced that Somaliland’s violent liberation struggle was constitutive to its state-building project, as the anti-regime war brought about the foundation for a monopoly of violence, led to the state’s economic self-reliance and accountability, and created key political institutions that survived the war and became important pillars of the new state thereafter. It is concluded that, while collective political violence is neither an angel of order nor a demon of decay, war can, under certain conditions, still be constitutive of state formation in today’s world—as is shown by Somaliland.

Introduction¹

The arbitrary nature of colonial borders has frequently been cited as a cause for Africa’s protracted conflicts. Yet, while some scholars advocate a reconsideration of the outcome of the 1884/85 Berlin Conference,² the community of states has been sharply opposed to redrawing borders in Africa.³ Partly deriving from this rationale, secessionist movements have usually been denounced as precursors of nation-state failure, regional Balkanization, and global anarchy. This view accompanies the dominant, neo-liberal interpretation of war and peace, which demonizes vio-

Dominik Helling, “Tillyan Footprints Beyond Europe: War-Making and State-Making In the Case of Somaliland,” *St Antony’s International Review*

6, no. 1 (2010): 103–23.

lent conflict as “tragic vicious cycles” that constitute “development in reverse.”⁴

Somaliland challenges many of these paradigms. Not only has this *de facto* state reverted to colonial borders upon its declaration of independence, but it has also managed to break out of the “tragic vicious cycles” of conflict. While Somalia’s South, after eighteen years of conflict and well over two dozen peace conferences, is still a long way from peace and stability, its northern break-away region has “autonomously”⁵ established comparatively viable structures of governance and developed into “one of the most stable polities in the Horn.”⁶ Why has Somaliland been successful in establishing peace, and how did the rebellion against the dictatorial Siyad Barre regime become a *de facto* secessionist movement and a relatively successful state-building project?

Countering the argument that today’s wars “do not make states, but rather unravel them,”⁷ and challenging general liberal understandings of war and peace, this article proposes that war has been constitutive to Somaliland’s development.⁸ The following section casts a critical eye on past explanations, which have focused on the role of “traditional” institutions. The proposition that a “bellicose peace” argument, informed by a politico-economic approach, offers a more fitting explanation for Somaliland’s peace- and state-building is theoretically substantiated in section three. Section four provides an empirical analysis of war- and state-making in Somaliland. Section five draws conclusions.

Water under the Bridge: Past Accounts of Somaliland’s “Success Story”

Somaliland is a particularly interesting case of *de facto* secession and state formation. Not only has Somalia been considered homogeneous in ethnic and other terms,⁹ as constituting the sole irredentist state in sub-Saharan Africa,¹⁰ and as representing a “nation in search of a state,”¹¹ but also Somaliland’s chief rebel movement did not pursue an explicit secessionist policy.¹² Why then did Somaliland “secede”?

Accounts of Somaliland’s De Facto Secession

The question of why Somaliland officially annulled its three decades of union with Somalia on May 18, 1991—a union into which it had rushed so enthusiastically—is generally answered by pointing to long-standing grievances that the North-West suffered at the hands of the South since the unification of the British protectorate of Somaliland and the Ital-

ian colony of Somalia in 1960.¹³ Reference is often made to the political marginalization and economic neglect of the northern populations in general, and the Isaaq clan in particular, who reacted by boycotting the constitutional referendum of June 1961. Furthermore, in attempts to justify Somaliland's *de facto* secession, the long-standing argument of Somalia's homogeneity has been called into question.¹⁴

These common explanations advanced to account for Somaliland's *de facto* secession have been challenged by alternative interpretations. It has been postulated that the root causes of conflict lie in competition over resources and power,¹⁵ that the antagonisms among the *petite bourgeoisie* were a key factor,¹⁶ and that Somaliland's *de facto* secession was based not on grievances but rather on greed, as certain groups in Somaliland had a vested interest in independence, from which they ultimately profited.¹⁷ While I agree that popular grievances contributed to the quest for the annulment of the Somali union, the politico-economic dynamics are not to be neglected. Although numerous Isaaq had migrated to the South and had a stake in Somalia's flourishing economy, Siyad Barre did continue to reduce the political and economic space in which northern elites could perform and from which they could profit.¹⁸

While the motivations for Somaliland's *de facto* secession provide one complex side of the story, the process and accomplishment of secession are another. Thus, we now turn from the question of *why* Somaliland seceded to the question of *how* it could be successful.

Explanations of the Somaliland "Success Story"

Commentators frequently credit Somaliland's success in re-establishing functioning institutions of governance to the revival of traditional institutions.¹⁹ The general argument is that clan elders successfully applied traditional reconciliation mechanisms among antagonistic clans and are thus "responsible for the success of Somaliland today."²⁰ This reasoning is linked to the "colonial difference" thesis, which cites divergent colonial practices in British and Italian Somalia as an explanatory variable: While in Southern Somalia Italian direct colonialism extinguished traditional institutions, they are said to have survived under the British policy of "indirect rule" and "benign neglect."²¹ As a consequence, post-civil war Somaliland was in a better politico-cultural situation to revive its traditional institutions than South-Central Somalia.

Although there is some truth in these arguments and the "elders" are, indeed, to be attributed a major role in Somaliland's peace-making process, this perspective has its flaws. Not only is the notion of "elders"

quite contested,²² but the explanation also displays “traditional” structures as static, ignoring the fact that they were changed by the (post-)colonial regimes over the previous decades.²³ The explanation turns a blind eye to the fact that “traditional” structures in the South had survived colonialism, “scientific socialism,” and civil war. Thus the role of southern “traditional elders ... has been both visible and positive.”²⁴ The argument also conceals the fact that Somaliland’s “elders” have not always been successful in their peace-making and state-building efforts.²⁵ While it is true that these accounts do not necessarily provide a counter-argument to the important role the “elders” played, they clarify that Somaliland’s peace- and state-making has neither necessarily nor solely depended on “traditional institutions.”

The “traditional peace” argument can be challenged in numerous ways. In fact, I argue that the importance of changes in the “traditional institutions” over the decades of colonialism is marginal, and that the more important consideration for someone wishing to follow a “traditional peace” argument is how these “traditional” institutions were (re)shaped and (ab)used in the wake of state collapse. Beyond this, however, I contend that a more compelling explanation of the contrasting fortunes of North and South Somalia lies in the divergent performance of warfare. How did civil conflict differ between North and South Somalia? Why does “war make states”²⁶ in Somaliland, while it “unmakes states”²⁷ in Somalia?

A Theoretical Watershed: Warfare and its Creative Potential

Historical accounts of state-building emphasize the crucial contribution of war. Charles Tilly’s statement that “war makes states and states make war”²⁸ is infamous in this regard, but other accounts also point to the fact that coercion and violence, as well as transformations of social structures due to war, have been the bedrock of state formation.²⁹ Naturally, there is significant debate about the extent to which European history foreshadows current developments of “non-consolidated” states. While some suggest that “many of the new states of today are engaged in struggles whose logic is similar to that of the European period”³⁰ and that “war can make states in the contemporary world,”³¹ others are more sceptical, countering that “the European experience does not provide a template for state-making in other regions of the world,”³² and that “the ‘war makes states’ argument no longer holds.”³³

While it should be acknowledged that collective political violence is neither an angel of order nor a demon of decay,³⁴ this article challenges propositions contending that “the connection between war and state-making ... does not appear to be present *at all* in the weak states in the Third World,”³⁵ and that “[c]ountries abandoned by the international development community show few signs of autonomous recovery.”³⁶ I will theorize and, later, empirically show that “war is not equal to the breakdown of societal order,”³⁷ and address the question of how warfare may still be constitutive of state formation.

Warfare and the Monopoly of Violence

The need to establish a monopoly of violence, as a condition for state-building, lies at the heart of any Weberian conception of the state. This argument is uncontested even among many “war-makes-states” critics, although the monopolization of coercive means has, historically, been generally achieved by the means of war.³⁸ According to these accounts, war has not only been a central means of displacing, subduing, or eliminating competitors, but has also been instrumental in building administrative structures that are central to state formation. Although the “new wars” literature denies the legitimate ascription of such state-building characteristics to current wars, the fact that “military victory is associated with a more stable and durable peace” can hardly be disputed.³⁹ By resolving political conflict, reducing “institutional multiplicity,”⁴⁰ and creating administrative structures, war can thus be constitutive of state formation, and may, furthermore, bring economic advantages.

Warfare and the Monopoly of Revenue

As all governments, regardless of their type, require an economic foundation in order to rule,⁴¹ the monopolization of the use of physical force has, historically, been inextricably linked to the development of a monopoly of taxation. Thus, it has been argued that “[m]uch of the institutional apparatus of modern government and economic management has its origins in this compulsion to finance wars.”⁴² The importance of taxation has been considered of such importance that Maragat Levi claimed that “[t]he history of state revenue production is the history of the evolution of the state,”⁴³ and Bhavnani and Snyder advanced a “no revenue, no regime” hypothesis.⁴⁴ Besides the fact that war may play a constitutive role in state formation in the military and economic realms,

it can also benefit the political accommodation of elites, which is a key factor in regime stability.

Warfare and Politico-Economic Settlements

In order to establish monopolies of violence and revenue, diverse elites must be accommodated. Elites bargain for power, influence, and riches, eventually forming an “elite cartel” to enforce and protect their interests. This “elite cartel” is fundamental for the success of state-building projects.⁴⁵ In this sense, Tilly argues that “the organization of major social classes within a state’s territory, and their relations to the state, significantly affected the strategies rulers employed to extract resources, the resistance they met, the struggle that resulted, the sorts of durable organization that extraction and struggle laid down, and therefore the efficiency of resource extraction.”⁴⁶ Warfare plays a critical role in the negotiation of such “elite bargains” partly because it is one of the most effective means of integrating, displacing, or crushing competing elites.

Grist to the Mill: Somaliland Blemished by War

Against this backdrop of inadequate explanations for Somaliland’s success and the theoretical considerations presented earlier, several scholars have pointed to the link between violent conflict and state-building in the Horn of Africa in general, and Somaliland in particular.⁴⁷ Not only is Somaliland’s internal peace and solidarity considered “very much a product of war,”⁴⁸ but this self-styled state is also said to “[have] its origins in the war that led to the collapse of the Somali state.”⁴⁹ Yet, despite these acknowledgements of the role of warfare in its development, the question of how “war made Somaliland” remains largely unresolved.

The subsequent paragraphs provide a first approach in analysing the connection between warfare and state-building in the case of Somaliland. Intrinsically, I argue that any meaningful analysis of Somaliland’s state formation project needs to go beyond May 18, 1991 (the date of Somaliland’s declaration of independence), and beyond May 5, 1993 (the date of Mohamed Ibrahim Egal’s election as President of Somaliland), in order to encompass both the violent anti-regime struggle against Siyad Barre as well as Somaliland’s civil wars of the mid-1990s and their respective state-building implications. However, due to space limitations and the fact that past accounts of Somaliland’s state-building have tended to exclude the pre-1991 period, the subsequent analysis focuses on how the decade-long anti-regime war has been constitutive of the formation

Setting the Scene: Anti-Regime Struggles in Somalia

In light of the lost 1977/78 irredentist war against Ethiopia, armed resistance against Barre’s increasingly repressive regime took root. Among the first anti-regime forces to form was the Somali National Movement (SNM), which was established in London on April 6, 1981. Having been an elitist Diaspora group at its inception, after years of guerrilla warfare the SNM incrementally turned into a mass movement. This was particularly true after May 1988, when Siyad Barre ordered aerial bombings of Hargeysa and Burco, Somaliland’s two largest cities, and when the SNM was expelled from its exile base in Ethiopia. While the number of SNM fighters was roughly 1,200 men until then,⁵⁰ the rebel movement gradually increased in numbers and took on such magnitude that some estimated it having had up to 50,000 fighters,⁵¹ leading Prunier to conclude that there was no rebel movement as such but “simply the Isaaq people up in arms.”⁵²

Facing such largely clan-based rebel movements, Barre applied “divide and rule” tactics to fend off the threat. However, arming the Ogaadeen refugees who had settled on Isaaq soil, and stirring up clan opposition by mobilizing other clans residing in the North-West—mainly Gadaburse, Isse, Dhulbahante, and Warsangeli—“only served to accelerate the transformation of the SNM guerrilla war into a conventional one.”⁵³ Due to SNM’s military achievements and a waning dictatorship, other rebel movements flourished in the period around the regime’s collapse in 1991.⁵⁴ By the time the South saw the establishment of proto-political clan organizations, the SNM was already in demise and in the process of handing control over to a civilian administration. To what extent had the SNM already laid the foundations of a *de facto* state at this stage?

Military Features of the Anti-Regime War in North-West Somalia

While Adam writes that the SNM was a “weak, inexperienced, decentralized, clan-based” organization, which Prunier believes was “unable to provide capable national leadership and vision,”⁵⁵ its warfare contained factors arguably constitutive of state-building. Among these “bellicose state-building benefits” were the achievement of a military victory and the installation of a monopoly of violence in almost all parts of the former British protectorate.

Since the end of the Ogadeen war in 1978, the North-West experienced a softening of the state's monopoly of power. Not only did Siyad Barre arm and mobilize Ogadeen refugees against the rising Isaaq challenge, but he also supported the establishment of diverse clan-based paramilitaries to counter the Isaaq threat. Yet neither these forces nor the Somali National Army (SNA) could prevent the SNM from emerging from war as the "most powerful military force in the north-west,"⁵⁶ having achieved "outstanding military success,"⁵⁷ and consequently being able to make a "legitimate claim to exercise power."⁵⁸ The SNM's military supremacy prevented opposition movements in North-West Somalia from pursuing "any viable alternative" to engaging in peace talks.⁵⁹ Indeed, the involvement of "elders" in the peace- and state-building process was antedated and complemented by a military victory.

Another "bellicose state-building benefit" from which Somaliland profited was grounded in the military-strategic organization of its forces. While the SNM's early anti-regime struggle was carried out by a relatively small group of "full-time" guerrilla fighters, the 1988-91 era was characterized by a highly decentralized force of "part-time" combatants that were mobilized and supported by their respective clan networks.⁶⁰ The recruitment of "sporadic" fighters through clan networks and the decentralized organization of the rank and file yielded several benefits for a successful war-to-peace transition. First, this meant that the fighters were under the relatively tight control of their respective communities, whom they had liberated from the SNA. This control discouraged these fighters from looting property and committing atrocities. Second, since the war and its spoils had not provided a livelihood for most fighters, many disarmed voluntarily instead of giving into "warlordism."⁶¹ Finally, the fact that the fighters were rooted in their communities facilitated not only their post-war reintegration but also assured the post-war, SNM-dominated administration a broad popular support base—at least among the dominant population of the Isaaq.

The long-standing military doctrine of "clan self-determination" proved beneficial at the onset of "post-war" reconciliation. This doctrine was based on the "conviction in the SNM that one clan cannot 'liberate' another, or by extension subjugate it,"⁶² and resulted in the SNM refraining from enforcing its authority over non-Isaaq territory. While the doctrine's enforcement was facilitated by the relatively coherent clan settlement pattern in Somaliland, it resulted in reduced potential for fighters to commit atrocities and loot property, which could have fueled inter-clan greed and grievances. However, it indicated that the SNM "did subordinate violence as a means to clearly-stated political ends" and greatly enhanced chances to make peace.⁶⁴

By these and other means, the anti-regime war and the manner in which it was conducted in the North appears to have contributed to Somaliland's state formation. The war allowed the SNM as well as the transitional government—drawn from its ranks⁶⁵—to establish a monopoly of power. As Reno has it, “[i]n the provisional government that followed, Tuur’s political authority rested upon his direct control over armed units.”⁶⁶ However, due to various circumstances, the power monopoly evaporated in subsequent years but was restored by President Mohamed Ibrahim Egal in the mid-1990s and did not dissipate to any extent comparable to the era prior to the anti-regime war.

Economic Features of the Anti-Regime War in North-West Somalia

Arguably, “[m]aking money is an important ... aim in warfare,”⁶⁷ and southern rebel movements appear to have had easy access to large amounts of capital, with which they could finance their forces.⁶⁸ Contrarily, the SNM was forced to establish internal mechanisms to finance the anti-regime war. Why was the SNM financially constrained, how did it fund its struggle, and what effect did the nature of resource mobilization have on the war and its transition to peace?

First, one has to recall that the SNM was established some eight years before most other guerrilla movements, at a time when the outcome of the struggle against the dictatorial regime was highly uncertain. Thus, major Somali(land) businessmen did not readily switch sides to have their assets protected and businesses enhanced by the rebels. This logic became much more sensible during later years of the struggle. Similarly, potential external funding sources, such as Libya and Ethiopia, were not ready to grant the SNM financial support.⁶⁹ Apart from some “token contributions”⁷⁰ in the form of ammunition and fuel, “the SNM had never received any substantial external aid,”⁷¹ thereby necessitating the development of internal fund-raising mechanisms.

In the early days, the SNM raised resources among the Isaaq Diaspora by means of a “highly evolved fund-raising structure.”⁷² At its inception, the movement was both politically and financially “more representative of Somaliland’s exile communities than of its local population.”⁷³ Yet, because the Somali community abroad was an irregular and insufficient financial foundation, the SNM was forced to explore further economic sources.⁷⁴

The SNM started to “raise funds through deals with commercial intermediaries within the *abban* system constructed outside of Barre’s control.”⁷⁵ *Abbans* are clan-based credit systems that were established

as protection from Barre's nationalization policies during the 1970s, mainly due to the northern businessmen's increasing politico-economic marginalization. *Abbans* enabled these businessmen to tap into locally organized informal remittance systems, which used customary clan authorities to guarantee contracts and protection, and to adjudicate on disputes. Entrepreneurial behaviour was not suppressed but contained, which prohibited the evolution of a political economy in which militia leaders were also principal business operators.⁷⁶ Simultaneously, clan elders gained major control over the politico-economic process.⁷⁷

The SNM's third economic source lay in Somaliland's population. Given the organization's expulsion from its Ethiopian sanctuary following the non-hostility agreement signed between Mengistu Haile Mariam and Barre on April 3, 1988, the swelling of its ranks after the bombing of Hargeysa and Burco in May 1988, and the SNM's subsequent major military offensive, the rebel movement relied on local communities and developed "a popular support base among the Isaaq."⁷⁸ Fundraising was no longer organized by the SNM officers and its Central Committee but by the different Isaaq subclans for their own militias.⁷⁹ Increasingly, the SNM came to rely on the population through the imposition of compulsory tolls—each household had to send a male to the SNM forces and make payments of one sheep (or its equivalent in cash) at least once a year.⁸⁰ These rules were applied strictly during the war.⁸¹ As local resources could hardly be mobilized in the absence of the communities' elders' support, the latter gained an increasing say in, and control over, the finances of the SNM.⁸²

The resulting economic self-reliance⁸³ was "unique among liberation movements, past and present,"⁸⁴ and led not only to the movement's economic independence, but also "enhanced [its] accountability to its numerous supporters."⁸⁵ Besides, the support of the population meant that there could no longer be passive sympathizers and that SNM fighters were discouraged from looting and preying upon communities that "provided critical income from remittances and which were the bases of the commercial organizations essential to the militia's continued survival."⁸⁶

These war trajectories have partially continued in post-war Somaliland, although "[t]he SNM's highly evolved fund-raising structure ... collapsed almost as soon as victory was realized."⁸⁷ On the one hand, "the government has relied on the business community for financial assistance";⁸⁸ on the other hand, the emergency laws enacted by the council of elders during the war jeopardized the functioning of the traditional system of blood money payment and instead introduced the basis for taxation.⁸⁹ Somaliland continued the SNM legacy of tariffing imported Ethiopian khat⁹⁰ and started developing its taxation structures

to such an extent that, by 2005, “some 95% of the resources that finance the activities of the government [were] locally mobilized, mostly through taxation.”⁹¹

Political Features of the Anti-Regime War in North-West Somalia

A third feature of warfare that positively shaped developments in Somaliland lies in the SNM's political organization. While the quite democratic nature of the movement favourably impacted the war-to-peace transition, the kind of warfare pursued by the SNM resulted in the creation of political institutions that have become central to Somaliland's state apparatus.

“The SNM evolved democratic procedures” partly by allowing broad participation in their congresses and exercising frequent changes in leadership.⁹² In the decade between its inception and victory, the SNM leadership changed six times, with all but one chairmen being politicians rather than military figures.⁹³ Due to these frequent changes of authority, power was institutionalized rather than personalized, and the movement prevented the build-up of dictatorial tendencies within itself.⁹⁴ While it has frequently been argued that these “democratic practices” lay in the culture of “pastoral democracy” and a traditional shunning of “charismatic leaders” in Somali society, they were also “facilitated” by external conditions.⁹⁵ According to Reno, “Mengistu also interfered in SNM's internal affairs, and had early leaders arrested to hinder the SNM's utility as a vehicle for personal ambitions of political entrepreneurs.”⁹⁶

An increase in local resource mobilization through decentralized clan structures went in tandem with an increasing demand for co-determination. This further prevented the development of authoritarian tendencies. Thus, the movement's platform of decision-making steadily grew, particularly in light of the broad-based mobilization in 1988 when the SNM transformed from a “hopelessly outnumbered and outgunned guerrilla band into a mass movement.”⁹⁷ In parallel, the number of members in the SNM Central Committee rose from eight in 1981 to ninety-nine in 1990. Partly based on this increase in intra-SNM governance, Adam claims that “[a]fter 1988 the SNM, for all practical purposes, came to constitute a counter-government with all the responsibilities that go with the transformation.”⁹⁸

Closely connected to this is a further aspect of how the political organization of the rebel movement helped to lay the foundations for a post-war state. While the clan elders have come to prominence due to their role in “traditional” peacemaking, their role in waging the war

has frequently been overlooked. When Siyad's SNA pushed the northern, mainly Isaaq, population across the border into Ethiopian refugee camps in 1988, "[c]lan and religious elders played crucial roles, distributing food aid and other relief, adjudicating disputes, and even recruiting fighters for the SNM."⁹⁹ As the support of the displaced communities and their respective elites (i.e., clan elders) was essential to boosting the anti-regime struggle, the SNM increasingly included the elders in order to secure their support.¹⁰⁰ Bryden even states that "[i]n order to survive, the SNM cadre had no choice but to lead through persuasion and consensus, and in the later years of the struggle even went so far as to incorporate the Isaaq elders into its formal membership."¹⁰¹ Just as the importance of the elders' support for mobilizing resources and fighters had grown over the course of the struggle, so did the elders' political weight within the SNM.¹⁰² The initial experimentation of integrating the elders was finally formalized in the form of the *Guurti*, a permanent council of elders that institutionalized and secured their participation. Within the SNM, the *Guurti* became co-equal in importance with the Central Committee, the movement's legislative organ, partly because it allowed the SNM to incorporate all of Somaliland's clans and create a broad constituency.¹⁰³ The *Guurti*, created in 1988, was thus a direct legacy of the war and an institution that was just as "modern" as "traditional" to the Somali political environment.¹⁰⁴

Bradbury argues that the "particular nature of the SNM as a politico-military movement ... influenced the form of polity that emerged in Somaliland after the war."¹⁰⁵ After the SNM defeated the forces of the dictatorial regime and convened a national congress in the city of Burco in April and May 1991, a transitional government (1991–1993) was established, which reflected the organizational structure of the rebel movement. Not only did the chairman and vice chairman of the SNM assume the offices of the president and vice president respectively, but almost all the executive members of the SNM were given a cabinet post.¹⁰⁶ Indeed, "the SNM's leadership structure was transferred virtually intact to the government of the new state."¹⁰⁷ Furthermore, the *Guurti* continued to thrive and prosper in the "post-war" period, becoming the *de facto* power to challenge a weak, ailing and increasingly fragmenting transitional government.

Conclusion

From these—and other—peculiarities, it can be deduced that war-making was constitutive of state-making in Somaliland. Although a multitude

of factors contributed to the positive outcome of state formation in Somaliland, warfare played an important role, serving as a “cruel university in the arts of political mobilisation and popular leadership, preparing the SNM better than most for the challenges of peacetime leadership.”¹⁰⁸

First, the SNM did not only achieve a decisive victory and establish itself as the most powerful force in North-West Somalia, but it also used the war to restore an official monopoly of violence, which had been softened during the late 1970s and 1980s. Second, the SNM was able to rely on internal funding mechanisms throughout the war, and to keep money separate from power to avoid inviting serious “warlordism.” Instead, by means of taxation, the war established a close relationship between the military and civilian population. Third, given that the greatly important *Guurti* was a direct product of war, the struggle also facilitated Somaliland’s state formation in a politico-administrative sense. Thus, not only was “[r]econciliation ... helped by the military supremacy of the SNM,”¹⁰⁹ but the SNM laid the foundations of a state if “state capability is measured by the capacity of a state to ‘penetrate society, regulate social relationships, extract resources, and appropriate or use resources in determined ways’.”¹¹⁰

This process of state formation was anything but linear, and it experienced challenges during the “wasted years”¹¹¹ of the Tuur administration, from 1991 and 1993, and the civil wars that haunted Somaliland’s development in the mid-1990s. How this internal strife brought the nascent state to the verge of collapse but also contributed to the larger state formation project is another chapter of Somaliland’s bellicose process of state formation. While it has to be accepted that Somaliland’s achievements are, of course, not only attributed to its capacity for, and methods of, conducting war, it appears to be true that “[i]n sum, as happened in the case of medieval Europe ..., warfare had played a central and indeed essential role in the process of nation-formation in Somaliland.”¹¹²

Hence, warfare *can* in fact be constitutive of state formation processes, even in Africa and even in the present day. War appears to hold *potential* for processes of state formation under the conditions that it leads to the replacement of power panoplies with power monopolies, that it establishes an economic basis within the population, and that it leads to favourable “elite settlements.” Yet, despite the constitutive role warfare has played in Somaliland’s state-building project, it is to be remembered that warfare is neither a necessary nor sufficient condition for state formation projects. ■

¹ A draft version of this paper was first presented in a seminar of the Crisis States Research Centre at the London School of Economics and Political Science (LSE). The author wishes to thank Prof. James Putzel, the seminar participants, and the two anonymous reviewers for their helpful comments. The usual disclaimers apply.

² See, e.g., Jeffrey Herbst, *States and Power in Africa: Comparative Lessons in Authority and Control* (Princeton, NY: Princeton University Press, 2000), 267; for a summary of different positions, see Ian Spears, "Debating Secession and the Recognition of New States in Africa," *African Security Review* 13, no. 2 (2004): 35–48.

³ See, e.g., Organization of African Unity (OAU), "Resolutions Adopted by the First Ordinary Session of the Assembly of Heads of State and Government," Resolution 16(I), Cairo, UAR, July 17–21, 1964, <http://www.africa-union.org/root/AU/Documents/Decisions/hog/bHoGAssembly1964.pdf> (accessed November 25, 2009); see also Nicholas Sambanis, "Partition as a Solution to Ethnic War: An Empirical Critique of the Theoretical Literature," *World Politics* 52 (2000): 437–83; and James D. Fearon, "Separatist Wars, Partition, and World Order," *Security Studies* 13, no. 4 (2004): 394–415 (who argue that redrawing states' borders in order to separate conflicting ethnic groups did not provide a solution to conflict).

⁴ See World Bank, "Conflict, Crime and Violence: Making Societies More Resilient to Violence," <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTCPR/0,,menuPK:407746fflpagePK:149018fflpiPK:149093ffltheSitePK:407740,00.html> (accessed February 18, 2010).

⁵ Jeremy Weinstein, "Which Path to Peace? Autonomous Recovery and International Intervention in Comparative Perspective," Background Memo for *The Bottom Billion* (Oxford: Oxford University, June 27–9, 2004).

⁶ Mark Bradbury, *Becoming Somaliland* (Oxford: James Currey, 2008), 1; see also International Crisis Group (ICG), *Somalia: Countering Terrorism in a Failed State* (Nairobi: ICG, 2003), 10; World Bank, *Conflict in Somalia: Drivers and Dynamics* (Washington, DC: World Bank, 2005), 19.

⁷ Anna Leander, "Wars and the Un-Making of States," in *Contemporary Security Analysis and Copenhagen Peace Research*, eds. Stefano Guzzini and Dietrich Jung (London: Routledge, 2004), 69–80, 69; see also Mary Kaldor, *New and Old Wars: Organised Violence in a Global Era* (Cambridge: Polity Press, 1999).

⁸ While a comprehensive and systematic review of secondary resources provides the basis for this article, interviews complement the empirical material. The article's analysis has been significantly shaped by the author's fieldwork in Somaliland between January and May 2009.

⁹ See, e.g., Alphonso Castagno, "The Republic of Somalia: Africa's Most Homogeneous State?" *Africa Report* 5 (1960); Saadia Touval, *Somali Nationalism: International Politics and the Drive for Unity in the Horn of Africa* (Cambridge, MA: Harvard University Press, 1963), 12; David Laitin and Said Samatar, *Somalia: A Nation in Search of a State* (Boulder, CO: Westview Press, 1987), 2.

¹⁰ See Anthony Smith, *National Identity* (London: Penguin Books, 1991), 108; Hussein Adam, "Somalia: Problems and Prospects for Democratization," in *State Building and Democratization in Africa: Faith, Hope and Realities*, eds. Kidane Mengistae and Cyril Daddieh (London: Praeger, 1999): 261–77, 261.

¹¹ Laitin and Samatar, *Somalia*, 128.

¹² See, e.g., Bradbury, *Somaliland*, 22; Daniel Compagnon, "Somaliland, Un Ordre Politique en Gestation?" *Politique Africaine* 50 (1993): 9–20, 10–1; Wartorn Societies Project (WSP) International Somali Programme, *Rebuilding Somaliland: Issues and Possibilities* (Asmara: The Red Sea Press, 2005), 60. However, Asteris Huliaras, "The Viability of Somaliland: Internal Constraints and Regional Geopolitics," *Journal of Contemporary African Studies* 20, no. 2 (2002): 157–82, contests this.

¹³ See Hussein Adam, "Formation and Recognition of New States: Somaliland in Contrast to Eritrea," *Review of African Political Economy* 21, no. 2 (1994): 21–38, 24; Ismail Ahmed and Reginald Green, "The Heritage of War and State Collapse in Somalia and Somaliland: Local-Level Effects, External Interventions and Reconstruction," *Third World Quarterly* 20, no. 1 (1999): 113–27, 116; Ulf Terlinden and Mohammed Ibrahim, "Somaliland: A Success Story of Peace-Making, State-Building and Democratization?" memo, 2008, 2.

¹⁴ For a good overview of competing interpretations see Ioan Lewis, ed., *Nationalism and Self-Determination in the Horn of Africa* (London: Ithaca Press, 1983).

¹⁵ See Afyare Elmi and Abdullahi Barise, "The Somali Conflict: Root Causes, Obstacles, and Peace-Building Strategies," *African Security Review* 15, no. 1 (2006): 32–54, 33.

¹⁶ See Ahmed Samatar, *Socialist Somalia: Rhetoric and Reality* (London: Zed Books, 1988), 62.

¹⁷ See Marleen Renders, "Traditional" Leaders and Institutions in the Building of the Muslim Republic of Somaliland, unpublished PhD thesis (Ghent: University of Ghent, 2007); Tabea Zierau, "State Building Without Sovereignty: The Somaliland Republic," *Mondes en Développement* 31, no. 123/3 (2003): 57–62.

¹⁸ See Compagnon, "Un Ordre Politique," 11.

¹⁹ See, e.g., Renders, *Somaliland*; Bradbury, *Somaliland*; Seth Kaplan, "The Remarkable Story of Somaliland," *Journal of Democracy* 19, no. 3 (2008): 143–57; Michael Walls, "The Emergence of a Somali State: Building Peace from Civil War in Somaliland," *African Affairs* 108, no. 432 (2009): 371–89.

²⁰ David Leonard, "Recreating Political Order: The Somali System Today," *IDS Working Paper* 316 (Brighton: Institute of Development Studies at the University of Sussex, 2009), 13; Julie Flint, "Somaliland: Struggling to Survive," *Africa Report* 39, no. 1 (1994): 36–40, 36.

²¹ See, e.g., Ioan Lewis, *A Modern History of Somalia: Nation and State in the Horn of Africa* (London: Westview Press, 1988): 169; Bradbury, *Somaliland*, 24–6; Gérard Prunier, "Somaliland Goes it Alone," *Current History* 97, no. 619 (1998): 225–8, 225. Compare, e.g., Samatar, *Socialist Somalia*, 44, who argues contrarily that the

colonial system affected the Somali political structures in important ways also in the North.

²² See, e.g., Compagnon, "Un Ordre Politique," 18.

²³ See Bradbury, *Somaliland*, 28; Abdurahman Osman-Shuke, "Traditional Leaders in Political Decision Making and Conflict Resolution," in *War Destroys, Peace Nurtures: Somali Reconciliation and Development*, eds. Richard Ford, Hussein Adam, and Edna Ismail (Asmara: The Red Sea Press, 2004), 147–168, 149.

²⁴ Hussein Adam, "Somalia: A Terrible Beauty Being Born?" in *Collapsed States: The Disintegration and Restoration of Legitimate Authority*, ed. William Zartman (Boulder, CO: Lynne Rienner, 1995), 69–90, 79–80; see also Ibrahim Samatar, "Light at the End of the Tunnel: Some Reflections on the Struggle of the Somali National Movement," in *Mending Rips in the Sky: Options for Somali Communities in the 21st Century*, eds. Hussein Adam and Richard Ford (Asmara: Red Sea Press, 1997), 21–48, 36–8.

²⁵ See Matt Bryden and Ahmed Farah, *The Peace Committee for Somaliland: Case Study of a Grassroots Peace Making Initiative* (Addis Ababa: UNDP Emergencies Unit for Ethiopia, 1996), 8; Drysdal, *Somaliland*, 8.

²⁶ Charles Tilly, *Coercion, Capital, and European States, AD990–1992* (Oxford: Blackwell, 1992), 67.

²⁷ Leander, "Wars and the Un-Making of States," 69.

²⁸ Tilly, *Coercion, Capital, and European States*, 67.

²⁹ See, e.g., Charles Tilly, "War Making and State Making as Organized Crime," in *Bringing the State Back In*, eds. Peter Evans, Dietrich Rueschemeyer, and Theda Skocpol (Cambridge: Cambridge University Press, 1985), 169–91; Mancur Olson, "Dictatorship, Democracy, and Development," *American Political Science Review* 87, no. 3 (1993): 567–76; Samuel P. Huntington, *Political Order in Changing Societies* (New Haven, CT: Yale University Press, 1968); Christopher Cramer, *Civil War is Not a Stupid Thing: Accounting for Violence in Developing Countries* (London: Hurst & Company, 2006); Elisabeth Wood, "The Social Processes of Civil War: The Wartime Transformation of Social Networks," *Annual Review of Political Science* 11 (2008): 539–561.

³⁰ Youssef Cohen, Brian Brown, and Abramo Organski, "The Paradoxical Nature of State Making: The Violent Creation of Order," *The American Political Science Review* 75, no. 4 (1981): 901–910, 902.

³¹ Brian Taylor and Roxana Botea, "Tilly Tally: War-Making and State-Making in the Contemporary Third World," *International Studies Review* 10, no. 1 (2008): 27–56, 28 (emphasis in original).

³² Herbst, *States and Power*, 22; see also Tilly, *Coercion*, 195; William Reno, "Somalia and Survival in the Shadow of the Global Economy," *Queen Elisabeth House Working Paper*, no. 100 (Oxford: University of Oxford, 2003).

³³ Leander, "Wars and the Un-Making of States," 69; see also Michael Desch, "War and Strong States, Peace and Weak States?" *International Organization* 50, no. 2 (1996): 237–268, 242.

³⁴ See Cohen et al., "The Paradoxical Nature," 902; and Christopher Clapham, "War and State Formation in Ethiopia and Eritrea," paper presented at the Failed States Conference, Florence, 10–14 April, 2001, 9.

³⁵ Georg Sørensen, "War and State Making: Why Doesn't It Work in the Third World?" *Security Dialogue* 32, no. 3 (2001): 341–354, 341 (emphasis added).

³⁶ World Bank, *World Bank Group Work in Low-Income Countries Under Stress* (Washington, DC: World Bank, 2002), as quoted in Weinstein, "Autonomous Recovery," 2.

³⁷ Jutta Bakonyi and Kirsti Stuvøy, "Violence & Social Order Beyond the State: Somalia & Angola," *Review of African Political Economy* 32, no. 104 (2005): 359–382, 359.

³⁸ See, e.g., Tilly, *Coercion*.

³⁹ Weinstein, "Autonomous Recovery."

⁴⁰ A concept introduced and coined by the Crisis States Research Centre (CSRC), see, e.g., "War, State Collapse and Reconstruction: Phase 2 of the Crisis States Programme," *CSRC Working Paper* no. 1 (London: London School of Economics and Political Science, 2005).

⁴¹ See David Laitin, "The Cultural Elements of Ethnically Mixed States: Nationality Re-Formation in the Soviet Successor States," in *State/Culture: State Formation after the Cultural Turn*, ed. Georg Steinmetz (Ithaca, NY: Cornell University Press, 1999): 291–320; Michael Moore, "Revenues, State Formation, and the Quality of Governance in Developing Countries," *International Political Science Review* 25, no. 3 (2004): 297–319.

⁴² Cramer, *Civil War*, 178; see also Tilly, *Coercion*; Joel Migdal and Klaus Schlichte, "Rethinking the State," in *The Dynamics of States: The Formation and Crises of State Domination*, ed. Klaus Schlichte (Aldershot: Ashgate, 2005), 1–40.

⁴³ Margaret Levi, *Of Rule and Revenue* (Berkeley: University of California Press, 1988), 1; see also Deborah Bräutigam, Odd-Helge Fjeldstad, and Mick Moore, *Taxation and State-Building in Developing Countries: Capacity and Consent* (Cambridge: Cambridge University Press, 2008); Jonathan di John, "The Political Economy of Taxation and Tax Reform in Developing Countries," *UNU-WIDER Research Paper*, no. 74 (Helsinki: United Nations University, 2006).

⁴⁴ Richard Snyder and Ravi Bhavnani, "Diamonds, Blood, and Taxes: A Revenue-Centered Framework for Explaining Political Order," *Journal of Conflict Resolution* 49, no. 4 (2005): 563–97, 572; see also Evans, Rueschemeyer, and Skocpol, eds., *Bringing the State Back In*.

⁴⁵ See, e.g., Mattei Dogan and John Higley, *Elites, Crises, and the Origins of Regimes* (Lanham, MD: Rowman and Littlefield, 1998); Stefan Lindemann, "Do Inclusive Elite Bargains Matter? A Research Framework for Understanding the Causes of Civil War in Sub-Saharan Africa," *Crisis States Research Centre Discussion Paper* (London: London School of Economics and Political Science, 2008); Jonathan di John and James Putzel, "Political Settlements," Emerging Issues Research Service of the Gov-

ernance and Social Development Resource Centre (London: Department for International Development, 2009).

⁴⁶ Tilly, *Coercion*, 57–8.

⁴⁷ See Bradbury, *Somaliland*, 2; see also Ian Spears, “Reflections on Somaliland and Africa’s Territorial Order,” in *War Destroys, Peace Nurtures*, eds. Ford, Adam, and Ismail (Asmara: The Red Sea Press, 2004), 179–92, 185; Clapham, “War and State Formation,” 2.

⁴⁸ Spears, “Reflections on Somaliland,” 185.

⁴⁹ Bradbury, *Somaliland*, 50.

⁵⁰ See Matt Bryden, “Somaliland: Fiercely Independent,” *Africa Report* 39, no. 6 (1994): 35–40, 38.

⁵¹ See Flint, “Struggling to Survive,” 37.

⁵² Gérard Prunier, “Somaliland: Birth of a New Country?” in *The Horn of Africa*, ed. Charles Gurdon (London: University College London Press, 1994), 61–75, 62.

⁵³ Hussein Aideed, “The Siyad Barre’s Genocide of the Somaliland People,” in *War Destroys, Peace Nurtures*, eds. Ford, Adam, and Ismail, 195–202, 196.

⁵⁴ See, e.g., Hussein Adam, *From Tyranny to Anarchy: The Somali Experience* (Asmara: The Red Sea Press, 2008), 16–7.

⁵⁵ Adam, “Terrible Beauty,” 78; see also Gérard Prunier, “A Candid View of the Somali National Movement,” *Horn of Africa* 13/14, no. 3/4 (1990/91): 107–120, 112; Abdurahman Abdullahi, “Perspectives on the State Collapse in Somalia,” in *Somalia at the Crossroads: Challenges and Perspectives in Reconstituting a Failed State*, ed. Abdulahi Osman and Issaka Souaré (London: Adonis & Abbey Publishers, 2007), 40–57, 45.

⁵⁶ Bradbury, *Somaliland*, 79; see also Walls, “Emergence,” 8. Therefore, the SNM’s takeover was not entirely peaceful, as Bradbury attests in *Somaliland*, 78.

⁵⁷ Adam, “Formation and Recognition,” 36; Daniel Compagnon, “Somali Armed Units: The Interplay of Political Entrepreneurship and Clan-Based Factionalism,” in *African Guerrillas*, ed. Christopher Clapham (Oxford: James Currey, 1998), 73–90, 82.

⁵⁸ Compagnon, “Somali Armed Units,” 82.

⁵⁹ Terlinden and Ibrahim, *Somaliland*, 2–3.

⁶⁰ See Jutta Bakonyi, “Moral Economies of Mass Violence: Somalia 1988–1991,” *Civil Wars* 11, no. 4 (2009): 434–454, 441; see also Prunier, “Candid View,” 109; Prunier, “Birth,” 62; Maria Brons, *Society, Security, Sovereignty and the State in Somalia: From Statelessness to Statelessness* (Utrecht: International Books, 2001), 204.

⁶¹ WSP, *Rebuilding Somaliland*, 61. However, this source also informs that the “spontaneous” and “premature” demobilization was partly off-set by the “mushrooming of irregular militias,” threatening the young state. Ibid.

- ⁶² Adam, "Formation and Recognition," 31; see also Bradbury, *Somaliland*, 79; Walls, "Emergence," 13.
- ⁶³ See, e.g., Bradbury, *Somaliland*, 79; Compagnon, "Un Ordre Politique," 13, suggests that the SNM simply did not have the power to control non-Isaaq territory, implying that the doctrine evolved as much out of necessity as out of principle.
- ⁶⁴ Adam, *Tyranny*, 196.
- ⁶⁵ See Indian Ocean Newsletter (ION), "Somaliland: A Government of Colonels," June 12, 1993.
- ⁶⁶ Reno, "Somalia," 26; Abdirahman Aw Ali "Tuur" was the first president of the Republic of Somaliland.
- ⁶⁷ David Keen, "War and Peace: What's the Difference?" *International Peacekeeping* 7, no. 4 (2000): 1–22, 3.
- ⁶⁸ See Reno, "Somalia," 18–20; see also Leonard, "Recreating Political Order," 8.
- ⁶⁹ See Adam, "Terrible Beauty," 76; Interview with SNM veteran, Burco, April 14, 2009.
- ⁷⁰ Samatar, "Light at the End of the Tunnel," 42.
- ⁷¹ Compagnon, "Somali Armed Units," 79; see also Adam, *Tyranny*, 194.
- ⁷² Bryden and Farah, *Peace Committee*, 8; see Adam, "Terrible Beauty," 76.
- ⁷³ Dominique Jacquin-Berdal, *Nationalism and Ethnicity in the Horn of Africa: A Critique of the Ethnic Interpretation* (Lewiston: The Edwin Mellen Press, 2002), 173.
- ⁷⁴ See Compagnon, "Somali Armed Units," 79–80.
- ⁷⁵ Reno, "Somalia and Survival in the Shadow of the Global Economy," 24.
- ⁷⁶ Nevertheless, politico-military and economic aspects were partly interwoven in the SNM, too; e.g., SNM's first chairman, Ahmed M. Gulayd, had been a rich businessman; see Jacquin-Berdal, *Nationalism and Ethnicity*, 173.
- ⁷⁷ See Compagnon, "Somali Armed Units," 84.
- ⁷⁸ Bradbury, *Somaliland*, 82.
- ⁷⁹ Interview with SNM veteran, Hargeysa, March 12, 2009; see also Bradbury, *Somaliland*, 70; Samatar, "Light," 43.
- ⁸⁰ Compagnon, "Somali Armed Units," 80; Ahmed and Green, "The Heritage"; Brons, *Society*, 204.
- ⁸¹ See Ahmed and Green, "The Heritage," 120.
- ⁸² See Reno, "Somalia," 24; see also Compagnon, "Somali Armed Units," 84.
- ⁸³ Interview with SNM veteran and former member of the Somaliland government, Hargeysa, January 30, 2009.
- ⁸⁴ Samatar, "Light," 42; see also Compagnon, "Somali Armed Units," 80.

- ⁸⁵ Adam, "Terrible Beauty," 76; see also Adam, *Tyranny*, 194; interview with SNM veteran, Hargeysa, March 12, 2009.
- ⁸⁶ Reno, "Somalia," 24–5.
- ⁸⁷ Bryden and Farah, *The Peace Committee for Somaliland*, 8.
- ⁸⁸ Bradbury, *Somaliland*, 115; see also Academy for Peace and Development (APD), *Consolidation and Decentralization of Government Institutions*, draft version (Hargeysa: Academy for Peace and Development, 2002), 63.
- ⁸⁹ See Ahmed and Green, "The Heritage," 120.
- ⁹⁰ See APD, *Consolidation*, 62. Khat/qaat is a mild amphetamine-like stimulant consumed by male Somalilanders.
- ⁹¹ WSP, *Rebuilding Somaliland*, 104; see also Bryden and Farah, *Peace Committee*, 8; Yet, it has to be noted that approximately eighty per cent of this taxation is raised through customs; see, e.g., Economist Intelligence Unit (EIU), *Country Report: Somalia* (London: EIU, 2008), 7; personal conversation with Ministry of Finance, Republic of Somaliland, Hargeysa, February 3, 2009.
- ⁹² Adam, "Terrible Beauty," 76.
- ⁹³ See Adam, "Terrible Beauty," 76; Matt Bryden, "Somalia's New Order: Patterns of Political Reconstruction Since State Collapse," Pearson International Institute of Peacekeeping, Halifax, 1999, 9; Adam, "Problems and Prospects," 270; Somaliland Network, "Somali National Movement," <http://www.somalilandnet.com/snm.shtml> (accessed February 18, 2010).
- ⁹⁴ See Samatar, "Light," 33.
- ⁹⁵ Adam, *Tyranny*, 198.
- ⁹⁶ Reno, "Somalia," 24, referring to Hussein Adam, "Militarism and Warlordism: Rethinking the Somali Experience," Working Paper of the African Studies Centre, Boston University, Boston, 1993, 10.
- ⁹⁷ Matt Bryden, "The Banana Test: Is Somaliland Ready for Recognition?" *Annales d'Éthiopie* 19 (2003): 341–364, 344–5; see also Prunier, "A Candid View," 118; and Adam, *Tyranny*, 193.
- ⁹⁸ Adam, *Tyranny*, 196.
- ⁹⁹ Adam, "Terrible Beauty," 82; see also Compagnon, "Un Ordre Politique," 12; Brons, *Society*, 204.
- ¹⁰⁰ See Compagnon, "Somali Armed Units," 77; Bradbury, *Somaliland*, 97.
- ¹⁰¹ Bryden, "New Order," 8.
- ¹⁰² See Adam, *Tyranny*, 201.
- ¹⁰³ See Samatar, "Light," 44; Bradbury, *Somaliland*, 97.
- ¹⁰⁴ Interviews with SNM veterans, Hargeysa, March 12, 2009, and March 30, 2009; Compagnon, "Un Ordre Politique," 19.
- ¹⁰⁵ Bradbury, *Somaliland*, 50.

¹⁰⁶ See Amina Warsame and Maria Brons, "Somaliland: A State in Pursuit of Peace and Stability," in *Crisis Management and the Politics of Reconciliation in Somalia: Statements from the Uppsala Forum, 17–19 January 1994*, eds. M.A. Mohamed Salih and Lennart Wohlgemuth (Uppsala: Nordiska Afrikainstitutet, 1994), 19–28, 20.

¹⁰⁷ Bryden and Farah, *Peace Committee*, 8.

¹⁰⁸ Bryden, "New Order," 137.

¹⁰⁹ Rakhiah Omaar, "Peace-Building and Democracy: Lessons of Somalia and Somaliland," *Whitehall Papers* 62, no. 1 (2004): 83–92, 87.

¹¹⁰ Abdullahi, "Perspectives," 4, quoting Joel S. Migdal, *Strong Societies, Weak States* (Princeton, NJ: Princeton University Press, 1988), 4.

¹¹¹ Patrick Gilkes, *Two Wasted Years: The Republic of Somaliland 1991–93* (London: Save Children Fund, 1993).

¹¹² Huliaras, "Viability," 159, referring to Tilly, *Coercion*; see also Markus Höhne, "Political Identity, Emerging State Structures and Conflict in Northern Somalia," *Journal of Modern African Studies* 44, no. 3 (2006): 397–414, 398, who convincingly argues that "as a result of the civil war and certain developments in northern Somalia, new identities have formed on the ground."

Incorporation and Institution-Building: Autonomy and Elections in Post-Conflict Aceh

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ABSTRACT

Granting political autonomy to regions is a common approach for dealing with secessionist movements. In the aftermath of conflict, it is argued that autonomy can incorporate potential peace spoilers, while addressing the underlying grievances that led to rebellion. Autonomy strategies ultimately aim to incorporate former insurgents into the political system, while building the capacity and legitimacy of local institutions. Based on the case of Aceh, Indonesia, where a 2005 peace agreement sought to end a three-decade secessionist conflict, this article argues that these two aims—political incorporation and institution-building—are often in tension. Focusing on the 2006 local elections in Aceh, we illustrate how electoral practices led to compromises that helped to bind former rebels into the political settlement, but that also have the potential to undermine future good governance. Our analysis highlights the tensions and trade-offs between political incorporation and institution-building in post-conflict political environments characterized by patronage.

Introduction

The use of decentralization as a mechanism for quelling unrest in regions with separatist aspirations has been both a common theoretical prescription and a policy strategy for states in the post-Cold War period.² Federal or decentralized structures that devolve powers to regions are often promoted to quell emerging violence in multi-ethnic states, with some evidence that federalism is associated with a lower incidence of rebellion.³ Peace settlements, aimed at ending secessionist unrest, frequently create new—or strengthen existing—local institutions and change the division of power between the centre and the region(s).⁴ Devolution is likely to promote peace in a region if it leads to improvements in the management of the local economy in ways that promote equitable growth, enhance service delivery, and result in the development and maintenance of accepted “rules of the game” for managing access to power and resource

Patrick Barron, Samuel Clark, and Blair Palmer, “Incorporation and Institution-Building: Autonomy and Elections in Post-Conflict Aceh,” *St Antony’s International Review* 6, no. 1 (2010): 124–44.

use. Such devolution arrangements have the potential to consolidate peace by enhancing state legitimacy.

Autonomy can potentially improve state functioning through two main mechanisms. First, it can lead to the political incorporation of former rebel groups by creating new opportunities and incentives for them to participate in political structures. Fresh elections for decentralized bodies offer an avenue for the articulation of interests as well as the opportunity—if successfully elected—to play a role in managing new fiscal resources and to utilize new revenue-raising powers, all of which create a strong incentive for participation. Given that successful post-war transitions inherently involve a move from the use of violent means to competition mediated through political processes, participation from former fighters is essential.⁵ Furthermore, providing mechanisms for the participation of former combatant groups can help resolve post-war security dilemmas and can prevent the emergence of spoilers by offering opportunities to compete for powerful and lucrative positions in government.⁶ Second, autonomy can strengthen local institutions. Devolving responsibilities can turn local agents into principals, leading to a more effective use of state resources and regulation to enhance growth and public-goods provision. This may include better matching of supply and demand for public goods,⁷ or making government more responsive and supportive of economic growth.⁸ Improving institutional performance can thus help to address grievances related to government performance that underlie many conflicts, making future outbreaks of violence less likely.

However, tensions can exist between these dual aims of incorporation and institution-building. As this case study of the Aceh peace process indicates, these tensions are particularly marked in political environments characterized by patrimonialism. Creating strong and more effective local institutions necessitates the promotion of meritocratic state structures and transparent rules of the game. Yet the prerogatives of incorporation may require giving preferential treatment to former parties to the conflict to ensure participation and “turning a blind eye” to practices that do not fit with democratic norms. In places where politics is strongly patrimonial, the difficulties of institution-building are compounded. Institution-building tends to be a medium- to long-term goal; in the short term, dealing with potential spoilers (through incorporation) is often prioritized over enhancing state performance. However, in political environments characterized by patronage, insufficient focus on transparency and institutional performance in the short term may lead to a reproduction of patterns of political behaviour that fed the conflict in the first place. This can undercut any future legitimacy gains, which

are fundamental to post-conflict stability. As Cheng and Zaum note, “corruption may be necessary to bring an end to war, but offering this type of a carrot could also sow the seeds of future political and economic instability.”⁹

This article focuses on the ways in which this tension has played out in Aceh, Indonesia’s westernmost province. The 2005 Helsinki peace agreement sought to end a three-decade separatist war that killed around thirty thousand people, by including provisions for enhanced regional autonomy. This agreement and the subsequent Law on Governing Aceh (LoGA) contained a series of provisions to give the province significant powers and resources, and created mechanisms for former guerrillas to access power quickly. The 2006 elections, which came sixteen months after the peace agreement, provided the first opportunity for former combatants to be incorporated into provincial political structures. As we argue below, these elections influenced how Aceh’s institutions would function post-election. Weaknesses in electoral practices sometimes reflected conscious choices to trade proper implementation of procedures for more effective incorporation of former combatants. At other times these weaknesses merely resulted from the kind of poor government performance characteristic of a patronage system. In both cases, however, political incorporation became easier and subsequent institution-building was rendered more difficult.

We begin by discussing the history of devolution and autonomy as a peace-maintenance measure in Indonesia and then outline how the 2005 peace agreement and the LoGA provided opportunities for both incorporation and institution-building. We will then focus on the 2006 elections in Aceh, examining their function and how they affected post-election governance.

Conflict and Autonomy in Aceh

The history of Indonesia since its independence from the Dutch in the 1940s has involved continuous attempts to keep this most diverse and geographically scattered country together. Various strategies have been used, most notably: the promotion of a common language; the use of legal instruments to homogenize cultural and political structures; the provision of development through standardized hierarchical structures; the encouragement of nationalist discourses and readings of history; and a territorial command structure with military stationed in every sub-district throughout the country. Each required a strong, centralized state to impose order and uniformity across thousands of islands. The rapid

collapse of Suharto's "New Order" regime in May 1998 illustrated how dysfunctional the system had become. Corruption-riddled bureaucratic structures, with few (if any) local checks and balances and accountability mechanisms, were increasingly unable to deliver the development and growth on which Suharto's legitimacy was predicated. Simultaneously, rising violence showed weaknesses in the top-down approach of maintaining order through pre-emptive intervention by the security forces.¹⁰

When Suharto fell, the new government sought a radical change in the governance structure of the country. Decentralization, it was hoped, would lead to improvements in public service provision.¹¹ While communal and secessionist violence raged across a number of islands, decentralization was also envisioned as a way of incorporating those with secessionist aspirations or local grievances into a reconstituted Indonesian political order.¹² Federalism was not considered as an option because of its links to attempts by the Dutch to maintain control over their East Indies.¹³ Instead, "big bang" decentralization provided resources to rural and urban districts.¹⁴ Law 22/1999 on regional governance ceded authority to regional governments in all fields except defence, security, foreign policy, monetary policy, the legal system, and religious matters.¹⁵ Law 25/1999 on fiscal balance more than quadrupled the revenues of regional governments. Devolution of powers and resources went even further in Papua and Aceh, where separatist unrest posed a challenge to national unity.¹⁶ In Aceh, Special Autonomy Law 18/2001 sought to address the political, economic, and cultural grievances of the Acehese people.¹⁷

These initiatives had long historical antecedents. In the 1940s, the Acehese were strong supporters of, and participants in, Indonesia's independence movement.¹⁸ In recognition of this, Aceh was awarded "special territory" status.¹⁹ However, this status was changed in 1951 and Aceh was incorporated into the neighbouring North Sumatra province. The incorporation of Aceh fuelled existing tensions over the exclusion of the Jakarta Charter, which obliged Muslims to follow Islamic Sharia law, as a preamble to the constitution. The Acehese were at the heart of the Darul Islam rebellion, which called for an Islamic Indonesian state. In 1962 the conflict was resolved by re-establishing Aceh's special status and promising local autonomy to manage religious, educational, and customary law affairs. However, Suharto unilaterally withdrew these provisions in 1974. Two years later, Hasan di Tiro, a descendant of the last sultan of Aceh, declared the formation of the Free Aceh Movement (or GAM, to use its Indonesian acronym) and independence from Indonesia.

GAM built upon the grievances of the many Acehese who had failed to benefit from the discovery and development of massive natural gas fields off the east coast of the province.²⁰ The movement grew in size

in the 1980s as fighters were trained in Libya. In response, the Indonesian military sought to destroy GAM with force, categorizing Aceh as a Military Operation Zone in August 1989 and launching a ten-year campaign which killed thousands and resulted in widespread human rights abuses.²¹ This only strengthened GAM, who recruited from among those who had lost family members or witnessed atrocities. After East Timor declared independence, momentum built in Aceh for a referendum on the province's status. In November 1999, a rally of 1.5 million people called for Acehnese self-determination.²²

Under President Wahid, peace talks began in the context of a deteriorating security environment. A humanitarian pause to the conflict was declared in September 2000 but had little effect, with GAM using the opportunity to consolidate control of territory and recruit troops. Special Autonomy was designed to undercut GAM's support base. Seventy per cent of oil and gas revenues were to be retained within the province and direct elections of the local government executive were provided for.²³ The implementation of Sharia law recognized the prominence of Islam in Aceh and the province's historical distinctiveness. However, the Special Autonomy Law was never fully implemented.

The Cessation of Hostilities Agreement of December 2002 collapsed just six months later due to spoiler activities from both sides.²⁴ As martial law was applied, and thousands of additional troops arrived in an unsuccessful attempt to wipe out GAM and separatist sentiment by military means, thoughts of a political or economic solution to the conflict faded. Only after the accession to power of a new Indonesian president and vice president with both military and peace-making credentials did attention again focus on using legal tools and political and economic arrangements as a means of bringing peace to Aceh.²⁵ After the devastating Indian Ocean tsunami of December 26, 2004, peace talks went public and a new accord—the Helsinki Memorandum of Understanding (MoU)—was signed on August 15, 2005, offering new hope for peace.²⁶ The MoU and its implementing legislation, the Law on Governing Aceh (LoGA), extended the provisions of the Special Autonomy Law.

The Helsinki Memorandum of Understanding and the Law on Governing Aceh

The MoU and the LoGA provide a framework that redefines Aceh's role within the Indonesian state in ways that might lead to sustainable peace.²⁷ Through changes to the local electoral system, decentralization of power and authority to local institutions, and the allocation of signifi-

cantly increased financial resources, the framework provides incentives and mechanisms for both incorporating GAM members and potentially improving the capacity and performance of local institutions. Of most importance, the MoU and LoGA establish a special electoral system for Aceh, which facilitates the inclusion of GAM and local political preferences more broadly.

The preamble of the MoU states that the Government of Indonesia and GAM will create conditions for “fair and democratic” government and that direct local elections—referred to in Indonesian as *pilkada*²⁸—will be held shortly after the peace agreement is signed.²⁹ It also stipulates a number of changes to the electoral system, establishing that independent candidates could, for the first time in Indonesia’s history, contest the 2006 elections³⁰ and that local political parties would be allowed, also for the first time, to contest legislative elections from 2009 onwards.³¹ This staged approach—allowing independent candidates, then local parties—gave an opportunity for former rebels to stand while GAM was still forming a political party, a process that would require some time. The MoU also established that the Indonesian government would grant amnesty to all persons who had participated in GAM activities and states that they “will have all political, economic and social rights as well as the right to participate freely in the political process both in Aceh and on the national level.”³² This enabled former GAM rebels operating within Indonesia, as well as those in exile, to participate in the elections without discrimination.

The MoU and LoGA provide extra powers and resources for the new Acehese government to manage, factors that strengthened incentives for former combatants and others to compete in the elections. For example, these agreements promise Aceh seventy per cent of “all current and future hydrocarbon deposits and other natural resources in the territory of Aceh as well as in the territorial sea surrounding Aceh.”³³ The LoGA pledges an additional two per cent of the *Dana Alokasi Umum* (DAU), which is the discretionary block grant from the centre to the regions aimed at equalizing the fiscal capacity of regional governments, for fifteen years, starting in 2008, and an additional one per cent for five years after. The money is to be paid into a “Special Autonomy Fund” managed by the provincial government.³⁴ Furthermore, the MoU states that Aceh has the authority to “regulate and implement government functions in all public sectors except ... [those] of national character, foreign affairs, defense, security, justice, monetary affairs, national fiscal affairs, and certain functions in the field of religion.”³⁵ Indeed, almost thirty-two thousand non-Acehese military and police withdrew from the province following the signing of the MoU. The MoU also states that the head of

the Aceh administration shall approve the appointment of the chief of police in Aceh and that recruitment and training should take place “in consultation with and with the consent of the Aceh administration.”³⁶ The LoGA broadly applies these provisions.

As such, the peace agreement and its implementing law provide a powerful set of incentives and mechanisms for facilitating the incorporation of former rebels into the state. They also provide significant powers and resources, which empower local institutions and bring decision-making closer to the Acehnese people. Determining whether and how these changes incorporate the former rebels and facilitate the resolution of underlying grievances requires investigating the implementation of these new institutional arrangements in practice. Analysing Aceh’s first post-conflict elections, and their immediate aftermath, provides a window for examining whether the institutional changes facilitated the incorporation of GAM into the political system and whether they established a strong basis for addressing issues relating to Aceh’s place within Indonesia in the long term.

Peaceful Political Incorporation: The 2006 Post-Conflict Elections

Direct executive elections for the positions of provincial governor and heads of all twenty-one rural and urban districts (*kabupaten* and *kotamadya*) were held in Aceh between December 2006 and January 2008.³⁷ They were widely seen as a success, were deemed “free and fair,” and there was minimal political violence.³⁸ The results were accepted both in Aceh and Jakarta, and the elections received positive coverage from Indonesian and international monitoring groups. Given the context in which the elections occurred—less than two years after the Helsinki peace process ended three decades of protracted violent conflict—this was an impressive achievement.

The elections provided a mechanism for incorporating the former rebel group, GAM, into the political system. GAM-affiliated candidates participated in all levels of elections, including the provincial race and most of the district races. The independent GAM-affiliated ticket—which consisted of Irwandi Yusuf, a former rebel leader, and Muhammad Nazar, a prominent former independence activist—won the gubernatorial election in the first round with 38 per cent of the vote, far ahead of the runner-up candidate pair from a national Islamic party (which obtained 16 per cent and, notably, contained a GAM-affiliated vice-Governor candidate)—see Table 1. Political participation amongst former

rebels was not confined to the elites. A representative sample of over one thousand former combatants found that 92 per cent of male and 90 per cent of female combatants reported voting in the elections, higher than the 88 per cent level for other civilians.³⁹

Table 1: Results of the Gubernatorial Election

No.	Party	Result (%)
1	Independent (GAM)	38.2
2	PPP*	16.6
3	Golkar, PDIP, PKPI	13.9
4	PAN, PKS	10.6
5	Independent	7.8
6	PBB	5.5
7	PBR, PPNUI, PKB	3.9
8	Independent	3.2

Source: Clark and Palmer (2008)⁴⁰

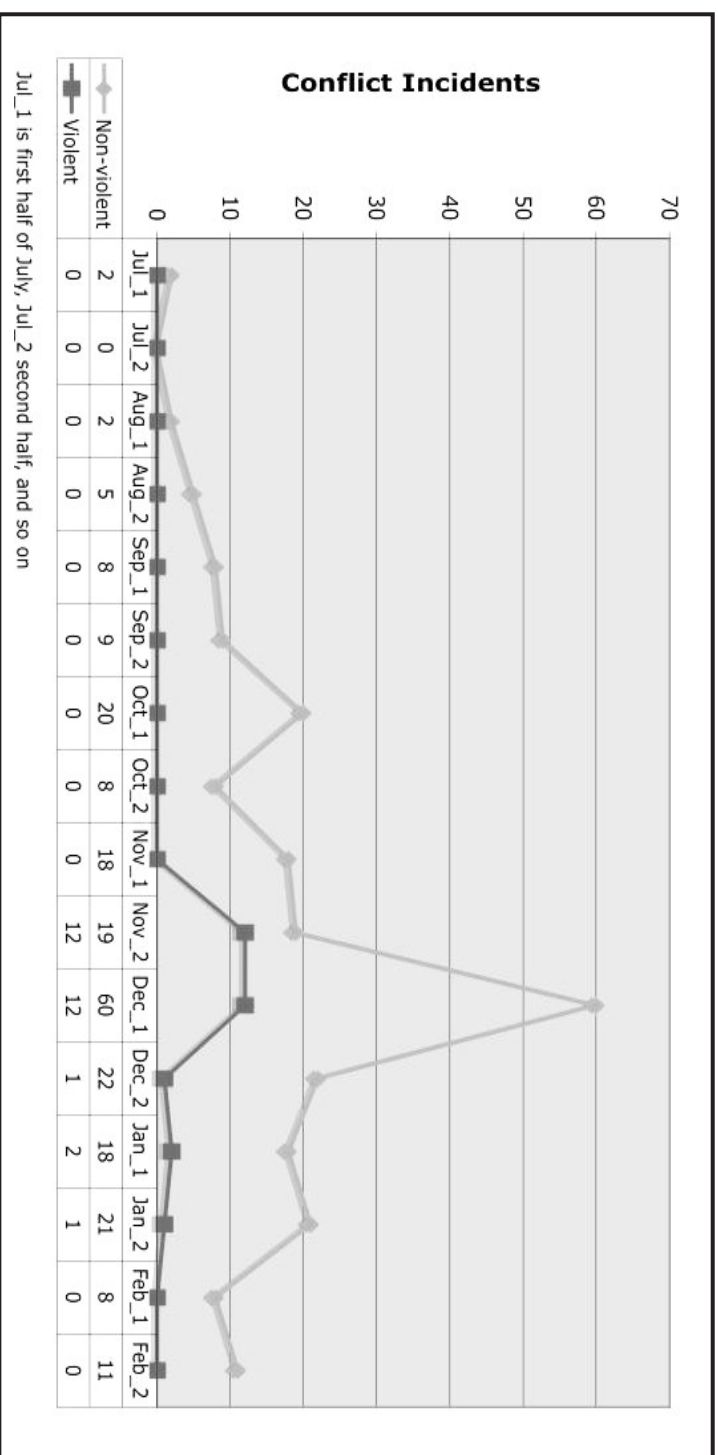
*Note: the PPP candidates also had an affiliation to elements within GAM. Other candidate pairings were not linked to GAM.

The 2006 elections were remarkable for the extent to which GAM became a mainstream and important local political player. In the district races, GAM-affiliated independent candidates won nine district head positions. Even in those districts where GAM candidates failed to win, they often fared well, coming in second or third. Furthermore, the independent GAM gubernatorial pair was the highest ranked candidate in seven of the twelve districts that GAM failed to win at the district level.⁴¹

This political incorporation of former combatants was accomplished with a remarkably low level of political violence. Over an eight-month period from July 2006, local newspapers recorded twenty-eight violent election-related incidents, which included physical attacks and kidnappings, serious intimidation, as well as physical destruction of party attributes.⁴² This rate of violence is exceptionally low considering that over this same period, seventy-three incidents of non-election related violent local-level conflict were recorded.⁴³ Violent incidents accounted for just eleven per cent of all election-related conflicts recorded, a rate similar to those recorded in provinces not affected by large-scale communal or separatist violence.⁴⁴

In contrast to the low levels of electoral violence, there was significant non-violent political conflict during the election period. 231 such incidents were recorded. Most concerned procedural questions and im-

Figure 1: The Timing of Election-Related Conflict (bi-weekly from July 2006 to February 2007)



Source: Clark and Palmer (2008)⁴⁵

plicated state actors—particularly the Independent Election Commission (KIP) and the Election Supervisory Committee (*Panwaslih*). Figure 1 illustrates how the number of violent and non-violent election-related incidents evolved over time.

Aceh's Electoral and Political Practices: Explaining Peaceful Incorporation

High levels of GAM participation at both the elite and local levels, the success of GAM-affiliated candidates, and the peacefulness in which they and other candidates competed, all attest to the success of the elections in supporting the war-to-peace transition. Rarely have immediate post-conflict elections gone so well. This resounding success begs the question: Why did a greater number of election-related conflicts not escalate into violence, as is so often the case in post-conflict contexts? The answer lies in the ways in which the institutions responsible for the elections managed conflict and political competition and in the nature of Aceh's patrimonial political system.

Four factors were critical in ensuring the peaceful political incorporation of the former combatants. First, electoral institutions played an important role in promoting peaceful local elections through a public information campaign and, more importantly, adopted a conflict mitigating, "flexible" approach to interpreting and applying electoral regulations. Second, the presence of the Aceh Monitoring Mission (AMM), an EU-ASEAN peace mission that arrived as part of the peace deal, helped to ensure that the Indonesian military and police did not disrupt or influence the outcome of the elections. Third, GAM's superior grassroots network—the same network that had allowed it to function as a rebel movement—meant that it was better able to mobilize voters than the non-GAM candidates were. Fourth, GAM candidates benefited from two aspects of Acehnese voting behaviour—the strong desire for peace to continue, and deep cynicism towards existing leaders—which made GAM a popular alternative to the incumbents. The first two factors explain why the election-related conflicts that did inevitably occur did not escalate into violence; the latter two factors, as well as the removal of the military from local politics, explain why GAM could expect to do well in the elections. This expectation of success led to high levels of commitment to the electoral process from the former rebel group.

Aceh's electoral institutions, particularly those with a primary role, focused on managing political competition in the short term so as to ensure peaceful elections.⁴⁶ This involved "bending the rules" where necessary in order to avoid the escalation of conflict. Such flexibility did not systematically benefit GAM candidates but did play a role in resolving tensions in a number of cases. An example of the electoral institutions' flexibility, which facilitated the inclusion of GAM, was the interpretation and application of the candidate verification process. The provincial election law states that all candidates must be able to chant the Koran. The verification test caused significant tensions in Aceh Utara district, a GAM stronghold on the east coast, when it was announced that two district head candidates, one of whom was the independent GAM-affiliated candidate, had failed. This resulted in several disputes between various civil society groups, GAM, and the election commission. To resolve the tensions, and in order to ensure the inclusion of the former rebel group in this key district, the original GAM candidate was disqualified but GAM was given the opportunity to field a new candidate, Ilyas Hamid, who subsequently passed the Koran reading test (and won the election).

Security Arrangements

The MoU stipulated the withdrawal of "non-organic" security personnel and the successful disarmament and demobilization of GAM combatants. This played an important role in ensuring that GAM-government conflict was minimized.⁴⁷ AMM's innovative facilitation of regular security meetings between GAM, the military, and the civilian government both in the lead-up to and, to a lesser extent, during the election period established an effective institutional space for joint information sharing, trust building, and problem-solving.⁴⁸ These forums helped ensure that the military did not get politically involved and that GAM refrained from intimidation. Most importantly, these regular meetings provided an institutional forum for quickly addressing tensions and security issues when they occurred during the election period.

Networks and Voter Mobilization

The absence of strong pre-existing political affiliations played to GAM's advantage. Whereas in other parts of Indonesia party preferences have—to an extent—endured since the 1955 elections,⁴⁹ in Aceh the long con-

flict with the national government resulted in voters lacking strong loyalties to the national parties. Grassroots patronage networks, which rely on vertical connections from villagers up to leaders of parties or mass organizations, were also relatively undeveloped in Aceh, even though they are common across Indonesia.⁵⁰ Whereas war had weakened the networks of political parties and of Islamic mass movements such as Nahdlatul Ulama and Muhammadiyah, GAM's war-time structure linked its leaders to villagers across the province. Such networks persisted after the peace agreement and were natural mechanisms for mobilizing voters, giving GAM-affiliated candidates a great advantage over others.

GAM-affiliated candidates made use of the organization's structure to campaign informally in coffee shops and in casual meetings rather than through explicit home visits or speeches in public fora. Most non-GAM candidates, on the other hand, campaigned through the rapid formation and deployment of hierarchical success teams (*tim sukses*), which functioned at the village, sub-district, and district level to mobilize voters from each stratum of society, often relying heavily on patron-client relationships. For example, the incumbent district head in Pidie managed to form a *tim sukses* consisting of contractors, businessmen, parliamentarians, community figures, *ulama* (Muslim teachers) and *ulama* associations, other religious associations, and youth groups.⁵¹ This meant that both old elites and former combatants had reasons to believe they would enjoy success in the elections, giving both incentives to participate and thus minimizing the extent to which they used violence to garner votes. Ultimately, GAM's network proved more resilient in obtaining votes, as patron-client relations set up by *tim sukses* were in most cases too new and shallow to ensure voter loyalty.

Voter Behaviour

In addition to GAM's superior grassroots network, two styles of voting common in Aceh acted to augment GAM's success: "voting for peace" and "voting on a track record." Although no candidates campaigned against the peace process, some villagers explained that they voted for GAM-affiliated candidates because they felt they were less likely to go back to fighting if they were in power. Thus some voters who neither had a history of supporting GAM nor felt that that GAM would govern well believed that peace would best be maintained by voting for GAM.⁵² This kind of "voting for peace" is common in post-conflict elections.⁵³

Voters also considered the track records of those candidates who had served in government positions in the past. Most often this worked

against those candidates. In Indonesia's patronage-based political system, incumbent bureaucrats and legislators were generally seen to be corrupt, nepotistic, and indifferent to the needs of the people. This voting strategy, then, generally benefited GAM-affiliated candidates who, having never held such positions, were seen as potentially less corrupt alternatives. Indeed, some credited them with being advocates of the "little people" and, through their armed struggle, having won additional authority and resources for Aceh from the national government.

Post-Incorporation: A Strong Basis for Addressing Underlying Grievances?

As a method of incorporating the former insurgents, the elections appear to have been a success. They consolidated a nascent peace and provided an effective mechanism for bringing GAM into Aceh's polity. Low levels of election-related violence illustrate that the elections fulfilled the short-term goal of autonomy—to bring the former rebel group into the political process in a peaceful manner. Although the elections played an important role in consolidating peace, the manner in which they were implemented, and the nature of the political system into which former combatants were incorporated, have created serious challenges for post-election governance. This leads us to question their effectiveness as an institution-building mechanism.

For Aceh's elections to provide the basis for institution-building, thereby addressing underlying grievances related to past governance failures, they needed to serve three key purposes. First, the elections needed to signal the policy priorities of politicians and ensure that politicians are responsive to the needs and priorities of ordinary citizens. Second, the elections needed to ensure that a single party or a stable coalition of smaller parties came to power in order to ensure that the winning candidates execute their policy agenda. Finally, the elections needed to shield the bureaucracy, which is ultimately charged with translating policy priorities into programmes and outcomes, from partisan politics.⁵⁴ Aceh's first post-conflict elections arguably failed on all three fronts.

This first criterion—ensuring that politicians are responsive to the needs and priorities of ordinary citizens—was largely unmet. Campaign and mobilization strategies adopted by both GAM and non-GAM candidates did not signal the policy priorities of politicians effectively. Many GAM supporters professed very minimal knowledge of the candidates, merely knowing that if you support *uroeng tanyoe* ("our person"), then you need to pick candidate number five (for example) on polling day. Instead of policy

dialogue and grassroots mobilization around voters' priorities, non-GAM candidates—especially those in district races—relied heavily on spreading implicit or explicit promises of patronage (via *tim sukses*) and on co-opting village leaders. Indeed, rather than focusing on identifying voter needs and articulating policy priorities, the predominant campaign strategy of many candidates was to rapidly establish patronage networks. This form of voter mobilization was facilitated by the electoral agencies' failure to rigorously implement campaign financing provisions.⁵⁵

The second criterion—ensuring that a single party or a stable coalition of smaller parties came to power—was also not fulfilled. It has become apparent in the post-election period that KIP and the *Panwaslih*'s reluctance to investigate and resolve election infractions generated political instability in some districts (particularly Aceh Tengah, Aceh Tenggara, and Aceh Barat Daya), making it difficult for winning candidates to govern effectively. Problems in these districts were not related to electoral infractions per se, nor to the reluctance of election agencies to investigate, for infractions and timid officials were present across the province. Rather, the presence of powerful political incumbents who were able to use infractions as pretext for political conflict generated instability. For example, in Aceh Tenggara, where GAM had only a minor presence, the Golkar incumbent lost the election to a challenger from another national party. However, a combination of "street power" and political manoeuvring was able to delay the announcement of the result and paralyse the local government for almost an entire year.⁵⁶ Even in those districts where conflict escalation was unlikely, winning candidates had to placate losing candidates who used electoral infractions as political capital. Losing candidates often hoped to be bought with political favour, in ways that undermined good governance and institutional strengthening. This form of power sharing helps to deal with political tensions in the short term. However, trading off long-term policy and planning for short-term political efficacy hardly strengthens Aceh's young democratic institutions.

The third criterion—ensuring that the bureaucracy was shielded from partisan politics—was also not fulfilled. There are clear signs that winning candidates are highly indebted to, and dependent upon, both their financial backers and those who mobilized the vote at the local level, and that these relationships are seriously undermining governance in the post-election period. *Tim sukses* members expected that their efforts, which sometimes included the provision of personal funds, would be rewarded after the elections. Similar demands were also made by GAM members upon those from GAM who were elected, with expectations of reward not only for their campaigning efforts, but also due to a sense of entitlement born of their long struggle.⁵⁷ This suggests that corruption

and patronage are highly likely to dominate any new administration, including any government led by GAM. The attempted resignation by the (non-GAM) elected district head of Aceh Besar, amidst rumours that he was unable to pay back those who had backed his candidacy, showed the expectations that many of those elected must satisfy.⁵⁸

More recent analysis suggests that as economic opportunities decline in Aceh due to the withdrawal of tsunami reconstruction funds, former GAM combatants are becoming increasingly demanding of their former commanders, many of whom are either in government or are using their political connections to the new GAM administrations to build new businesses and access government contracts. Edward Aspinall notes: "After the December 2006 *pilkada*, access to contracting and other lucrative economic opportunities greatly expanded for GAM members in areas where GAM candidates were elected as *bupati* or mayors. In such areas, the new governments have unstated policies of directing large number of small-scale projects ... to *sagoe* [local] commanders."⁵⁹

The situation in Bireuen, a district with a large GAM presence on the east coast, is particularly instructive. There, the issue at hand was the degree to which GAM commanders are entitled to patronage flows from the new district government. The GAM candidate who won the district election, Nurdin Abdul Rahman, was a relative outsider. He had just returned from exile in Australia, and some local GAM factions opposed his nomination because he was widely viewed as a reformist. Despite Nurdin's reformist credentials, his victory is seen by many—probably correctly—as purely the result of GAM endorsement. This has generated expectations among many local GAM leaders of access to, and influence over, the new "GAM government." Indeed, relations within GAM broke down over the selection of the district secretary, a powerful position with control over the allocation of lucrative government contracts, and a number of violent incidents took place in 2007. Internal party struggles over patronage benefits are common in patrimonial democracies, but when former combatants are involved, the potential for violence is higher. It is likely that in many cases this potential for violence will be mitigated through political favours which compromise efforts to improve institutions.

Conclusions

In concluding, it is worth briefly revisiting the arguments we have made in this article. Over the decades, conflict in Aceh has been driven by grievances that have been framed in relation to Aceh's place within the Indonesian state. Jakarta's focus on promoting a narrowly defined conception of

what it means to be a province within a unitary state led many to feel that progress in Aceh could only be achieved through formal separation from Indonesia. On this basis, GAM was able to mobilize those who felt disenfranchised. The Indonesian government's approach to the Aceh conflict and unrest elsewhere in the country has oscillated between the use of top-down security approaches and the devolution of economic and political power to the regions. The Helsinki negotiations showed that Jakarta had settled on the latter strategy for Aceh, a key element of which was changes to the electoral system and the holding of fresh elections.

Aceh's first post-conflict elections successfully and peacefully incorporated GAM into the formal political system. The elections have not, however, transformed politics itself. Patronage in Aceh, as in the rest of Indonesia, remains the dominant logic of politics, only now GAM is controlling the flow of funds at the provincial level and in many districts. Indeed, the Aceh case clearly demonstrates the tension between what autonomy and elections can offer in the short term—the incorporation of previously disenfranchised groups; and what it can (potentially) offer in the longer-term—the basis for good governance and a functioning state. This is particularly marked in political systems driven by patronage. With former combatants quickly integrated into patronage networks with old elites, elections provide a powerful mechanism for political incorporation. However, patronage makes the building of democratic institutions more difficult, leading to the risk of grievance accumulation in the long term. The context in Aceh thus meant that elections led to inclusion but poor governance, rather than promoting risky short-term politics that could lay the foundations for stronger governance. This helped to consolidate peace following the Helsinki agreement. But much of the difficult work of institution-building, necessary in order to address long-standing grievances in Aceh, has merely been postponed. Extra attention must be paid to such issues in the medium term, or the risk is that the benefits of rapid political inclusion will be for nothing. ■

Notes

¹ Patrick Barron is a DPhil candidate in Politics at the University of Oxford; Samuel Clark is a DPhil candidate in Socio-Legal Studies at the University of Oxford; Blair Palmer has a PhD in Anthropology from the Australian National University. The authors worked on development and conflict issues in Aceh following the Helsinki peace agreement. Thanks to Edward Aspinall, Scott Guggenheim, Marcus Mietzner, Nezar Patria, Matthew Zurstrassen, Chris Wilson, and Susan Wong, as well as the editors of this special edition of *STAIR*, who provided comments on early versions of

this work. The views are those of the authors rather than the institutions to which they are, or have been, affiliated.

² See Dawn Brancati, "Decentralization: Fueling the Fire or Dampening the Flames of Ethnic Conflict and Secessionism?" *International Organization* 60, no. 3 (2006): 651–85.

³ See Stephen M. Saideman, David Lanoue, Michael Campenni, and Samuel Stanton, "Democratization, Political Institutions, and Ethnic Conflict: A Pooled, Cross-Sectional Time Series Analysis from 1985–1998," *Comparative Political Studies* 35, no. 1 (2002): 103–29.

⁴ Recent examples include the establishment of the Autonomous Region of Muslim Mindanao in the Philippines, the provision of significant powers to two semi-autonomous entities within the Republic of Bosnia and Herzegovina, and the provision of autonomy to Papua and, our case here, Aceh in Indonesia.

⁵ See Roland Paris, *At War's End: Building Peace After Civil Conflict* (Cambridge: Cambridge University Press, 2004).

⁶ See Philippe Le Billion, "Buying Peace or Fuelling War: The Role of Corruption in Armed Conflicts," *Journal of International Development* 15, no. 4 (2003): 413–26.

⁷ See, for example, Jean-Paul Faguet, "Does Decentralization Increase Responsiveness to Local Needs? Evidence from Bolivia," *Journal of Public Economic* 88, no. 3–4 (2004): 867–93; Richard C. Crook and James Manor, *Democracy and Decentralization in South Asia and West Africa: Participation, Accountability and Performance* (Cambridge: Cambridge University Press, 1998).

⁸ See Barry Weingast, "Constitutions as Governance Structures: The Political Foundations of Secure Markets," *Journal of Institutional and Theoretical Economics* 149, no. 1 (1993): 286–311.

⁹ Christine S. Cheng and Dominik Zaum, "Introduction—Key Themes in Peacebuilding and Corruption," *International Peacekeeping* 15, no. 3 (2008): 301–9, 304–5.

¹⁰ At least 9,500 died between the onset of the collapse of the New Order regime in early 1997 and the end of 2003. This figure excludes the separatist conflicts in Aceh, Papua and East Timor. See Ashutosh Varshney, Mohammad Zulfan Tadjoeidin, and Rizal Panggabean, "Creating Datasets in Information-Poor Environments: Patterns of Collective Violence in Indonesia, 1990–2003," *Journal of East Asian Studies* 8, no. 3 (2008): 361–94.

¹¹ See Muhtadi, "Membangun 'Good Governance' Pemerintah Lokal [Developing Local Good Governance]," *Sinar Harpan* (January 27, 2003); Warsito, "Plus Minus Otda [Pros and Cons of Regional Autonomy]," *Suara Merdeka* (December 31, 2004); William Frej, "Regions Make Decentralization Programs Work," *The Jakarta Post* (January 28, 2004).

¹² See Marcus Mietzner, "Local Elections and Autonomy in Papua and Aceh: Mitigating or Fuelling Secessionism?" *Indonesia* 84 (2004): 1–39.

¹³ During World War II, the Japanese had taken control of the Dutch East Indies and had subtly promoted Indonesian nationalist sentiments. When they surrendered, the Dutch sought to undercut this by imposing a federal state, with each region part

of the Kingdom of the Netherlands. See M. C. Ricklefs, *A History of Modern Indonesia since c. 1200* (Stanford, CA: Stanford University Press, 2001).

¹⁴ Bert Hoffman and Kai Kaiser, "The Making of the Big Bang and its Aftermath: A Political Economy Perspective," paper presented at the conference "Can Decentralization Help Rebuild Indonesia?" Atlanta, Georgia, May 1–3, 2002.

¹⁵ See Edward Aspinall and Greg Fealy, eds., *Local Power and Politics in Indonesia: Decentralisation and Democratisation* (Singapore: Institute of Southeast Asian Studies, 2003). Laws 32, 33, and 34 of 2004 cemented the decentralization framework.

¹⁶ We do not focus on Papua in this article. One good recent discussion is Richard Chauvel and Ikrar Nusa Bhakti, "The Papua Conflict: Jakarta's Perceptions and Policies," *Policy Studies* no. 5 (Washington, DC: East-West Center, 2004).

¹⁷ Two recent edited volumes by the historian Anthony Reid provide good overviews of the evolving relationship between the Acehnese and the Indonesian central government. See Anthony Reid, ed., *An Indonesian Frontier: Acehnese and Other Histories of Sumatra* (Singapore: Singapore University Press, 2005); Anthony Reid, ed., *Verandah of Violence: The Background to the Aceh Problem* (Singapore: Singapore University Press, 2006).

¹⁸ The Acehnese are disproportionately represented among those officially named "Indonesian heroes." Prominent heroes from Aceh include Teuku Umar, Teuku Cik Di Tiro, Cut Nyak Dien, and Cut Mutia.

¹⁹ See Reid, ed., *Verandah of Violence*.

²⁰ See Michael L. Ross, "Resources and Rebellion in Indonesia," in *Understanding Civil War: Europe, Central Asia, and Other Regions*, eds. Paul Collier and Nicholas Sambanis (Washington, DC: World Bank, 2005).

²¹ For an overview of the history of the conflict, see Edward Aspinall, *Islam and Nation: Separatist Rebellion in Aceh, Indonesia* (Stanford, CA: Stanford University Press, 2009).

²² See Ross, "Resources and Rebellion in Indonesia."

²³ See International Crisis Group (ICG), "Aceh: How Not to Win Hearts and Minds," Asia Briefing No. 27 (Jakarta/Brussels: ICG, 2003); ICG, "Aceh: A Fragile Peace," Asia Report No. 47 (Jakarta/Brussels: ICG, 2003).

²⁴ See Konrad Huber, "The HDC in Aceh: Promises and Pitfalls of NGO Mediation," *Policy Studies* no. 9 (Washington, DC: East-West Center, 2004).

²⁵ See Michael Morfit, "Staying on the Road to Helsinki: Why the Agreement Was Possible in August 2005," paper prepared for the international conference on "Building Permanent Peace in Aceh: One Year after the Helsinki Accord," Jakarta, Indonesia, August 14, 2006.

²⁶ There is much debate and speculation about the importance the tsunami played in resolving the conflict. Some have suggested that the tsunami forced both sides to the negotiating table, whether for compassionate or strategic reasons. What is clear is that the government, particularly Vice President Jusuf Kalla, had been courting GAM prior to the tsunami and that the Crisis Management Initiative (the NGO that

brokered the accord) formally invited both sides to negotiate two days *before* the Indian Ocean tsunami struck (see Morfit, “Staying on the Road to Helsinki”). We would suggest that the tsunami played a larger role in ensuring that both parties kept to the agreement *after it was signed* than in leading to the agreement itself. The massive reconstruction effort and international attention that the tsunami brought to Aceh provided an informal spotlight that prevented spoiler actions and provided economic incentives for both sides to adhere to the agreement.

²⁷ A fuller analysis of the MoU and LoGA is provided in Patrick Barron and Samuel Clark, “Decentralizing Inequality? Center-Periphery Relations, Local Governance and Conflict in Aceh,” *Conflict Prevention and Reconstruction Paper* no. 39 (Washington, DC: World Bank, 2006).

²⁸ *Pilkada* stands for “elections of local government heads” (*pemilihan kepala daerah*), whereas *pilkadasung* stands for “direct elections of local government heads” (*pemilihan kepala daerah langsung*). However, in practice, after the elections became direct, people continued to refer to them simply as *pilkada*.

²⁹ See Government of Indonesia and the Free Aceh Movement, “Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement,” 2005, Clauses 1.2.2–1.2.3, available at <http://www.aceh-mm.org/download/english/Helsinki%20MoU.pdf> (accessed February 22, 2010).

³⁰ See government of Indonesia and the Free Aceh Movement, “Memorandum,” Clause 1.2.2. Note that during the design of the LoGA there was some controversy about whether this clause mandated independent candidates, but due to pressure from GAM, the government relented and independent candidates were allowed; see Mietzner, “Local Elections,” 24.

³¹ See Government of Indonesia and the Free Aceh Movement, “Memorandum,” Clause 1.2.1.

³² *Ibid.*, Clause 3.2.1.

³³ *Ibid.*, Clause 1.3.4.

³⁴ *Ibid.*, Clause 1.3.4.

³⁵ See LoGA, Clause 7. This differs from the text of the MoU, which can be interpreted as only reserving powers in seven areas for Jakarta. The sub-clause on areas of “national character” was added for three reasons: (a) some areas are constitutional obligations for the central government, e.g., in areas of service provision; (b) some are related to international conventions; and (c) the implementation of some areas by the government of Aceh would affect other areas of Indonesia. See Bernhard May, “Law on the Governing of Aceh—A Brief Review and Assessment,” presentation, Banda Aceh, 2006.

³⁶ Government of Indonesia and the Free Aceh Movement, “Memorandum,” Clause 1.4.4.

³⁷ The majority, including the provincial and nineteen of twenty-one district races, were held on December 11, 2006. Of these nineteen district races, two required run-offs in March 2007 and one in May 2007. The remaining two districts, Bireuen and Aceh Selatan, held their elections in May 2007 and January 2008 re-

spectively. Analysis in this and the next section draws heavily on Samuel Clark and Blair Palmer, "Peaceful Pilkada, Dubious Democracy: Aceh's Post-Conflict Elections and their Implications," *Indonesian Social Development Paper* No. 11 (Jakarta: World Bank, 2008).

³⁸ European Union Election Observation Mission, "Aceh, Indonesia: Governor and Regent/Mayor Elections, Final Report," 2007, http://ec.europa.eu/external_relations/human_rights/election_observation/aceh/final_report_en.pdf (accessed February 22, 2010).

³⁹ See Patrick Barron, "The Limits of DDR: Reintegration Lessons from Aceh," in *Small Arms Survey 2009: Shadows of War* (Cambridge: Cambridge University Press, 2009). This can be compared with voting rates of thirty-nine per cent and forty-five per cent for male and female combatants, respectively, in the 2004 national presidential election.

⁴⁰ Clark and Palmer, "Peaceful Pilkada," 34.

⁴¹ See Clark and Palmer, "Peaceful Pilkada," for fuller details of the results.

⁴² Data is from a dataset put together by the World Bank to record all incidents of conflict (violent and not) related to the elections. Four local news sources were monitored before, during, and after the elections. Violent events were defined as those where physical force or serious intimidation was used against people, or property damaged. Verbal threats and low-level intimidation were considered non-violent. See Clark and Palmer, "Peaceful Pilkada."

⁴³ The term "local-level conflicts" refers to various small conflicts about local issues, distinct from larger conflicts such as the GAM rebellion against the government. The difference suggested by these figures is more remarkable, given that the data on non-election conflicts comes from only two newspapers (*Aceh Kita* and *Serambi*), while the election conflict mapping used four local newspapers.

⁴⁴ A study of the 2004 legislative elections in four other provinces found a similar number of cases of election conflict with approximately eleven per cent resulting in violence. In the sole post-conflict province in that study, Maluku, twenty per cent of electoral conflict incidents were violent, a higher rate than Aceh. See Patrick Barron, Melina Nathan, and Bridget Welsh, "Consolidating Indonesia's Democracy: Conflict, Institutions and the 'Local' in the 2004 Legislative Elections," *Conflict Prevention and Reconstruction Paper* (Washington, DC: World Bank, 2005).

⁴⁵ Clark and Palmer, "Peaceful Pilkada," 15.

⁴⁶ Implementation of Aceh's post-elections was the responsibility of a number of "primary" and "secondary" institutions. Primary institutions include the Independent Election Commission (KIP) and the Election Supervisory Committee (*Panwaslih*). Secondary institutions, whose tasks were crucial but not directly related to the electoral process, include the police, the courts, the local parliaments at the provincial and district levels, and the EU-ASEAN Aceh Monitoring Mission (AMM), which oversaw the peace process and left shortly after the first round of elections.

⁴⁷ The MoU uses the distinction between "organic" and "non-organic" troops, which is common in Indonesia. Organic troops are those whose base (and usually ethnic

origin) are in their location of duty, whereas non-organic troops are from units based elsewhere and are perceived as being more brutal towards the populace.

⁴⁸ See Patrick Barron and Adam Burke, "Supporting Peace in Aceh: Development Agencies and International Involvement," *Policy Studies* no. 47 (Washington, DC: East-West Center, 2008).

⁴⁹ See Marco Bünte and Andreas Ufen, eds., *Democratization in Post-Suharto Indonesia* (London: Routledge, 2008).

⁵⁰ See Gerry van Klinken, "Patronage Democracy in Indonesia," in *Rethinking Popular Representation*, eds. John Harriss, Kristian Stokke, and Olle Tornquist (Basingstoke: Palgrave Macmillan, 2009).

⁵¹ For more discussion, see Clark and Palmer, "Peaceful Pilkada."

⁵² For a discussion of "voting for peace" and patronage-based voting during the 2009 legislative elections in Aceh, see Blair Palmer, "Services Rendered: Peace, Patronage and Post-Conflict Elections in Aceh," in *Problems of Democratisation in Indonesia: Elections, Institutions and Society*, eds. Edward Aspinall and Marcus Mietzner (Singapore: ISEAS, 2010).

⁵³ See Terrence Lyons, "Post-Conflict Elections and the Process of Demilitarizing Politics: The Role of Electoral Administration," *Democratization* 11, no. 3 (2004): 36–62, 39.

⁵⁴ Evans argues that autonomy within bureaucracy not only facilitates its implementation of the executive's immediate policy priorities, but that it allows for the bureaucracy to rise above short-term societal interests and implement long-term projects. See Peter Evans, *Embedded Autonomy: States and Industrial Transformation* (Princeton, NJ: Princeton University Press, 1995).

⁵⁵ Aceh's electoral law provided a framework for monitoring campaign finances in *Qanun* number 2 and 3. Candidates were required to use a designated bank account for all donation and expenditures, could only accept donations below a given threshold, and were required to report all donations and expenditures to the Electoral Commission. Compliance with these regulations was extremely low. On all of these campaigning dynamics, see Clark and Palmer, "Peaceful Pilkada."

⁵⁶ See Clark and Palmer, "Peaceful Pilkada," 41–6; World Bank, "Aceh Conflict Monitoring Update—August 2007," <http://www.conflictanddevelopment.org/news.php?id=88>; World Bank, "Aceh Conflict Monitoring Update—September 2007," <http://www.conflictanddevelopment.org/news.php?id=91>; World Bank, "Aceh Conflict Monitoring Update—November 2007," <http://www.conflictanddevelopment.org/news.php?id=96> (all accessed February 22, 2010).

⁵⁷ See Edward Aspinall, "Guerillas in Power," *Inside Indonesia* Oct–Dec 2009.

⁵⁸ See World Bank, "Aceh Conflict Monitoring Update—September 2008," <http://www.conflictanddevelopment.org/news.php?id=117> (accessed February 22, 2010). The resignation was subsequently rejected.

⁵⁹ Edward Aspinall, "Combatants to Contractors: The Political Economy of Peace in Aceh," *Indonesia* 87 (2009): 1–34, 24.

Secession and Security in the South Caucasus: A Region at Risk

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ABSTRACT

Throughout much of its troubled history, the South Caucasus region has served as an arena for the competing interests of empires. Since the collapse of the Soviet Union, the three small countries in the region—Armenia, Azerbaijan, and Georgia—have struggled to overcome the legacy of seven decades of Soviet rule. The abrupt independence of these three states has been marked by the emergence of new threats from within, as the collapse of the Soviet system unleashed potent forces of separatism and secession, which challenge the sovereignty and territorial integrity of these states. This article examines the course of the conflicts, mediation approaches, and security implications of three secessionist entities: Abkhazia, South Ossetia, and Nagorno-Karabagh. Special attention is given to the US-funded “Georgian Train and Equip Programme” and the implications of Turkish-Armenian rapprochement on the Nagorno-Karabagh conflict between Armenia and Azerbaijan. The article makes the case for promoting democratization, for engaging new political actors, and for promoting cross-border co-operation. It emphasizes the potential for progress on common issues as illustrated by the co-operation on combating wild-fires in the border area between Nagorno-Karabagh and Azerbaijan in 2006 led by the Organization for Security and Co-operation in Europe (OSCE). The article concludes that the real prerequisites for regional security and stability stem more from internal imperatives, ranging from legitimacy to leadership, than from external pressure or mediation. From this perspective, democratization must come first, prior to any effective or lasting resolution to the “frozen” conflicts of this “region at risk.”

Introduction

Historically, the South Caucasus region has served as an arena for the competing interests of larger empires. For the three small countries of the region—Armenia, Azerbaijan, and Georgia—the competition for power and dominance has returned, as Russia, Turkey, and Iran seek to exert their own influences on the region.¹ Along with these threats to stability and security, the region struggles to overcome the legacy of seven decades of Soviet rule; the successor states remain burdened by a

Richard Giragosian, “Secession and Security in the South Caucasus: A Region at Risk,” *St Antony’s International Review* 6, no. 1 (2010): 145–64.

difficult course of economic and political reform, systemic transition, and nation-building. However, the fragility and vulnerability of the region also stems from an internal dynamic of secession, separatism, and self-determination, which has triggered ethnic clashes and war.²

Georgia, Armenia, and Azerbaijan are beset by three internal conflicts, which represent latent security risks and constant sources of tension. Following an unsuccessful war against Russia in August 2008, Georgia faces the loss of Abkhazia and South Ossetia. Meanwhile, Armenia and Azerbaijan continue to contest the status of the majority Armenian-populated enclave of Nagorno-Karabagh.³ These secessionist entities remain as unresolved impediments to lasting security and stability. As components of this “region at risk,” each of these three countries battles to either restore territorial integrity after the loss of separatist regions or to retain irredentist gains.⁴

From 1988 to 1994, Armenia and Azerbaijan waged war over Nagorno-Karabagh, home to the region’s first and most significant modern secessionist movement, which erupted well before the collapse of the Soviet Union. Although effectively “frozen” by a lasting ceasefire reached in May 1994, the Karabagh issue continues to divide the region and has formed an obstacle to recent efforts to normalize relations between Armenia and Turkey.⁵ For Armenia, the challenge is to ensure the status of Karabagh as either an independent state or as a part of Armenia itself. Armenia’s diplomatic strategy is to only offer concessions regarding Armenian-held areas of Azerbaijani territory beyond the borders of Nagorno-Karabagh.⁶ For Azerbaijan, the Karabagh conflict centers on the loss of its territorial integrity.⁷ The conflict serves as a painful reminder of the significant military defeat that Azerbaijan suffered after losing its war with the much smaller Armenia—a national humiliation that underpins its diplomacy regarding the conflict.⁸

Meanwhile, Georgia has long been plagued by an even more obvious erosion of its state authority and sovereignty. The dual conflicts of Abkhazia and South Ossetia pose serious threats to its statehood. While Georgia’s loss of territorial integrity was as extensive as Azerbaijan’s loss, the implications are even more far-reaching for Georgia, as Russian power and influence is a key consideration for security and stability of the country.⁹ Importantly, the brief but dramatic August 2008 war between Georgia and Russia effectively thawed Georgia’s two “frozen” conflicts, raising new considerations over the question of sovereignty versus secession, and posing fresh concerns over the future of Georgia itself.

The first threat to Georgian statehood and sovereignty came in its initial stage of independence, with the outbreak of war for control of Abkhazia and South Ossetia. Georgian forces sought to put down two separate secessionist movements, as South Ossetia initiated a campaign in 1989 to unify with neighboring North Ossetia in the Russian Federation, and Abkhazia declared outright independence from Georgia in July 1992.

The implications of the South Ossetia conflict were in some ways more serious, involving Russian interests as the Osset secessionist movement sought to join the Russian Federation.¹⁰ However, the scale of the fighting was rather limited, with an estimated total number of deaths of between 2,000 and 4,000 and the displacement of some tens of thousands of people.¹¹ Interestingly, the conflict was triggered not by the 1989 move for unification by the Ossets, but by the harsh and repressive response by then-Georgian President Gamsakhurdia.¹² In June 1992, Russia succeeded in brokering a ceasefire agreement, calling for the formation of a tripartite peacekeeping mission, comprised of Georgian, Osset, and Russian troops, to operate in a delineated "special security zone" around Tskhinvali, South Ossetia.¹³

The Abkhaz conflict escalated as Russian and North Caucasian "volunteers," who reportedly constituted the bulk of the Abkhaz separatist forces, successfully routed Georgian forces in 1993. At this stage, the war had left over 10,000 dead and resulted in over 200,000 displaced persons, mostly ethnic Georgians forced from their homes in Abkhazia.¹⁴ This forced exodus of Georgians remains one of the thorniest issues in the conflict, as the Georgian authorities demanded the return of their people prior to any negotiations over the status of Abkhazia.¹⁵ Meanwhile, the Abkhaz insisted on full recognition of their independence as a precondition to any large-scale repatriation.¹⁶

These conflicts failed to reach any conclusive resolution and ended with fragile ceasefire agreements,¹⁷ which maintain a simmering degree of insecurity. The wars over South Ossetia, which lasted from 1990 to 1992, and Abkhazia, which spanned a shorter period of 1992 to 1993, were marked by cycles of refugee flight and significant numbers of displaced persons.¹⁸ The ceasefire agreements of 1992 and 1993 brought a suspension of armed hostilities, which was not accompanied by any political reconciliation. Since then, the stalemate has been consolidated, as the separatist regions were backed by varying degrees of Russian support, while international mediators engaged in peacekeeping efforts lack the political will or leverage to attempt any longer-term "peacemaking."¹⁹

This stalemate continued as the political, economic and even military institutions of “proto-statehood” were formed and consolidated in Abkhazia and South Ossetia.²⁰

The “frozen” and unresolved nature of these conflicts was complicated by the introduction of military “peacekeepers,” which contributed to the separation of forces along artificial borders. In Abkhazia, the United Nations Observer Mission in Georgia (UNOMIG) was formed with a mandate to monitor the ceasefire agreement, while peacekeeping duties were carried out by a Russian-led force comprised of soldiers from the Commonwealth of Independent States (CIS).²¹ In South Ossetia, the Organization for Security and Co-operation in Europe (OSCE) Mission in Georgia was mandated to monitor the CIS peacekeeping mission. Prior to the August 2008 war, there were approximately 2,000 Russian “peacekeeping” troops stationed in Abkhazia and another 1,000 deployed in South Ossetia.²²

The specific characteristics of each actor contribute to the stalemate. Abkhazia had a long record of relative autonomy and enjoyed a degree of economic self-sufficiency, while South Ossetia had close ethnic, political, and commercial links with North Ossetia. Under several consecutive Georgian governments, Tbilisi consistently failed to offer any real political or economic incentives to entice either Abkhazia or South Ossetia to seriously consider returning to subordination under the Georgian state.²³ In the long-term, this lack of vision by Georgian officials, coupled with a stubborn refusal to compromise, only entrenched the determination of the majority of the Abkhaz and Ossets to reject any possible return to Georgian rule.²⁴

Approaches to Georgian Security

During its first decade of independence, Georgia experienced a breakdown of central authority, the spread of lawlessness in several regions, and the emergence of paramilitary groups and “warlords” in some areas.²⁵ The governments of both the first elected leader, nationalist Zviad Gamsakhurdia, and his successor, former Soviet Foreign Minister Eduard Shevardnadze, faced significant challenges from such “warlordism,” manifested through the localized power of small militias and armed gangs operating with near impunity.²⁶ Gamsakhurdia and Shevardnadze both attempted to combat these armed militia—with varying levels of success. The rise of these militias demonstrated the failure of the Georgian armed forces to either effectively incorporate them into the military

structure, as in the case of Armenia, or to disarm and disband them, as in Azerbaijan.²⁷

Although the Shevardnadze government faced a daunting challenge, with conflicts already flaring in South Ossetia and Abkhazia, its inability to counter or contain the threat from warlords contributed to national instability and state insecurity. The Shevardnadze period also marked a loss in authority over areas other than Abkhazia and South Ossetia, as central control over the southwestern Ajarian Autonomous Republic and the pro-Gamsakhurdia western provinces diminished greatly. The breakdown in military control over these areas eroded the credibility of the Georgian state, weakened economic and political reforms, compounded corruption, and endangered overall legitimacy.²⁸

After the “Rose Revolution” of November 2003, in which a group of young reformers led by former Justice Minister Mikheil Saakashvili forced the resignation of Shevardnadze, there were new hopes for a break-through in the Abkhaz and South Ossetian conflicts.²⁹ However, the optimism was short-lived, as the Saakashvili administration’s focus on defense spending represented the first commitment to building up the military after several years of neglect.³⁰ The move to prioritize the Georgian military signaled a wider strategy to restore central control and authority.³¹ This approach was more ambitious than previous attempts to intimidate or coerce Abkhazia and South Ossetia. Indeed, the Saakashvili strategy marked the start of a campaign designed to check the erosion of central government power that had continued unabated since the fall of the Soviet Union.³²

In many ways, the Saakashvili government acted on the basis of the recognition that it inherited a collapsing state, teetering on the brink of becoming a “failed” state.³³ Although the central Georgian government was still years away from being able to retake the breakaway regions of South Ossetia and Abkhazia by force, the new government sought to restore its control over the remainder of the country while ensuring its own political survival by leveraging its new-found nationalist credentials and by producing immediate economic results.³⁴ The Georgian government also exploited the Georgian Train and Equip Program (GTEP), an American project to build up the Georgian army for its own long-term interests.³⁵

The Georgian Train and Equip Program

In March 2002, the United States responded to the danger of Georgian “state failure” by launching a new \$64 million programme of military

assistance—the GTEP, which provided specialized counter-terrorism training for two thousand elite Georgian troops. Designed as a flexible, time-phased training initiative, the GTEP supplemented the existing bilateral military-to-military relationship between Georgia and the United States, but was not designed to provide the Georgian military with offensive capabilities that would upset the already delicate balance of power in the region.³⁶

Through innovative “train-the-trainer” efforts, US Army Special Operations personnel served as an important—and often the only—force to professionalize and modernize the Georgian armed forces.³⁷ Operationally, the programme centered on a counter-terrorism mission and served as a component of other US counter-terrorism efforts underway in the region in a broader campaign to bolster stability and counter Russian influence in the South Caucasus. The programme also shared similarities with the US effort to train and equip Colombian forces involved in counter-insurgency and counter-drug operations.³⁸

The GTEP suffered from two fundamental deficiencies. First, the early model of US military engagement in Georgia did little to address the reality of Georgia’s internal vulnerability. While the United States saw this effort as a symbolic affirmation of American commitment to Georgian statehood and sovereignty, the perception among many within Georgia—and by some in Moscow—was starkly different. The Georgian military viewed such US military assistance and training as the quickest and cheapest way to acquire the capabilities needed to retake control over Abkhazia and South Ossetia by force.³⁹

Implications of the 2008 War for Georgia

Misperceptions of both the scale of the US commitment to Georgia and the scope of the military benefits for Georgian forces fueled over-confidence regarding Georgian military capacity.⁴⁰ The dangers of this were most evident in August 2008, when the Georgian response to an escalation of Russian provocations led to a seven-day Georgian-Russian war, which culminated in the near-final loss of both Abkhazia and South Ossetia.⁴¹ This loss was consolidated in late August 2008, when Russia recognized the independence of Abkhazia and South Ossetia.

What are the prospects for reconciliation? Without any long-term strategy aimed at bridging the divide between the central Georgian government and the separatist movements in Abkhazia and South Ossetia, the efficacy of international efforts at mediation will be limited. It must also be recognized that such external mediation will only be effective as

long as there is political will on all sides to find a negotiated resolution. The need for a political commitment to mediation by all sides is a daunting prerequisite. There is another equally formidable obstacle to resolution: the stark absence of any attractive incentive from the central authorities, rooted in the consistent failure of consecutive Georgian leaders to recognize the need for concession and compromise with the Abkhaz and Osset peoples.⁴² Given the lack of accommodation and incentives from the Georgian side, Russian offers of security and political and economic support were readily welcomed in Abkhazia and South Ossetia.

Perhaps the only viable hope for the future of a reintegrated Georgia presents itself as the “missed opportunity” to recast Georgia into a confederation or federation. However, in the wake of Russian recognition of the independence of Abkhazia and South Ossetia after the 2008 war, even a belated move by Georgia to present new incentives and inducements could be seen as too little, too late for the Abkhaz and Ossets. It seems that the “resolution” to Georgia’s two “frozen” conflicts was forged neither by concession nor compromise, making negotiations at this stage both unlikely and unrealistic.

Nagorno-Karabagh: The Last “Frozen” Conflict

The Nagorno-Karabagh conflict, which resulted in approximately fifteen thousand casualties and hundreds of thousands of refugees and displaced persons in both Armenia and Azerbaijan, represents a political and diplomatic challenge.⁴³ Since the August 2008 Georgian-Russian war, the Karabagh conflict is now arguably the last remaining “frozen” conflict in the region.

The Nagorno-Karabagh issue “thawed” towards the end of the Soviet era. As early as 1988, within the context of the Gorbachev reform period, self-determination for Nagorno-Karabagh emerged as the core element of a revived Armenian nationalism. Following the outbreak of *pogroms* (campaigns of targeted ethnic violence) against Armenians in several Azerbaijani cities,⁴⁴ the Karabagh issue rapidly descended into open hostilities between Armenia and Azerbaijan.⁴⁵ As a result, the Karabagh conflict came to symbolize Armenian unification and mobilization and had important implications for the political, economic, and military development of independent Armenia.

Militarily, the conflict was well beyond the control of the then-Soviet-Armenian state, with military action in Karabagh dominated by small paramilitary units operating under autonomous command of Armenian commanders.⁴⁶ By 1993, the unification of these paramilitary

groups into a new “national army” was one of the more understated achievements of the first post-Soviet government, led by President Levon Ter-Petrosian. In the latter stages of the conflict, the unified Armenian forces consolidated control over most of Nagorno-Karabagh and seized several districts of Azerbaijan beyond the Karabagh borders. With both military victory and the seizure of territory—rare achievements in Armenian history—this success encouraged the militarization of Armenian society.⁴⁷

Politically, the lack of legitimacy of the Soviet-Armenian state only strengthened the appeal of those bold enough to challenge the regime. Guided by Ter-Petrosian, the so-called “Karabagh Committee”⁴⁸ was able to outflank the Soviet-Armenian leadership, maximizing the Karabagh issue and garnering both popular appeal and legitimacy.⁴⁹ During the first stage of Armenian independence, this new elite emerged from a virtual “state of war” in Nagorno-Karabagh, which served as the primary determinant of Armenian politics at the time. Indeed, the avenue to political and economic power for the Armenian elite was the Nagorno-Karabagh conflict. More moderate politicians were lost amid the rhetoric of Armenian nationalism.⁵⁰

For Ter-Petrosian’s government, it was increasingly apparent that this new elite threatened to impede the overall course of democratic and economic reform. When the ceasefire of 1994⁵¹ halted hostilities, but merely “froze” the underlying conflict, the resulting uneasy period of “neither peace nor war” enabled this new political elite to consolidate greater power. Steadily securing power from within the Ter-Petrosian government, the elite was quickly dominated by Defense Minister Serge Sarkisian, Prime Minister Robert Kocharian and former Defense Minister Vazgen Sarkisian. The first two were natives of Nagorno-Karabagh—Serge Sarkisian had led the small but impressive Karabagh armed forces, and Kocharian previously served as the Karabagh head of state. As their power and ambition grew, the men came to be seen as a new political force, and, in 1996, they collaborated to force the resignation of President Ter-Petrosian.

The rise of Kocharian, who became president in subsequent elections in 1998 and 2003, demonstrated the ascendancy of the Karabagh elite, which set out to consolidate many of the country’s networks of crime and corruption. Thus, the Karabagh conflict—in military, political, and economic terms—was the first and only source for legitimacy and power beyond the confines of the collapsing Soviet system. The initial disparity between the development of the military and the emergence of the state within the post-Soviet context served as the foundation for the subsequent militarization of the Armenian state, with important implications

for the intractability of the conflict, such as the general “institutionalization” of rigid nationalism and a weakening of more moderate political discourse.

Mediation Approaches to the Karabagh Conflict

Militarily, the May 1994 ceasefire effectively froze the conflict and established an informal “line of contact” running from the northern border of the Nagorno-Karabagh enclave to the south-eastern sector abutting the border with Iran.⁵² Since then, the conflict has been subject to an international mediation effort aimed at forging a negotiated resolution. The mediation effort has been managed by the Commission on Security and Co-operation in Europe (CSCE)—now the OSCE—through the so-called Minsk Group, a body co-chaired by France, Russia, and the United States working in close and effective co-operation with the parties to the conflict.⁵³

The long record of diplomatic activity in mediating the Nagorno-Karabagh conflict has been characterized by a period of shuttle diplomacy, with the Minsk Group mediators engaging each of the parties (Armenia, Azerbaijan, and Nagorno-Karabagh) in talks, informal meetings, and formal summits.⁵⁴ During 1997 and 1998, the Minsk Group formulated and presented no less than three separate peace proposals, although each was rejected by one or another of the parties. The mediation effort then assumed a new level in 1999, as the Armenian and Azerbaijani presidents pursued direct talks, culminating in a March 2001 summit in Paris presided over by the French president.⁵⁵

The Paris summit led to a follow-up summit meeting in the United States directed by then-Secretary of State Colin Powell that brought Armenian President Kocharian and his Azerbaijani counterpart, Geidar Aliyev, to Key West, Florida, in April 2001. The Key West summit came closest to resolving the conflict, as each side made significant progress, yet failed at the last minute to conclude a comprehensive settlement.⁵⁶ In the wake of the summit, the Armenian and Azerbaijani presidents continued their talks and held a symbolically important meeting at the Armenian-Azerbaijani border in August 2002.⁵⁷ With the death of President Aliyev in 2003 and the onset of presidential elections in both countries in that year, the negotiation process slowed.

In 2004, the OSCE mediators initiated a series of meetings in Prague between the Armenian and Azerbaijani foreign ministers, focusing on specific details to be negotiated on a ministerial level in preparation for subsequent presidential talks.⁵⁸ This format became known as the “Prague

Process,” which was designed to “reinvigorate” dialogue between the parties. The Prague Process continues to this day and has been bolstered by additional talks between the Armenian and Azerbaijani presidents, with the most recent meetings continuing into late 2009. The current peace talks focus on a draft document known as the Madrid Proposals,⁵⁹ which were presented to the conflict sides by the Minsk Group mediators in November 2007 as the most recent starting point for concrete negotiations.⁶⁰

However, any real progress in the diplomatic approach to the Karabagh problem seems both unlikely and, perhaps, unreasonable, for two reasons. First, despite a long record of mediation, there has been little to show for such diplomatic engagement. Nonetheless, the very fact that the Armenian and Azerbaijani leaders are meeting and discussing the conflict could be a positive development. Second, the situation on the ground has remained virtually unchanged since a ceasefire was signed sixteen years ago. The Armenian and Azerbaijani mediators have little domestic leverage, and since France, Russia, and the US have competing interests in the Caucasus, any real break-through over the Nagorno-Karabagh conflict depends more on the regional leaders themselves.

Nagorno-Karabagh: The Missing Dimension of the Turkish-Armenian Protocols

A regional breakthrough on Nagorno-Karabagh is more possible in light of advances in Turkish-Armenian diplomacy. In October 2009, the foreign ministers of Turkey and Armenia signed two protocols: one on the establishment of diplomatic relations, the other on the development of relations between the Republic of Armenia and the Republic of Turkey.⁶¹ Despite the controversy raised by the protocols and the opposition of the Armenian Diaspora,⁶² these developments represent a shift in the fragile diplomatic balance between Armenia, Turkey, and Turkey's traditional ally, Azerbaijan. The relationship between Ankara and Baku has suffered as a result of Armenian-Turkish rapprochement.⁶³ It is in Turkey's interest to promote negotiation between Armenia and Azerbaijan over Karabagh. Any progress in 2010 would affirm Turkish strategy and convince Azerbaijan that the future lies more in opening borders than in maintaining blockades. However, Turkey has little leverage to promote this progress since it de-linked the Karabagh issue from negotiations on the protocols with Armenia.⁶⁴ Consequently, Turkey stands on the sidelines, making demands but exerting little significant power.

Even after the Armenian and Azerbaijani presidents met six times in 2009 alone, there are few expectations for any breakthrough in 2010.⁶⁵ The momentum generated by Turkish-Armenian diplomacy has yet to impact on Karabagh. In Azerbaijan, stubborn diplomacy demands nothing short of the return of all of Nagorno-Karabagh and its territories, something that Armenia sees as a maximalist and unreasonable starting point for diplomatic negotiations.⁶⁶ More disturbingly, Azerbaijani defense spending now exceeds \$1.3 billion annually, exacerbating the threat of a forced military resolution to the conflict.⁶⁷ A day before meeting his Armenian counterpart in November 2009, Azerbaijani President Ilham Aliyev warned that “Azerbaijan is spending billions on buying new weapons, hardware, strengthening its position on the line of contact,” stressing that “we have the full right to liberate our land by military means.”⁶⁸ Such a war of words has hardened positions and postures in each country. It has also placed Turkey in a vulnerable position, as each step closer to Armenia is a step away from Azerbaijan.

Another difficulty to be faced in 2010 comes from the Armenian side. Even if the Armenian leadership chose to make a concession on Karabagh, it would be “political suicide” to do so after recently sparking such opposition to the Turkish-Armenian protocols. With this “war of words” between Armenia and Azerbaijan, Turkish leaders face a difficult challenge in 2010. Ankara has gone too far on the road to normalizing relations with Armenia to turn back now. At the same time, the removal of the Karabagh issue from the protocols as a direct precondition makes it much more difficult for Turkey to demand a concrete concession over Karabagh in the future.⁶⁹

Looking beyond the Parameters of Conflict

Against this backdrop of protracted mediation efforts and a fragile military situation, the imperative is to address the underlying lack of trust among the parties to the Nagorno-Karabagh conflict. One of the most attractive measures may be to seek to create a new environment conducive to fostering a more active, but more limited, round of negotiations among all parties to the conflict, including Nagorno-Karabagh. Such a measure would be buttressed by policies to build confidence and trust on a basis of “bridging divides” and “spanning generational divisions.”

More specifically, such an initiative would offer a new approach of forging a forward-looking strategic analysis of the Nagorno-Karabagh conflict. By offering a long-term analysis focusing on the next five to ten years, this initiative may provide key decision makers and influential elit-

es in each country with a new opportunity for “thinking strategically” about Nagorno-Karabagh. What makes this effort especially attractive is that this approach has been largely absent from the debate and dialogue in Armenia, Azerbaijan, and Nagorno-Karabagh.

Recommendations

(1) Look beyond Vested Interest Groups

One of the most important aspects of engaging the political and economic elites in each country is to look beyond the current group of officials and leaders and focus on three specific subgroups: (1) the emerging political elite, including military and security officers, many of whom have completed Western training programmes; (2) commercial and business leaders, especially those engaged and interested in regional or global business opportunities beyond their home base; and (3) student groups, university faculties and societies, and internet-based media sources.

(2) All Politics Are Local: Finding Common Issues

An interesting approach is illustrated by the “wild-fires” issue, which arose in August 2006, when the Azerbaijani government turned to the OSCE for assistance in dealing with a series of brush fires which damaged more than sixty square kilometers in the eastern parts of the Armenian-held areas of Azerbaijan beyond the border of Nagorno-Karabagh.⁷⁰ The largest areas affected were reportedly concentrated in uninhabited areas and in several deserted former Azerbaijani villages. Although this tended to limit damage and prevented the need for any relocation of inhabitants, it fostered some suspicions of a deliberate campaign to inflict environmental damage prior to a new round of Minsk Group negotiations that discussed the possible return of the Armenian-held areas.

The fire issue quickly became politicized in July and August 2006, as Azerbaijan accused Armenia of starting the fires deliberately.⁷¹ Officials in Armenia and Nagorno-Karabagh rejected the accusations, arguing that brush fires are commonplace in the area and pointing to natural factors as the triggers of the fires. Significantly, the Azerbaijani allegations were also dismissed by the personal representative of the chairman-in-office of the OSCE.⁷² In 2006, the OSCE coordinator of economic and environmental activities carried out preliminary inter-ethnic work regarding the outbreak of summer “wild-fires” along the border area between Nagorno-Karabagh and Azerbaijan. This effort il-

lustrates that environmental and economic issues offer an important area of shared interests that could overcome the parameters of the conflict. Most importantly, common interests on environmental and economic issues are predominantly local in nature. This provides leaders in border areas with a chance to explore shared interests with their counterparts across the border.

The “wild-fires” issue is significant for three reasons. First, the brush fires demonstrated the shared nature of environmental threats, with a need for co-operation to address regional environmental challenges. Such shared environmental threats, including soil degradation and air and water pollution, recognize neither national borders nor artificial military conflict zones. All parties must recognize common ecological threats and admit that greater environmental policy co-ordination is in each country’s national interest. Second, the brush fires presented an opportunity for each side to demonstrate a new maturity, as well as contributing to confidence-building. Some examples of confidence-building measures include greater exchanges and co-operation among civil society groups, journalists, and artists, allowing each side to garner greater personal and professional contacts with each other. Such efforts, which can bolster earlier efforts at “track-two” diplomacy and “people-to-people” exchanges, may supplement ongoing efforts now underway between Turkey and Armenia.⁷³ Finding solutions to these environmental problems should be seen as a positive-sum game, offering benefits to both sides. Third, the brush fires presented an opportunity for the OSCE to deepen and expand ties between the OSCE and the relevant state bodies from each side. Moreover, the OSCE may also serve as a facilitator for some initial local co-operation, perhaps between local municipal and village leaders on both sides. Thus far, one of the most promising areas for pursuing new contacts and co-operation between all sides to the conflict has been the most neglected. The local level on all sides, which includes village and municipal officials, school teachers and administrators, small civic groups, and non-government organizations, offers substantial opportunity for reaching beyond the confines of politics and closed borders.

Conclusion

The lingering “frozen” conflicts of the South Caucasus have garnered great international attention and external mediation to resolve the disputes over sovereignty and territory. While the prospects for the resolution of Georgia’s two “frozen” conflicts appear bleak in the near future,

the Karabagh issue is still firmly on the agenda of both international mediators and regional politicians. However, within this regional game of chess, it is hard to predict the impact on Nagorno-Karabagh of any developments. This article presents the argument that the regional reality of these “frozen” conflicts is increasingly defined by local politics and economics, leading us to the conclusion that democratization must come first, prior to any hopes for an effective or lasting resolution to the “frozen” conflicts in the region. Most clearly, the institutions of democracy are more important for real democratization than individual politicians. Consequently, the regional regimes themselves hold the key to their future. Only then can the South Caucasus hope to graduate from its beleaguered status as a “region at risk.” ■

Notes

¹ See Fiona Hill and Omer Taspinar, “Turkey and Russia: Axis of the Excluded?” *Survival* 48, no. 1 (2006): 81–92; Robert M. Cutler, “Russia, Turkey and Iran: An Eternal Triangle,” CACI Analyst, Central Asia-Caucasus Institute, July 5, 2000, <http://www.cacianalyst.org/?q=node/296> (accessed February 25, 2010); and Jaba Devdariani, “Georgia and Russia: The Troubled Road to Accommodation,” in *Statehood and Security: Georgia after the Rose Revolution*, eds. Bruno Coppieters and Robert Legvold (Cambridge, MA: MIT Press, 2005), 153–204.

² See Thomas de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War* (New York: New York University Press, 2003); and Svante E. Cornell, *Small Nations and Great Powers: A Study of Ethnopolitical Conflict in the Caucasus* (London: Curzon Press, 2001).

³ The word *nagorno* means “mountainous” in the Russian language.

⁴ For the reference of the South Caucasus as a “region at risk,” see Richard Giragosian, “(Re)Positioning Armenian Security and Foreign Policy within a Region at Risk,” paper presented at the conference on State-Building and Policy-Making in an Independent Armenia: 1991–2006, Columbia University, March 11, 2006.

⁵ For details on the attempt to link the Nagorno-Karabagh conflict with Turkish-Armenian diplomacy, see Ron Synovitz, “Pitfalls Remain as Turkey, Armenia Move Toward Reconciliation,” *Radio Free Europe/Radio Liberty*, September 1, 2009; and International Crisis Group (ICG), “Turkey and Armenia: Opening Minds, Opening Borders,” Europe Report No. 199, April 14, 2009, 6–7.

⁶ See Robert Avetisyan, “Nagorno-Karabakh Must No Longer Be Barred from the Negotiating Table,” *Radio Free Europe/Radio Liberty*, July 14, 2009; Nikolay Hovhannisyan, *The Karabakh Problem: Factors, Criteria, Variants of Solution* (Yerevan: National Academy of Sciences of Armenia Institute of Oriental Studies, 1999), 23; and Valery Tishkov, *Ethnicity, Nationalism and Conflict in and after the Soviet Union: The Mind Aflame* (London: Sage, 1997), 107.

⁷ See Stephen Astourian, "The Nagorno-Karabakh Conflict: Dimension, Lessons, and Prospects," *Mediterranean Quarterly* 5, no. 4, (1994): 85–109, 90; Ariel Cohen, *Eurasia in Balance: US and the Regional Power Shift* (Aldershot: Ashgate, 2005), 60; and Claire Nuttall, "Slow Progress in latest Nagorno-Karabakh Negotiations," *Business New Europe*, July 26, 2009.

⁸ See Stephen Astourian, "In Search of their Forefathers: National Identity and the Historiography and Politics of Armenian-Azerbaijani Ethnogeneses," in *Nationalism and History: The Politics of Nation-Building in Post-Soviet Armenia, Azerbaijan, and Georgia*, eds. Donald V. Schwartz and Razmik Panosian (Toronto: University of Toronto, Centre for Russian and East European Studies, 1994); Glenn E. Curtis, *Azerbaijan: A Country Study* (Washington, DC: GPO, 1995); and Avetisyan, "Nagorno-Karabakh."

⁹ See David Darchiashvili, "Georgian Defense Policy and Military Reform," in *Statehood and Security*, eds. Coppieters and Legvold; and Robert L. Larsson, "The Enemy Within: Russia's Military Withdrawal from Georgia," *Journal of Slavic Military Studies* 17, no. 3 (2004): 405–24.

¹⁰ One of the main differences between the Abkhaz and Osset conflicts was the geopolitical ramifications of the South Ossetia case, which was a quest to unify with neighbouring North Ossetia in the Russian Federation. Rather than an outright separatist bid for independence, like the Abkhaz conflict, the South Ossetia conflict invoked a direct Russian interest. Nevertheless, both conflicts posed separatist threats to Georgian sovereignty and territorial integrity.

¹¹ See ICG, "Abkhazia Today," Europe Report No. 176, September 15, 2006, 1–2; Human Rights Watch, "Georgia/Abkhazia: Violations of the Laws of War and Russia's Role in the Conflict," March 1995, <http://www.hrw.org/sites/default/files/reports/georgia953.pdf> (accessed February 25, 2010).

¹² See Irakly Areshidze, *Democracy and Autocracy in Eurasia* (East Lansing, MI: Michigan State University Press, 2007), 20–3.

¹³ See Anna Matveeva and Duncan Hiscock, *The Caucasus: Armed and Divided* (London: SaferWorld, April 2003); Dov Lynch, *Engaging Eurasia's Separatist States: Unresolved Conflicts and De Facto States* (Washington, DC: US Institute of Peace, 2004).

¹⁴ See Lynch, *Engaging Eurasia's Separatist States*; Svante E. Cornell, *Autonomy and Conflict: Ethnoterritoriality and Separatism in the South Caucasus* (Uppsala: Department of Peace and Conflict Research, 2002).

¹⁵ See Hewitt, *Abkhazians*; Areshidze, *Democracy and Autocracy*; ICG, "Abkhazia Today."

¹⁶ See Human Rights Watch, "Georgia/Abkhazia"; Charles King, "The Benefits of Ethnic War: Understanding Eurasia's Unrecognized States," *World Politics* 53, no. 4 (2001): 524–52; Jim Nichol, "Armenia, Azerbaijan, and Georgia: Political Developments and Implications for U.S. Interests," Congressional Research Service (CRS), April 2009, 14.

¹⁷ The first ceasefire agreement was mediated by Russia in September 1992, although further agreements were signed in May and July 1993; see John Mackinlay and Evgenii Sharov, "Russian Peacekeeping Operations in Georgia," in *Regional Peace-*

keeping: *The Paradox of Russian Peacekeeping*, eds. John Mackinlay and Peter Cross (Tokyo: United Nations University Press, 2003), 63–87.

¹⁸ According to data and figures from the UNHCR and the Internally Displaced Monitoring Centre (IDMC); UNHCR, “UNHCR Georgia 2010 Operation,” UNHCR Tbilisi, November 2009, <http://www.unhcr.org/4b274bcf9.html> (accessed February 25, 2010); see Richard Giragosian, “The Transcaucasus: An Overview of Challenges and Crises Facing Children,” Report to the Session of the Preparatory Committee for the Special Session of the 2001 United Nations General Assembly Follow-up to the World Summit for Children, United Nations, New York, January 29–February 2, 2001, 3–4.

¹⁹ See Mackinlay and Sharov, “Russian Peacekeeping Operations,” 76–82.

²⁰ In this context, the institutions of “proto-statehood” refer to the development of state institutions that can be seen as embodying much of the framework of state sovereignty, such as democratic elections, civil society, diplomatic activity, and other essential government services, albeit without formal recognition. The emergence of such a parallel state is especially important in cases of the separatist areas where there was a history of little or no central authority by the official titular government.

²¹ See Jaba Devdariani, “Georgia and Russia”; S. Neil MacFarlane and Larry Minear, *Armed Conflict in Georgia: A Case Study in Humanitarian Action* (Providence, RI: Watson Institute, 1996).

²² For details on the composition of the Russian peacekeepers, see Mackinlay and Sharov, “Russian Peacekeeping Operations,” 63–87.

²³ See Hewitt, *Abkhazians*; Oksana Antonenko, “Frozen Uncertainty: Russia and the Conflict Over Abkhazia,” in *Statehood and Security*, eds. Coppieters and Legvold, 208–17.

²⁴ See ICG, “Abkhazia Today,” 7–9.

²⁵ For more on “warlords” in the Georgia case, see the work of Professor Kimberly Marten, a political science professor at Columbia University’s Barnard College. Kimberly Marten, *Enforcing the Peace: Learning from the Imperial Past* (New York: Columbia University Press, 2004); id., *Weapons, Culture, and Self-Interest: Soviet Defense Managers in the New Russia* (New York: Columbia University Press, 1997); and id., *Engaging the Enemy: Organization Theory and Soviet Military Innovation* (Princeton, NJ: Princeton University Press, 1993).

²⁶ See *Statehood and Security*, eds. Coppieters and Legvold, 276–83.

²⁷ See David Darchiashvili, “Georgian Defense Policy,” in *Internal Factors in Russian Foreign Policy*, eds. Neil Malcolm, Alex Pravda, Roy Allison, and Margot Light (Oxford: Oxford University Press, 1996), 271–2.

²⁸ See Greg Hansen, “Displacement and Return,” in *A Question of Sovereignty: The Georgia–Abkhazia Peace Process*, Issue 7 of Accord (London: Conciliation Resources, 1999), 56.

²⁹ See ICG, “Abkhazia Today,” 2–4.

³⁰ See Liz Fuller and Richard Giragosian, "Georgian Parliament Approves Expansion of Armed Forces," *Radio Free Europe/Radio Liberty Newline Endnote*, September 19, 2007; Liz Fuller and Richard Giragosian, "Analysis: Georgia Reverses Decision to Cut Defense Spending," *Radio Free Europe/Radio Liberty Caucasus Report*, June 26, 2008.

³¹ See "New Leader Vows to Hold Next Inauguration in Abkhazia," *Civil Georgia*, January 24, 2004.

³² See Antonenko, "Frozen Uncertainty," 210–6.

³³ See Areshidze, *Democracy and Autocracy*, 230–2.

³⁴ For details, see Molly Corso, "Georgian President Saakashvili's Campaign against Corruption," *EurasiaNet*, December 22, 2004; John B. Taylor, "Economic Freedom and Georgia's Rose Revolution," remarks at the Caucasus Business School, Tbilisi, Georgia, November 22, 2004.

³⁵ See Richard Giragosian, "Shifting Security in the South Caucasus," *Connection* VI, no. 3 (2007): 100–6; Fuller and Giragosian, "Georgian Parliament Approves Expansion."

³⁶ See Liz Fuller and Richard Giragosian, "Why Should Georgia Need a Larger Army?" *Radio Free Europe/Radio Liberty Caucasus Report*, July 22, 2005.

³⁷ See Richard Giragosian, "The U.S. Military Engagement in Central Asia and the Southern Caucasus: An Overview," *The Journal of Slavic Military Studies* 17, no. 1 (2004): 43–77; Richard Giragosian, "The Military Balance in the South Caucasus and Nagorno-Karabakh," briefing to Radio Free Europe/Radio Liberty staff, Prague, May 25, 2006.

³⁸ See Giragosian, "U.S. Military Engagement," 46–57; Richard Giragosian, "The Strategic Importance of Central Asia and the South Caucasus," presentation at JFK Special Warfare Center and School, US Army, Fort Bragg, December 13–4, 2005.

³⁹ See Damien Helly and Giorgi Gogia, "Georgian Security and the Role of the West," in *Statehood and Security*, eds. Coppieters and Legvold, 284–6.

⁴⁰ See interview with Georgian Deputy Defence Minister Batu Kutelia, cited in "Tbilisi Admits It Miscalculated Russian Reaction," *Financial Times*, August 22, 2008; Richard Giragosian, "Seeking Security over Strategy in Georgia," *Radio Free Europe/Radio Liberty Newline Endnote*, March 1, 2002.

⁴¹ See Richard Giragosian, "Georgian Planning Flaws Led to Campaign Failure," *Jane's Defence Weekly*, August 15, 2008; Koba Liklikadze, "Lessons and Losses of Georgia's Five-Day War with Russia," *Eurasia Daily Monitor*, Jamestown Foundation, September 26, 2008;

⁴² See ICG, "Abkhazia Today," 3–5.

⁴³ See Nichol, "Armenia, Azerbaijan, and Georgia," 11; Richard Giragosian, "Military Buildup in South Caucasus Adds to Tensions," *Radio Free Europe/Radio Liberty Newline Endnote*, October 16, 2006.

⁴⁴ Beginning on January 13, 1990, a seven-day pogrom was launched targeting Armenians in the Azerbaijani capital Baku, culminating in a death toll of between

forty-eight and sixty-six, with most victims killed after being stabbed or beaten to death. The Baku pogroms followed a similar series of ethnic violence in 1988. In that incident, known as the Sumgait pogrom, violent mobs targeted the Armenian population of the seaside town of Sumgait in then-Soviet Azerbaijan on February 27, 1988, killing some three dozen Armenians. See de Waal, *Black Garden*, 32; Yuri Rost, *The Armenian Tragedy: An Eye-Witness Account of Human Conflict and Natural Disaster in Armenia and Azerbaijan* (New York: St Martin's Press, 1990), 27; Human Rights Watch, "Bloodshed in the Caucasus: Escalation of the Armed Conflict in Nagorno-Karabakh," Washington, DC, September 1992; and Stuart Kaufman, *Modern Hatreds: The Symbolic Politics of Ethnic War* (New York: Cornell University Press, 2001), 49.

⁴⁵ See Mark Beissinger, *Nationalist Mobilization and the Collapse of the Soviet State* (Cambridge: Cambridge University Press, 2002); Peter Rutland, "Democracy and Nationalism in Armenia," *Europe-Asia Studies* 46, no. 5 (1994): 839–61.

⁴⁶ See Rouben Zargarian, "International Legal Status of the Republic of Nagorno Karabakh," in *Contrasts and Solutions in the Caucasus*, eds. Ole Hoiris and Sefa Martin Yürükel (Aarhus: Aarhus University Press, 1998), 343–5; Mark Saroyan, "The 'Karabakh Syndrome' and Azerbaijani Politics," *Problems of Communism* 39, no. 5 (1990): 12–9.

⁴⁷ The trend of a "militarization" of society was evident in the shift in the political discourse, from a more moderate and inclusive politics to a more rigid debate of strongly exclusive nationalism. The rise of a modern armed forces as a professional and clean state institution among widespread and entrenched state corruption also did much to magnify this trend. See Richard Giragosian, "Redefining Armenian National Security," *Demokratizatsiya* 14, no. 2 (2006): 223–34.

⁴⁸ The most prominent and active members of the "Karabakh Committee" included Levon Ter-Petrosian, Vazgen Manukian, Babken Ararktsian, Igor Muradyan, Samson Ghazaryan, Ashot Manucharyan, and Raphael Ghazaryan; see Saroyan, "Karabakh Syndrome"; and de Waal, *Black Garden*.

⁴⁹ See Tadeusz Swietochowski, *Russia and Azerbaijan: A Borderland in Transition* (New York: Columbia University Press, 1995), 182–6.

⁵⁰ The clearest example was the forced resignation of former Armenian President Levon Ter-Petrosian, allegedly after he sought to pursue a conciliatory policy toward Turkey that was deemed to be insufficiently nationalist.

⁵¹ The Russian-brokered ceasefire agreement of 1994 was signed by Armenia, Azerbaijan, and Nagorno-Karabagh, as full parties to the conflict, and Russia pledged to be the guarantor, although the OSCE later became the sole monitoring body to enforce the ceasefire. See Liz Fuller and Richard Giragosian, "Nagorno-Karabakh: What is the Sticking Point in the Peace Talks?" *Radio Free Europe/Radio Liberty*, June 12, 2006.

⁵² S. Neil MacFarlane and Larry Minear, "Humanitarian Action and Politics: The Case of Nagorno-Karabakh," Occasional Paper No. 25, Thomas J. Watson Jr. Institute for International Studies, Brown University, Providence, 1997, 124.

⁵³ See Richard Giragosian, "Nagorno-Karabagh: International Political Dimensions," in *The Making of Nagorno-Karabagh: From Secession to Republic*, ed. Levon Chorbajian (London: Palgrave, 2001).

⁵⁴ See Brenda Shaffer, "A Conflict That Can Be Resolved in Time: Nagorno-Karabakh," *International Herald Tribune*, November 29, 2003; Carol Migdalovitz, "Armenia-Azerbaijan Conflict," Congressional Research Service (CRS), March 25, 2003, 4-7.

⁵⁵ See Galina Starovoitova, "National Self-Determination: Approaches and Case Studies," Occasional Paper No. 27, Thomas J. Watson Jr. Institute for International Studies, Brown University, Providence, 1997, 68.

⁵⁶ See Jean-Christophe Peuch, "Armenia/Azerbaijan: International Mediators Report Progress on Karabakh Dispute," *Radio Free Europe/Radio Liberty*, April 10, 2001; Liz Fuller and Richard Giragosian, "Nagorno-Karabakh."

⁵⁷ See De Waal, *Black Garden*, 109.

⁵⁸ See Nichol, "Armenia, Azerbaijan, and Georgia," 5.

⁵⁹ The Madrid Principles presented by OSCE Minsk Group in November 2007 stipulate the withdrawal of Armenian forces from Nagorno-Karabagh and its adjacent regions, including the district of Kelbajar and the strategic Lachin corridor that links Armenia to Nagorno-Karabagh; the demilitarization of these territories followed by the deployment of international peacekeeping forces there; arrangements for IDPs to return safely; and a referendum among the population of Nagorno-Karabagh to determine its future status.

⁶⁰ See Anna Israelian and Aghasi Yenokian, "Osakanian Defense Madrid Principles," *Radio Liberty*, August 3, 2009.

⁶¹ The full text of the two protocols are available at the official website of the Turkish Ministry of Foreign Affairs; see "Protocol on the Establishment of Diplomatic Relations between the Republic of Turkey and the Republic of Armenia," <http://www.mfa.gov.tr/data/DISPOLITIKA/t%C3%BCrkiye-ermenistan-ingilizce.pdf> (accessed February 25, 2010).

⁶² The global Armenian diaspora is strongly opposed to the Turkish-Armenian protocols, arguing that the normalization effort would weaken the international campaign for recognition of the Armenian genocide. See Bridget Johnson, "Armenian Group Slams the White House for Pushing Turkey Agreements," *The Hill*, October 3, 2009. Diaspora groups also created a website devoted to their opposition to the protocols, see <http://www.stoptheprotocols.com> (accessed February 25, 2010).

⁶³ On the deterioration of Azerbaijani-Turkish relations, see Anar Valiyev, "The Turkish-Armenian Protocols: Implications for Azerbaijan," *Caucasus Analytical Digest* no. 11, November 23, 2009, 5-8.

⁶⁴ See David Judson and Irem Koker, "Turkey-Armenia Process at Turning Point," *Hurriyet Daily News & Economic Review*, December 18, 2009.

⁶⁵ See David Judson and Irem Köker, "US Hails Karabakh Peace Talks as Breakthrough," *Hurriyet Daily News & Economic Review*, July 15, 2009.

⁶⁶ See Nichol, "Armenia, Azerbaijan, and Georgia"; Migdalovitz, "Armenia-Azerbaijan Conflict."

⁶⁷ See Richard Giragosian, "Looking to 2020: Azerbaijan's Military Aspirations," *Jane's Islamic Affairs Analyst*, April 23, 2008.

⁶⁸ Lada Yevgrashina, "Azerbaijan May Use Force in Karabakh after Kosovo," *Reuters*, March 4, 2008; "Azerbaijan Military Threat to Armenia," *The Daily Telegraph*, November 22, 2009.

⁶⁹ See Judson and Koker, "Turkey-Armenia Process."

⁷⁰ See Organization for Security and Co-operation in Europe (OSCE), "Report on Fires Affecting Areas Close to the LOC," Personal Representative of the OSCE Chairman-in-Office on the Conflict Dealt with by the OSCE Minsk Conference, Tbilisi, July 10, 2006, http://www.osce.org/documents/nk/2006/08/20134_en.pdf (accessed February 25, 2010).

⁷¹ Interviews with OSCE officials and senior staff from the Azerbaijani Ministry of Foreign Affairs.

⁷² See OSCE, "Report on Fires."

⁷³ The UK group Conciliation Resources and the Armenia-based Civil Society Institute (CSI) have carried out a number of such programs in the past several years; see CSI, <http://www.csi.am> (accessed February 25, 2010); see also Haroutiun Khachatryan, "Intellectual Shuttle Diplomacy," *EurasiaNet*, July 11, 2007.

Transnistria: In Search of a Settlement for Moldova's Breakaway Region

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JOHN BEYER

ABSTRACT

The Transnistria issue has generally been studied through the lenses of political analysis, international relations, or area studies. Such a development is hardly surprising, given the high level of interest across a range of academic disciplines in both the disintegration of the Soviet Union after 1989 and in the current external strategies of the Russian Federation. This article draws on a conflict analysis framework to provide an abbreviated examination of the factors and players in the stand-off over Transnistria and is based on written source materials, interviews, and the author's experience as British Ambassador to Moldova 2006–2009, a period during which the conflict analysis was put into effect. However, the views expressed are those of the author alone. As well as outlining the structural causes behind the conflict, this article offers some comparisons with other conflicts in the region and addresses factors that keep the conflict alive. A further section examines the extent to which these factors are permanently entrenched, considers the question of whether a separate Transnistrian identity exists and analyses the roles and attitudes of the actors, both internal and external. Finally, the article identifies elements of dynamism that might enable change and concludes with some brief strategies for resolution.

Introduction¹

Transnistria declared its separation from the newly independent Republic of Moldova on September 2, 1990.² The Moldovan Popular Front, which was elected in February 1990, favoured the Romanian language and an orientation towards Romania, while militants preferred political unity with Romania. Operating in a climate of ultra-nationalism and intolerance, the Moldovan Popular Front set out to remove Russian-speakers from public positions. Prime Minister Mircea Druc was quoted as saying: "Do what you want, Russian brothers, but do it in your own land!"³ This played into the hands of conservatives in Transnistria, the narrow strip of Moldova to the East of the River Nistru.⁴ It provided support for those who wanted a separate state, linked to Russia if not part of it: They looked to support from Russian forces based in Transnistria.⁵ Rhetoric

John Beyer, "Transnistria: In Search of a Settlement for Moldova's Breakaway Region," *St Antony's International Review* 6, no. 1 (2010): 165–87.

escalated on both sides, and fighting broke out in March and lasted until June 1992. Under Russian sponsorship, a ceasefire was agreed on July 21, 1992. This was too late to save several hundred lives.⁶ Since the conflict, distrust (particularly at the elite level) has become embedded and has undermined settlement efforts.⁷ Bilateral Moldovan-Russian talks have run in parallel to, or alternated with, a formal mechanism under the Organization for Security and Co-operation in Europe (OSCE). However, both tracks have been inconclusive.⁸

A key external factor is that the Russian Federation wishes to maintain its strategic interests in Transnistria; Russian troops stationed there effectively block eastward expansion of the North Atlantic Treaty Organization (NATO).⁹ Meanwhile, Ukraine has good reasons (not least because it shares a border with Transnistria) to find a settlement and has the capability to use its influence to achieve one.¹⁰ Compared to the parallel conflicts in Georgia and Armenia/Azerbaijan, whose origins also lie in the collapse of the Soviet Union, the Transnistrian case is notable for its low intensity, indeed its passivity: There is no ethnic or religious factor and no ongoing violence, so it is rightly seen as the case most amenable to resolution.¹¹ Since Romania's accession to the European Union (EU) in 2007, the Transnistria conflict is now directly on the borders of the EU. Much can be done to improve the atmosphere between the parties to the conflict, but external actors are of crucial importance. The EU has the incentive and, increasingly, the means to influence the protagonists, but it can only achieve results by working with Russia, as co-operation depends on the wider EU-Russia relationship.

The general approach of studies on the Transnistria issue has been through the lenses of political analysis, international relations, or area studies.¹² This is hardly surprising, given the high level of interest across a range of academic disciplines both in the disintegration of the Soviet Union after 1989 and the external strategies of the Russian Federation in the present. This paper uses a conflict analysis framework to provide an abbreviated examination of the factors and players in the stand-off. Given the standpoint of the writer as practitioner rather than academic, this analysis is policy-oriented rather than theoretical. The paper outlines the *structural causes* behind the conflict and offers some comparisons with other conflicts in the region: It addresses factors which keep the conflict alive and the extent to which these are permanently entrenched (for example, the question of whether a separate Transnistrian identity exists); the roles and attitudes of the *actors* (internal and external) involved; some elements of *dynamism* which might enable change; and concludes briefly with some *strategies* for resolution. This article is based on written source materials, interviews, and the author's experience as British

Ambassador to Moldova from 2006 to 2009, a period during which the conflict analysis was put into effect. However, the views expressed are those of the author alone.

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“Frozen Conflicts” in Transnistria: Neither Frozen nor a Conflict?

There is continuing debate amongst concerned specialists about what constitutes a conflict.¹³ At its simplest level, conflict analysis can break down conflict types into four main categories: At one end of the spectrum, the situation is described as *no conflict*; at the other extreme as *open conflict*; in between are *surface conflicts* (where neither real roots nor structural causes exist); and *latent conflict* (where the conflict is below the surface, but with a potential for violence).¹⁴ In the case of Transnistria, while scuffles and stand-offs occurred between the parties, there have been no fatalities since 1992. In this sense it fits the “frozen” epithet so inappropriately applied to the more violent struggles in Azerbaijan/Armenia and Georgia. Therefore, the Transnistrian problem is currently best described as a *latent conflict*, which is liable to erupt under external pressures.¹⁵ For example, during the Georgian-Russian war in South Ossetia in August 2008, some Transnistrians genuinely believed that the Moldovans might try to use force against them, which induced them to appeal to Russia to send military support for its citizens in Transnistria.¹⁶

An Ethnic or Religious Dimension?

While other post-communist conflicts such as those in Georgia (South Ossetia and Abkhazia) and Armenia/Azerbaijan (concerning Nagorno-Karabagh¹⁷) have ethnic, religious, and linguistic dimensions, none of those factors is present in the Transnistrian case.¹⁸ Despite the rhetoric of the early 1990s (which is often resurrected), the linguistic mix is not as simple as the formulaic stereotype, “Transnistrians speak Russian, Moldovans speak Romanian,” suggests. According to the 2004 Moldovan census, in Transnistria, 38 per cent consider themselves Russian, 29 per cent Ukrainian, and 32 per cent “Moldovan.”¹⁹ While around 200,000 people in Transnistria think of themselves as Russians, so do around 100,000 in the capital, Chisinau. Concerning religion, the population in both Transnistria and Moldova proper is predominantly Russian Orthodox; both look for spiritual leadership to the Patriarch in Moscow. Freedom of movement presents another contrast to the Georgian and

Armenia/Azerbaijan cases. Although visitors to Transnistria have to pay a fee, there is no restriction of the movement of people between Transnistria as such. Many have relatives on the other side of the river. Over 5,000 Transnistrian students attend university in Chisinau.²⁰

Reunification is not an issue among the Transnistrian public; livelihood, education, and employment are the main concerns. This attitude is mirrored in Moldova proper—in my experience, most Moldovans (outside the small political and commentator nexus in Chisinau) are apathetic about Transnistria; their concerns, too, are with their economic well-being.²¹ While party manifestos ritually call for a settlement, it is not a major preoccupation even among politicians. Both sides lack the visceral and widespread emotions seen in conflicts such as in Armenia and Azerbaijan over Nagorno-Karabagh. There are no violent incidents to be brought up in television news or newspaper headlines. Few are concerned about the issue. Inertia is part of the problem, but apathy and the low intensity of the stand-off can also facilitate the solution if an agreement can be reached between leaders on both sides.

Structural Factors: Historical and Territorial Divisions

Following the defeat of the Ottomans during the 1800s, Russia extended its influence over what is now Moldova. In the nineteenth century, the Russian empire treated the West bank of the Nistru as one province, Bessarabia (as shorthand referred to as “Moldova proper” in this article). On the other hand, the East bank (what is now Transnistria) was not yet amalgamated into one unit, but rather was divided into two parts, which were incorporated into two different Russian provinces. This separation continued into the twentieth century. From 1918 to 1940, Transnistria formed part of the Soviet Union, while Bessarabia/Moldova belonged to Romania. The two regions were amalgamated during the 1940s (once in August 1940, then in April 1944, as the battle lines moved back and forwards) when Soviet armies defeated German forces and their Romanian allies. The two banks of the Nistru became constituent parts of the Moldovan Soviet Socialist Republic.²² Transnistrians cite pre-Soviet history as a justification for their separation from Moldova, while Moldovans emphasize their common Soviet experience.²³ There are therefore different approaches to history, but the differences are not exacerbated by real ethnic, religious, or linguistic divisions.²⁴

Transnistrians reiterate the fear that the views of pro-Romanian militants will be realized: Moldova will join Romania, leading to discrimination or worse against Russian speakers.²⁵ Transnistrian leaders have encouraged (irrational) fears of Moldovan intentions to maintain public solidarity and have played on the Moldovan government's continually insensitive handling of the Gagauz region.²⁶ Gagauzia is an autonomous entity based on its ethnically Turkish minority, which, however, has frequently complained that it is deprived of due funds by the central government in Chisinau.²⁷ Lastly, Transnistrians proclaim that they have had *de facto* independence for nearly twenty years and that it is time the world recognized this fact.²⁸ Transnistria has many of the trappings of a state: a currency (the Transnistrian rouble, albeit non-convertible), a national day, a flag, ministries, a judiciary, and armed forces. A referendum on November 17, 2006 showed that a high percentage of the population favoured independence, which probably reflected public opinion.²⁹ During this time, the leadership has sought to outwardly manufacture a "Transnistrian" identity; due to its control of the media and the persistence of Soviet-era controls, a generation has grown up with no allegiance to, or affection towards, a wider Moldova.³⁰

Crony Capitalism

Another factor is blocking change: Business interests are the most important internal factor in prolonging the crisis. The group around President Igor Smirnov, leader of the unrecognized region since 1991, enjoys its status as the political leadership, but also derives benefits from the current economic and fiscal arrangements.³¹ Transnistria is a territory effectively beyond international law. For business people with the right connections in both Transnistria and Moldova proper, the status quo provides a convenient operating environment where Moldovan regulation and taxes can be avoided. Such "entrepreneurs" do not want political change that may upset current arrangements:

Crony capitalism could be triumphing over other differences. A top Moldovan politicians' scrap-metal business sells mainly to a steel mill in Transdnistria. The son of another has a chain of fast-food restaurants which operates in the separatists' capital, Tiraspol.³²

The Economic Base: Two Tales of Poverty

Soviet policy from the 1930s built up industry in Transnistria rather than in Moldova proper, placing the assets away from any possible invasion from the West.³³ There were major plants producing steel, machine tools, and light industry, together with power stations. Some of these plants have been accused of producing arms for illegal export. While they have the capability, there is no published hard evidence of manufacture in recent years.³⁴ Smuggling has instead revolved around non-military products such as cars and foodstuffs.³⁵ The core of these companies—the Moldovan Metallurgical Factory, the Pribor Gas Turbine Plant, Moldovkabel, the Kvint Distillery, and Tirotext Textiles—have become thriving businesses, exporting not just to the former Soviet area but increasingly also to Europe.

Despite its inheritance from the Soviet era, the Transnistrian economy declined during the 1990s. While agricultural output had been around \$100 million in 1990, it only reached \$3 million in 2008.³⁶ To raise income for the region's budget, the Transnistrian authorities began to privatize state-owned enterprises in 2002. The buyers were mostly Russians or Transnistrians close to the ruling elite. Therefore, a key Russian and Transnistrian demand in any settlement is a guarantee that these privatizations will not be reversed.³⁷ While asset sales accounted for as much as fifty per cent of state income in 2005, the most valuable assets had been sold off by 2007.³⁸ The only way to meet the budget gap was to turn to Russia. Although the figures are only approximations, Russia subsidized the Transnistrian budget (the deficit was \$100 million in 2008) to the tune of \$60 million in 2006, and \$30 million in 2007.³⁹ The indications are that Russia is prepared to continue with this strategy, but only if in return there is a reasonably co-operative attitude from Transnistrian leaders in order to avoid large-scale misappropriation of funds.⁴⁰

Youth Exodus

Linked to the economic decline is the mass exodus of young people, paralleling the outflow in Moldova proper. Of a population of 800,000 in 1991, some 200,000 had gone abroad by 2008, and the exodus continues.⁴¹ Economic specialists and some political leaders in Transnistria see the state budget and the economy as unsustainable without continued external subsidies or a radical change in political status for the region.⁴² Commenting to a Transnistrian publication, Renewal (*Obnovlenie*) party

leader Yevgeny Shevciuk (then speaker of the Transnistrian parliament, the Supreme Soviet) said: "Surely, if the Dniester region had been recognized, we would have been capable of improving the well-being of our citizens within three to five years ... The unsettled nature of the conflict entails grave consequences, unemployment, lack of decent wages and opportunities to educate young people in decent universities. About 200,000 people have left the Dniester region."⁴³ He also noted that there were only 102,000 people in the working population to support 180,000 pensioners and others on benefits.⁴⁴

The decline of the Transnistrian economy is mirrored in Moldova proper. New investment is insufficient (smaller investors and Moldovan entrepreneurs complain about administrative hurdles and corruption), the budget is massively in deficit, and the solution for the mobile and young is to leave: An estimated forty per cent of the working population are seeking employment abroad, many as illegal immigrants in the EU.⁴⁵ Without their remittances and external aid, the country would collapse.⁴⁶ This is a problem in itself: Moldova is well known as the poorest country in Europe. However, it also means that Moldova cannot be a magnet for Transnistrians. As Yevgeny Shevciuk once commented to me: "Why would one small, poor country want to join another small, poor country?"⁴⁷

Settlement Attempts

Although attempts at achieving a settlement have been ongoing throughout the nearly twenty years of separation, it is illustrative to focus on five main phases. The first effort followed the July 1992 Snegur-Yeltsin cease-fire agreement under the auspices of the Conference on Security and Cooperation in Europe (CSCE, precursor of the OSCE).⁴⁸ Ideas for a settlement revolved around a unitary state, with autonomy for Transnistria.⁴⁹ Subsequently, a key stage was the "Primakov" agreement (named after the Russian Foreign Minister) signed on May 7, 1997 by the Presidents of Moldova, Transnistria, Russia, Ukraine, and the OSCE Chairman-in-Office to establish a five-party negotiation, with Russia and Ukraine acting as guarantors.⁵⁰ A second round—the "Kiev" round—began under Ukrainian auspices and once again proposed a federal state.⁵¹ However, the Transnistrians insisted on a confederal arrangement with two equal "republics."⁵² Following an election which brought the Communist Party into power, a third initiative was introduced by President Voronin in 2001. Chisinau proposed talks in which Moldovans and Transnistrians would jointly draft a new constitution. Although this approach tackled

the status issue head on, Moldovan changes in the customs regime for Transnistria shortly afterwards contributed to the failure of this initiative.⁵³

The fourth effort occurred in 2003, when Russian presidential adviser Dmitri Kozak drew up a memorandum, based on bilateral Moldovan-Russian discussions and developed independently from the “five-sided” negotiation format. Kozak’s initiative came as a surprise to the OSCE negotiators: Even the Russian Ministry of Foreign Affairs had only a vague idea of its contents.⁵⁴ Preparations were in hand for a grand signature ceremony with Presidents Putin and Voronin, following Putin’s announcement of a break-through. On November 25, 2003, the night before the ceremony, Voronin phoned the Kremlin to say the deal was off.⁵⁵ The most likely explanation was that Voronin had become worried that public demonstrations might get out of hand.⁵⁶ In Georgia, the Rose Revolution was sweeping aside the post-communists—President Shevardnadze had resigned on November 23.⁵⁷ One of the demands of the Georgian Rose Revolution was precisely the withdrawal of Russian forces, and the events in Tbilisi were being closely followed in Chisinau. Moldovan acceptance of Russian troops would have meant “Host Nation Consent,” thus removing the commitment by Russia at the 1999 OSCE Istanbul Summit to withdraw its forces from Moldova.⁵⁸

At first, the EU member states and the United States were equivocal about the Kozak plan. However, on further analysis, they concluded that the plan was flawed, arguing that it left Moldova as a dysfunctional state, thereby failing to provide a lasting solution—too many powers were shared or allowed a Transnistrian veto.⁵⁹ Both the EU and the United States took the view that this could block any future EU or NATO enlargement involving Moldova, and, most crucially, there was an unpublished addendum which allowed Russian forces to remain on Moldovan soil for a further twenty years.⁶⁰ The OSCE had come out against the Memorandum on November 23, and the EU High Representative phoned Voronin on November 23, warning him not to sign.⁶¹

After 2003 there were attempts to invigorate the OSCE-sponsored settlement talks. Following the Kozak debacle, President Voronin looked towards the EU and sought to strengthen the EU (and US) influence on settlement efforts. In addition to the five parties (Russia, Moldova, Transnistria, Ukraine, and the OSCE), two observers, the United States and the EU, were added in October 2005 to form the “5+2” format.⁶² A fifth round began in 2005, shortly after Yushchenko’s election as Ukrainian President, but it lost momentum as the Orange coalition began to split. Talks inevitably faltered as a result of an unwillingness of Transnistrians to give up *de facto* independence and of Moldovan mistakes.⁶³ Despite

Peace Keepers

There have also been discussions between the United States and Russia on changing the composition of the Peace Keeping Force established in the July 21, 1992 ceasefire agreement. The force watches over a security zone along the 225 kilometre boundary between Transnistria and Moldova proper. It is composed of troops from Russia (five units), Transnistria (two units), and Moldova (three units), all of which are parties to the conflict. Consequently, it is dominated by Russian forces.⁶⁴ There is a strong parallel with the Russia-Georgian-Ossetian peacekeeping force set up on June 24, 1992 in Georgia.⁶⁵ In the Moldovan case, there was an agreement for ten Ukrainian observers to join in November 1998.⁶⁶ The operation has no United Nations (UN) mandate. When, in 2003, the EU proposed replacing the existing force (in the event of a settlement) with an EU-led force, Russia firmly declined, not wishing to lose strategic ground.⁶⁷

Moldovan Politicians and Analysts

The rejection of the Kozak Memorandum made “federation” a dirty word.⁶⁸ Legislation enacted by the Chisinau Parliament in 2005 underlined the unitary nature of the Republic of Moldova and offered Transnistria little more than autonomy along the lines of Gagauzia.⁶⁹ Unfortunately, the central government’s treatment of this region has not been exemplary, a factor to which Transnistrians frequently refer.⁷⁰ Debate after the rejection of Kozak subsequently focused on three preconditions for a settlement: “demilitarization, decriminalization, and democracy.”⁷¹ This approach was, and remains, a reasonable aspiration: Unless the authoritarian control of society in Transnistria is lifted, there is little scope for the population voting in favour of reunification. However, making the “three Ds” a precondition for progress in effect blocks any settlement, given the *de facto* independence of Transnistria.⁷² Under a Communist majority, the Moldovan parliament passed two resolutions on Transnistria, outlining the “three Ds” as Moldovan policy on June 10, 2005, and the Law on the Special Legal Status of the Localities on the East Bank of the Nistru on July 22, 2005. The same thinking led some Moldovan politicians to propose replacing the “5+2” mechanism, which includes Transnistria, with a “3+1+3” format, excluding Transnistria from

negotiations.⁷³ While there has been a consensus on the “three Ds,” there has also been an understanding in Chisinau that a solution should only be achieved by peaceful means. A joint Moldovan-Transnistrian statement, signed in Moscow on March 12, 2009 and overseen by President Medvedev, explicitly excludes force.⁷⁴

Actors in Transnistria

President Smirnov is an adamant adherent to the status quo.⁷⁵ The goal of his group is full independence, preferably with an attachment to Russia and recognition by the outside world. There is little incentive for him to change his position.⁷⁶ The removal of President Smirnov from the scene was a *sine qua non* for any agreement on the part of President Voronin (President from 2001 to 2009).⁷⁷ However, the aims of the Transnistrian elite do not represent those of the majority of Transnistrians, whose main concerns are their own livelihoods and personal prospects.⁷⁸ The leadership in Transnistria is not monolithic;⁷⁹ for example, there is greater potential dynamic for change from business circles. Large manufacturing and commercial enterprises suffer from the constraints of a closed economy; they can export to the EU by registration in Chisinau, but they lack access to sophisticated finance bodies in the EU to develop their business.⁸⁰ None of these enterprises, or the political parties that represent such interests—e.g., Renewal—would speak out against the established mantra of independence for Transnistria.⁸¹ However, the economic imperative to look for solutions remains and may come to mitigate the tendency among those who prefer their investment in the status quo. There are differences of approach inside the Transnistrian leadership which can mean some flexibility in finding a settlement.⁸²

Russia

The five new foreign policy principles outlined by President Medvedev in 2008 included the right to protect Russia's citizens and business abroad and the right to “privileged interests” in certain regions.⁸³ After opening a “liaison office” in Tiraspol in 2006 to provide “administrative support,” Russia began to issue passports, thereby increasing the number of Russian passport holders in Transnistria. By 2006, there were an estimated 100,000 Russian passport holders in a population of 550,000.⁸⁴ Transnistria claimed further Russian protection during the Georgian hostilities in August 2008, and there were reports of a token Russian response.⁸⁵

Despite its recognition of South Ossetia and Abkhazia, Russia has made clear that it will not recognize Transnistria. Speaking on May 29, 2008, Aleksey Ostrovskiy—head of the Russian Duma Committee on Commonwealth of Independent States (CIS) affairs—said that Russia would never recognize Kosovo, nor would it recognize an independent Transnistria: “We do not understand the Transnistrian people’s wish to see Russia as a guarantor of the region’s independence. We support the territorial integrity of all states.”⁸⁶ Following the Russia-Georgia hostilities, Russia reiterated this position. Russia refuses to recognize Transnistrian independence because limbo better serves its interests.⁸⁷ While the status of the region remains uncertain, it has a lever to use on Chisinau. For Russia, the big prize would be to bring Moldova closer. A consensus has been reached in Moscow that Moldova should stay out of NATO, but more ambivalence exists on Moldovan entry to the EU.⁸⁸ Also, Russia, having made its point over Georgia, does not want to encourage secession as a general principle, as Chechnya and other republics might become restive.

Ukraine

Apart from Moldova, the Ukraine is the only country which shares a border with Transnistria. Due to its strategic interest in having stable neighbours and secure borders, Ukraine can be expected to be concerned about this unrecognized region, not least because nearly a third of Transnistrians are Ukrainian-speaking. Ukraine would never recognize an independent Transnistria, as this might threaten the status of the Crimea, where Russian-speakers look towards Moscow as much as towards Kiev.⁸⁹ Ukraine is—along with Russia—one of the two guarantor states in the “5+2” format. When Yushchenko, on a wave of “Orange” power, became president after elections in December 2004, one of his major foreign policy initiatives was to propose a settlement plan for Transnistria. However, as disagreements inside the Orange coalition became more marked in the run-up to parliamentary elections in March 2006, efforts on the plan lost momentum.⁹⁰

The European Union

Recognizing the need for a more proactive role towards its neighbours in 2004, the EU stepped up engagement with Moldova from 2005:

In its neighbourhood and beyond, the EU cannot ... confine itself to the economic and political spheres; it also needs to be able to guarantee stability, prevent conflicts and manage crises on its own doorstep.⁹¹

The Commission opened an office in Chisinau in 2006. Furthermore, the European Council Secretariat appointed an EU Special Representative to participate in the “5+2” talks, engage with Transnistria, and promote democratic reform in Moldova in 2005.⁹² An EU visa-ban had already been placed on seventeen members of the Transnistrian leadership for obstructing settlement efforts in 2003; the United States acted in concert.⁹³ The establishment of the European Union Border Assistance Mission (EUBAM) to Ukraine and Moldova in December 2005 brought a degree of transparency to cross-border trafficking. In particular, it reduced the scope for smuggling along the Transnistrian section of the border with Ukraine.⁹⁴ EUBAM has no executive powers; it works through training and advice. However, with a staff of over a hundred personnel, it is highly visible on the ground. EUBAM has been largely successful in helping to enable Ukrainian and Moldovan authorities to control trade into and out of Transnistria. EUBAM has thus pushed Transnistrian businesses to look towards Chisinau, affecting not just the business climate, but also the political dynamics.⁹⁵

Internal Strategies

Twenty years of *de facto* independence are not easy to overcome, especially when in the shadow of Russian interest. However, from my own experience, there are some actions that could make a difference. The Moldovan government could develop policies which would not only be beneficial but could also win the war for hearts and minds. From a political perspective, the Moldovan government should ensure moderation in any statements on Transnistria and proclaim a more tolerant policy on the Russian language. While reasserting its adherence to its own territorial integrity, dismissing any aim of union with Romania, the Moldovan government should support the autonomous region of Gagauzia politically and economically and develop new ideas on the status for Transnistria, avoiding buzzwords that trigger disagreement. From an economic perspective, the Moldovan government should aim to foster a more transparent business environment, thereby rendering the black and grey areas of the economy non-viable. This would make Moldova an attractive proposition for a poor Transnistria.

The Transnistria conflict has no foundation in religion, ethnicity, or—in reality—language: It has been a conflict of two elites. The Moldovan government could show that at least one of the elites is willing to move. The Communist Party was in power from 2001 to 2009, but the new government of the Alliance for European Integration, formed

after the July 2009 elections, has a chance to make progress.⁹⁶ Any solution also requires reaching out to those in Transnistria who have an interest in change—political groups, but especially those within the business community. There is also a role for the international community, principally for the EU and the United States, to endorse such conciliatory policies. The Moldovan government (and the EU) can leverage the desire for Transnistrian companies to enjoy the huge market offered by the EU. Initial studies indicate that a combined state would be wealthier. In the economic arena, this could lead to a “win-win” situation.⁹⁷ Without outside intervention, there is a risk that Transnistria will continue to live in limbo.

External Strategies

This internal strategy could only work with concerted outside intervention, notably from the EU and the United States. To make economic unification attractive, something like a Marshall Plan would be needed to spur economic growth and demonstrate the benefits of Moldova’s reorientation towards Europe. The EU (and the United States) should consider a “reintegration fund,” well-publicized and ready to be deployed to stimulate economic development on both sides of the Nistru, as part of a settlement. As the EU External Action Service comes into place after the 2009 ratification of the Lisbon Treaty, Commission programme work and political aims will be merged under a single leadership, with policy and programmes brought together in one strategic vision and a single operation. This should enable the EU to be more effective.

Furthermore, the EU should aim to inject more dynamism into the “5+2” OSCE-sponsored negotiations, becoming a full, proactive player. Currently, it is an observer. There is nothing wrong with the OSCE mechanism, but if the EU was a real driver there would be more momentum. The EU has the essential combination of a substantial presence on the ground (EUBAM, Commission representation and programmes, EU Special Representative, the member states) and the attraction of its huge market. The EU also has the motive and the means to bring about change. Moreover, it should also support “Track Two” activities, such as bringing the two communities together in a sector by sector approach while linking this track to the formal negotiations.⁹⁸ High visibility is an important part of any strategy: Inhabitants on both sides of the Nistru need to see that the EU is offering tangible help. The EU and its member states should build direct links with Transnistria, but make clear that this

does not imply recognition. Only face-to-face contact will bring home to Transnistria opinion-formers the realities of their situation.

Conclusion

Externally, there will be little progress without acknowledging the reality that Russia has historical, economic, and political interests in Moldova and Transnistria. Transnistria is not economically viable without Russian financial support, currently around \$80 million a year, but it could become self-sustaining if there were to be a settlement.⁹⁹ Although Russia has appeared ready to continue to pay the bill, it may well prefer a more prosperous Transnistria, where its investors could thrive and feel legally secure. Russia does not seem to want to recognize Transnistria, so there is no real prospect of the independence of which Transnistrians speak.¹⁰⁰ Progress on Transnistria can only be achieved by identifying and developing common EU-Russian interests. This will be a long-term approach, which can be pursued while the EU and the United States build up stability, democracy, and prosperity in Moldova proper. Given the economic crisis affecting Transnistria, there may be a chance for movement that should be seized. As it warns on packets of frozen peas: "Once defrosted, do not refreeze." ■

Notes

¹ This article draws on the conflict analysis framework presented in UK Department for International Development, "Conducting Conflict Assessments: Guidance Notes," January 2002, <http://www.dfid.gov.uk/Documents/publications/conflict-assessmentguidance.pdf> (accessed February 27, 2010).

² The declaration proclaimed the establishment of the Dniestrian Moldovan Soviet Socialist Republic on September 2, 1990, the "Soviet" and "Socialist" being dropped on November 5, 1991. See Rebecca Haynes, ed., *Moldova, Bessarabia, Transnistria* (London: School of Slavonic and East European Studies, University College London, 2003), 183.

³ Cited in Alla Skvortsova, "The Cultural and Social Makeup of Moldova: A Bipolar or Dispersed Society?" in *National Integration and Violent Conflict in Post-Soviet Societies: The Cases of Estonia and Moldova*, ed. Pål Kolstø (Oxford: Rowman & Littlefield, 2002), 159–96, 187. By 1991, the new government had dismissed most ethnic Russians from positions of authority in government and administration: Ninety per cent of top positions were occupied by Romanian speakers; see International Crisis Group (ICG), "Moldova: No Quick Fix," Europe Report No. 147, August 12, 2003, 3.

⁴ This article uses "Transnistria," which is the Romanian word for the territory; Transnistrians use the Russian "Pridnestrovie." Some authors use the term "left bank" to refer to Transnistria, which is on the east side of the Nistru, taking as their convention the viewpoint of someone travelling downstream rather than intuitively looking at a map, which shows Transnistria to the right. For ease of reference, this paper describes the territory controlled by Chisinau as "Moldova proper."

⁵ On the idea that Transnistrian moves towards independence were based on a *reaction* to movements in Chisinau, i.e., what Crowther has called "reactive nationalism," see William Crowther, "The Politics of Ethno-National Mobilisation: Nationalism and Reform in Soviet Moldavia," *Russian Review* 50, no. 2 (1991): 183–202, 183. See also Charles E. King, *The Moldovans: Romania, Russia, and the Politics of Culture* (Stanford, CA: Hoover Institution Press, 2000), 151.

⁶ The agreement ("Agreement on the Principles for the Peaceful Settlement of the Armed Conflict in the Transnistria Region of the Republic of Moldova") was signed by Russian President Boris Yeltsin and Moldovan President Mircea Snegur on July 21, 1992; see King, *The Moldovans*, 196; and Trevor Waters, "Security Concerns in Post-Soviet Moldova: The Roots of Instability," in *Moldova, Bessarabia, Transnistria*, ed. Haynes, 195. Precise figures on deaths and casualties have never been established.

⁷ Writing in 2006, the International Crisis Group outlined a succession of negotiations and their failure, noting a disconcerting symmetry: "Moldova has hardened its position to match Transdnistria's intransigence," and "the decade-long cycle" of "drafts tabled ... then stonewalled as one side or the other backs away from what it had apparently agreed to do." See ICG, "Moldova's Uncertain Future," Europe Report No. 175, August 17, 2006, i, 9. This weariness was frequently reflected in the author's interviews with the Moldovan government, think tanks, and Transnistrian leaders between 2006 and 2009. For an extensive bibliography of publications on the Transnistrian issue, see Centre for OSCE Research, "Selected Bibliography: The OSCE and the Transdnistrian Conflict," Institute for Peace Research and Security Policy at the University of Hamburg (IFSH), http://www.osce.org/documents/mm/2005/10/16725_en.pdf (accessed February 27, 2010).

⁸ For an outline of settlement efforts, see Marius Vahl and Michael Emerson: "Moldova and the Transnistrian Conflict," *Journal on Ethnopolitics and Minority Issues in Europe* 2004, no. 1: chap. 4. For OSCE efforts between 1992 and 2002, see Gottfried Hanne, "The Role and Activities of the OSCE Mission in Moldova in the Process of Transdnistrian Conflict Resolution," in *European Yearbook of Minority Issues*, vol. 2, 2002/2003, ed. European Centre for Minority Issues and European Academy Bozen/Bolzano (Leiden: Martinus Nijhoff Publishers, 2004), 31–51.

⁹ See Rafael Khachaturian, "The Specter of Russian Nationalism," *Dissent* 56, no. 1 (2009): 19–24, 22. The author notes Russian fears of Ukraine joining NATO. Russia has around 1,200 troops in Transnistria; see *ibid.*, 23. The International Crisis Group, commenting on developments in 1994, wrote: "against a backdrop of NATO enlargement, Russia began a campaign to keep its military base in Moldova." ICG, "Moldova: Regional Tensions over Transdnistria," Europe Report No. 157, June 17, 2004, 5. Another commentator argues: "The Commonwealth of Independent States serves as a buffer for the Russian Federation with regard to NATO enlargement." S. Neil MacFarlane, "Russian Policy in the CIS under Putin," 125–131 in *Russia between*

East and West: Russian Foreign Policy on the Threshold of the Twenty-First Century, ed. Gabriel Gorodetsky (London: Frank Cass, 2003), 125–31, 128. See also Bobo Lo, *Russian Foreign Policy in the Post-Soviet Era: Reality, Illusion and Mythmaking* (Basingstoke: Palgrave Macmillan, 2002), 81. Moldovan President Snegur signed NATO's Partnership for Peace on March 16, 1994, but in doing so emphasised Moldova's neutral status; see Waters, "Security Concerns," 199.

¹⁰ See Andrew Wilson, *Ukraine's Orange Revolution* (New Haven, CT: Yale University Press, 2005). Wilson characterizes earlier Ukrainian policy, under President Kuchma, of having helped to "prop up" the "quasi-state." The then Foreign Minister Borys Tarasiuk told the press that the new administration was determined to solve the Transnistrian problem since it threatens Ukrainian security; interview with Ukrinform, June 1, 2005, <http://www.ukrinform.ua/eng/order/?id=50432> (accessed February 27, 2010).

¹¹ See, for example ICG, "Moldova's Uncertain Future," 1.

¹² See Oliver Schmidtke and Serhy Yekelchuk, *Europe's Last Frontier? Belarus, Moldova, and Ukraine between Russia and the European Union* (New York: Palgrave Macmillan, 2008); King, *The Moldovans*; Igor Munteanu, *Moldova on the Way to Democracy and Stability: From the Post-Soviet Space towards the World of Democratic Values* (Chisinau: Cartier, 2005); Dov Lynch, *Engaging Eurasia's Separatist States: Unresolved Conflicts and De Facto States* (Washington, DC: United States Institute of Peace Press, 2004). Exceptions to the general approach, in which the authors also provide (valuable) points on a way forward, can be found in Alexei Arbatov, Abram Chayes, Antonia Handler Chayes, and Lara Olson, eds., *Managing Conflict in the former Soviet Union: Russian and American Perspectives* (Cambridge, MA: MIT Press, 1997), and ICG, "Moldova: No Quick Fix"; id., "Moldova: Regional Tensions"; id., "Moldova's Uncertain Future." An exhaustive legal interpretation is provided in Association of the Bar of the City of New York, "Thawing a Frozen Conflict: Legal Aspects of the Separatist Crisis in Moldova," 2007, <http://www.nycbar.org/pdf/report/NYC-ity%20BarTransnistriaReport.pdf> (accessed February 27, 2010).

¹³ The Berghof Handbook outlines academic approaches and debates, see Alex Austin, Martin Fischer, Norbert Ropers, eds., *Transforming Ethnopolitical Conflict: The Berghof Handbook* (Wiesbaden: VS Verlag für Sozialwissenschaften, 2004).

¹⁴ See Simon Fisher, Dekha Ibrahim Abdi, Jawed Ludin, Richard Smith, Steve Williams, and Sue Williams, eds., *Working with Conflict: Skills and Strategies for Action* (London: Zed Books, 2000), 5. A similar approach is adopted in Organisation for Economic Co-operation and Development (OECD), *Conflict Prevention and Development Cooperation in the 21st Century* (Paris: OECD, 1998), 19.

¹⁵ See Fisher, *Working with Conflict*, 6.

¹⁶ Conversations with Transnistrian leaders and NGOs, the Moldovan Reintegration Ministry, and the Association for Foreign Policy, August 12–18, 2008.

¹⁷ The ethnic, religious, and linguistic dimensions are most marked in the case of the disputed region of Nagorno-Karabakh, where the Christian Armenians have a stand-off with the Moslem Azeris after considerable ethnic cleansing. See Lynch, *Engaging Eurasia's Separatist States*, and Arbatov et al., *Managing Conflict*.

- ¹⁸ See Pal Kolsto and Andrei Malgin, "The Transnistria Republic: A case study of politicized regionalism," *Nationalities Papers* 26, no. 1 (1998): 103–27.
- ¹⁹ See Vlad Spănu, "Conflict in Moldova's Eastern Region of Transnistria: What is the Way Out?" in *Quo Vadis, Moldova?* eds. European Integration Studies Centre and Institute for Development and Social Initiatives "Viitorul" (Lviv: Multi-M, 2007), 19–24, 20; and Steven Roper, "The Politicization of Education: Identity Formation in Transnistria and Moldova," *Communist and Post-Communist Studies* 38, no. 4 (2005): 501–14, 505–14. Compare figures for Moldova proper: 6% Russian, 8% Ukrainian and 76% Moldovan, and the 1989 census, which gave Transnistria 25.5% Russian, 28% Ukrainian, 40% Moldovan. Gosudarstvennyi Komitet SSSR po Statistike, *Itogi Vsesoiuznoi Perepisi Naseleniia 1989 Goda, Results of the All-Union Census 1989* (Moscow: Gosstatizdat, 1990), cited in Oleh Protsyk, "Moldova's Dilemmas in Democratizing and Reintegrating Transnistria," *Problems of Post-Communism* 53, no. 4 (2006): 29–41, 39.
- ²⁰ Discussion with the Chisinau-based Association of Students from Transnistria (ASTRA), December 15, 2008. Somewhat incongruously, the Transnistria Sheriff team plays in the Moldovan football league.
- ²¹ This was also the general view among think tanks and NGOs in Moldova and Transnistria between 2006 and 2009.
- ²² See King, *The Moldovans*, 94.
- ²³ Interviews with various Transnistrian leaders. See also Oazu Nantoi, *The East Zone Conflict in the Republic of Moldova: A New Approach* (Chisinau: Institute for Public Policy, 2002), 4. Nantoi disagrees with "separatist ideologists" who say that "Tiraspol was never a constituent of the Moldovan state." See also an interview by Serguei Markedonov with President Smirnov; Serguei Markendov, "Transnistrie: Le Credo Separatiste," *Politique Internationale*, no. 114 (2007): 249–70, 255, 257.
- ²⁴ "Transnistria never has been considered part of traditional Moldovan lands, although it has always contained a sizeable Moldovan population," Waters, "Security Concerns," 190.
- ²⁵ In an article, Vladislav Malinovskiy warned of creeping Europeanization (Vladislav Malinovskiy, *Russkiy Proriv*, March 4, 2009), a scenario that means that Transnistria will "sooner or later become part of Romania," *BBC Monitoring*, March 12, 2009.
- ²⁶ In an interview with Olvia Press (Transnistria), March 6, 2009, Transnistrian President Smirnov said that the Transnistrian authorities do not believe Moldova's pledges about granting "the widest possible autonomy"; the example of Gagauzia was a "sad experience." *BBC Monitoring*, March 12, 2009.
- ²⁷ Interviews with Moldovan government, civil society, and Gagauz leaders.
- ²⁸ Association for Foreign Policy, Chisinau, February 18, 2009.
- ²⁹ See Michael Mainville, "Breakaway Vote Boosts Russia's Hand over 'Frozen Conflicts'," *The Guardian*, September 19, 2006. Ninety-seven per cent reportedly voted for independence.

³⁰ On conscious attempts to build a Transnistrian identity, see Stefan Troebst, "The 'Transdnistrian Moldovan Republic': From Conflict-Driven State-Building to State-Driven Nation-Building," in *European Yearbook of Minority Issues*, vol. 2, 2002/2003, 5–30.

³¹ See, for example, an article published in Transnistria, which states that the Smirnov family owns more than ten enterprises: A Markhov, "We have been building the republic not for ourselves, but for them," in *Chelovek I Yego Prava* (Tiraspol), May 3, 2007, cited in *BBC Monitoring*, May 12, 2007. See also ICG, "Moldova's Uncertain Future," 13, and John Lowenhardt, "The OSCE, Moldova and Russian Diplomacy in 2003," *Journal of Communist Studies* 20, no. 4 (2004): 103–12, 105. Smirnov was elected president in 1991, 1996, 2001, and 2006. "Igor Smirnov has much to lose, as have his sons and other members of his clan: power and wealth," Lowenhardt, "The OSCE," 105.

³² "A Thaw in the River," *The Economist*, April 19, 2007.

³³ What is now Moldova proper was to be predominantly agricultural, while industry, including military manufacture, was to be in Transnistria, Waters, "Security Concerns," 190.

³⁴ See ICG, "Moldova: Regional Tensions," 15.

³⁵ See "Russia and EU could start from Transnistria," *The Economist*, November 14, 2008. The *Economist* article says that according to the European Union Border Assistance Mission (EUBAM), huge quantities of frozen chicken were being smuggled into Transnistria, avoiding duties and VAT: "[I]n 2006, EUBAM has found, the poor folk of Transnistria normally ate 12 times as much chicken per head as Germans."

³⁶ Discussion, Transnistrian Chamber of Commerce, March 6, 2009.

³⁷ Interviews with the Moldovan government and Transnistrian leaders.

³⁸ Interviews with the Transnistrian Chamber of Commerce and Transnistrian NGOs, September 9, 2008.

³⁹ See *Olvia Press* (Tiraspol), December 4, 2008, cited in *BBC Monitoring*, December 4, 2008. The budget for 2009 expected a deficit of \$74 million, with expenditure of \$171 million and income of \$97 million.

⁴⁰ Discussions with Moldovan and Transnistrian NGOs.

⁴¹ Transnistrian Chamber of Commerce, September 9, 2008.

⁴² Transnistrian Chamber of Commerce, March 6, 2009. See also comments by Supreme Soviet Speaker Shevciuk, in *Chelovek I Yego Prava*, September 10, 2008, cited in *BBC Monitoring*, September 11, 2008.

⁴³ Ibid.

⁴⁴ See *ibid.*

⁴⁵ The Institute for Migration (IOM) in Chisinau estimates the number of emigrants as 800,000, see IOM, "IOM Mission's to the Republic of Moldova Country Strategy," <http://www.iom.md/strategy.html>. It notes the vital role of remittances

for the economy, see IOM, "Migration & Development," <http://www.iom.md/migration&development.html#remit> (both accessed February 28, 2010).

⁴⁶ On Moldova's poverty, see *The Economist*, May 15, 2007; and S. Adam Cardais, "Moldova Hooked on Remittances," *Business Week, Eastern Europe*, April 22, 2008.

⁴⁷ Interview with Yevgeny Shevciuk, May 14, 2008.

⁴⁸ See Conference for Security and Co-operation in Europe (predecessor of OSCE), "Report No. 13 by the CSCE Mission to Moldova," November 13, 1993, http://www.osce.org/documents/mm/1993/11/454_en.pdf (accessed February 13, 2010). See also King, *The Moldovans*, 199.

⁴⁹ The CSCE Report No. 13 had envisaged Transnistria as having a special status in the Republic of Moldova. Subsequent OSCE negotiations have therefore refused any idea of recognition of Transnistria as a separate state.

⁵⁰ "Memorandum on the Normalisation of Relations Between the Republic of Moldova and the Transnistrian Moldovan Republic," see Spănu, "Conflict in Moldova's Eastern Region," 22.

⁵¹ On the "Kiev document," see OSCE, "Joint Statement of Participants in the Kiev Meeting on Issues of Normalisation of Relations between the Republic of Moldova and Transnistria," http://www.osce.org/documents/mm/1999/07/458_en.pdf (accessed February 28, 2010).

⁵² See ICG, "No Quick Fix," 8, 13.

⁵³ See background briefing, "Moldovan-Dniester settlement process," *BBC Monitoring*, October 5, 2008,

⁵⁴ For the text, see "Russian Draft Memorandum on the basic principles of the state structure of a united state in Moldova (Kozak Memorandum)," http://www.eurojournal.org/more.php?id=107_0_118_M5 (accessed February 28, 2010).

⁵⁵ See Lowenhardt, "The OSCE," 109.

⁵⁶ See Spănu, "Conflict in Moldova's Eastern Region," 22.

⁵⁷ See Lowenhardt, "The OSCE," 24.

⁵⁸ The OSCE reminded the Russian Federation of the agreement to withdraw forces at the Tenth Meeting of the Ministerial Council, but noted that the Transnistrians were making this difficult. See OECD, "Tenth Meeting of the Ministerial Council, 6 and 7 December 2002," MC.DOC/1/02, December 7, 2002, http://www.osce.org/documents/mcs/2002/12/4174_en.pdf, 30 (accessed February 17, 2010). At the 1992 Conference on Security and Co-operation in Europe, Russia had agreed to withdraw its troops, a point confirmed at Istanbul in 1999. However, Russia would not be bound to withdraw forces if Moldova, as host nation, gave consent. See ICG, "Moldova's Uncertain Future," 12.

⁵⁹ The proposed senate would have comprised 26 members, with 13 from Moldova, 4 from Gagauzia, and 9 from Transnistria. Federal laws would need a 75 per cent majority, i.e., 20 votes, thus Transnistria would be able to block any legislation it disliked. See Lowenhardt, "The OSCE," 110.

⁶⁰ See *ibid.*, 109.

⁶¹ See *ibid.*, 109.

⁶² According to the US Department of State, "Background Note: Moldova," Bureau of European and Eurasian Affairs, February 2009, <http://www.state.gov/r/pa/ei/bgn/5357.htm> (accessed February 28, 2010).

⁶³ For example the legislation of July 22, 2005, which states that talks on status can only take place after democratization and demilitarization; "in its attempt to predetermine negotiations, the law was seen in Tiraspol and Moscow, and by many western officials, as evidence of bad faith." ICG, "Moldova's Uncertain Future," 11.

⁶⁴ See Nicole Jackson, *Russian Foreign Policy and the CIS, Theories, Debates and Actions*, (London: Routledge, 2003), 103.

⁶⁵ See Jackson, *Russian Foreign Policy*, 127. Lynch argued that Russian peacekeeping in Moldova is post-imperialist, the objective is primarily to support Russian foreign policy, Lynch, *Engaging Eurasia's Separatist States*, 78.

⁶⁶ See European Spănu, "Conflict in Moldova's Eastern Region," 21.

⁶⁷ See John Lowenhardt, "The OSCE," 106. Russia has in recent years maintained that Russian troops will only be withdrawn *after a settlement*; see ICG, "Moldova's Uncertain Future," 12. For more on the proposed force, see European Commission, "Wider Europe — Neighbourhood: A New Framework for Relations with our East-ern and Southern Partners," COM(2003) 104 final, March 11, 2003.

⁶⁸ See Oleh Protsyk, Andrei Volentir, Igor Bucătaru, "Adressing the Transnistrian Conflict: Competing Stances of Moldova's Political Parties and Expert Community," ECMI Working Paper no. 37, 2007, European Centre for Minority Issues, http://www.ecmi.de/download/working_paper_37_en.pdf, 11 (accessed February 28, 2010).

⁶⁹ On June 10, 2005, the Moldovan Parliament endorsed the Yushchenko plan, appealing for help from the EU, the Council of Europe, and the OSCE to democratize Transnistria in preparations for elections. On July 22, 2005, it passed the Law on the Basic Provisions of the Special Legal Status of Settlements on the Left Bank of the Nistru.

⁷⁰ Interviews with Transnistrian leaders. The need for the Moldovan government to show exemplary handling of the autonomous region of Gagauzia was a conclusion of a think tank discussion in Chisinau organized by the Moldovan Association for Foreign Policy, February 18, 2009.

⁷¹ See Moldova Foundation, "3D Strategy (Demilitarization, Decentralization, Democratization)," November 2004, <http://foundation.moldova.org/pages/eng/136/> (accessed February 13, 2010).

⁷² Oleh Protsyk, "Moldova's Dilemmas in Democratizing and Reintegrating Transnistria," *Problems of Post-Communism* 53, no. 4 (2006), 29–41. Protsyk writes that the Moldovan government sought to implement the plan, "however, in a way that might be considered excessively unilateral and self-serving."

⁷³ I.e., instead of Russia, Ukraine, and OSCE plus Moldova and Transnistria (3+2), it would have been Russia, Ukraine, *Romania* plus Moldova plus OSCE, EU, and the United States (3+1+3). See Spănu, "Conflict in Moldova's Eastern Region," 22.

⁷⁴ The declaration (only one sheet of paper) calls for both bilateral contacts between Moldova and Transnistria and a reinvigoration of OSCE-sponsored talks; it thanks the Russian Federation for its mediating efforts. See Republic of Moldova, "Moldovan President has Bilateral Meeting with Russian Counterpart in Moscow," <http://www.moldova.md/en/news/1211/1/3134> (accessed February 28, 2010).

⁷⁵ "Our state will one day take its place among the community of nations," Igor Smirnov, cited in Markedonov, "Transnistrie," 258 (own translation).

⁷⁶ Some members of the Transnistrian administration may fear arrest in the event of a settlement. Vadim Antufeyev, formerly in the Soviet-era Otryad Militsii Osobogo Naznacheniya (OMON) special forces, has been on the Interpol wanted list, albeit Latvia has dropped charges against him of criminal activity in Riga 1990–1991. ICG, "No Quick Fix," 6. On the lack of incentive for change, see Troebst, "The 'Transdnistriean Moldovan Republic,'" 6.

⁷⁷ Interviews with the Moldovan government and Transnistrian officials, 2006–2009.

⁷⁸ See Oleh Protsyk, "Representation and Democracy in Eurasia's Unrecognized States: The Case of Transnistria," *Post-Soviet Affairs* 25, no. 3 (2009): 257–281, 259.

⁷⁹ Hypothesis of a think tank, "A battle for power is at hand," *Novaya Gazeta*, February 25, 2009; and *BBC Monitoring*, March 9, 2009.

⁸⁰ Interview with the Transnistrian Chamber of Commerce, March 6, 2009. While Transnistrian enterprises were said to need \$500 million a year in loans, in practice the unrecognized nature of Transnistria meant that they only had access to \$200 million.

⁸¹ Interviews with Moldovan and Transnistrian think tanks and NGOs. In public and press announcements Transnistrian politicians normally maintain that Transnistria wants independence: after all this is Transnistria's negotiating stance, and it is presented by the elite around President Smirnov as a litmus test of loyalty. In my experience, in private they were more nuanced. Speaking at a small-scale forum of specialists on February 16, 2009, former Transnistrian Foreign Minister Valerii Litskai said: "If the US, Russia etc. will not recognize Transnistria, we will have to adjust our thinking."

⁸² See Protsyk, "Moldova's Dilemmas," 36.

⁸³ See Paul Reynolds, "New Russian World Order: The Five Principles," *BBC News*, September 1, 2008, <http://news.bbc.co.uk/1/hi/world/europe/7591610.stm> (accessed February 28, 2010).

⁸⁴ See Nicu Popescu, "'Outsourcing' De Facto Statehood: Russia and the Secessionist Entities in Georgia and Moldova," in *CEPS Policy Brief* no. 109, 2006, Centre for European Policy Studies, 5. Popescu estimates 15 per cent of the Transnistrian population as having Russian passports, compared to 90 per cent of the inhabitants

of South Ossetia and Abkhazia. Increasing the numbers of Russian passport holders was a way for the Putin administration to regain lost influence in the post-Soviet space. See ICG, "Moldova: Regional Tensions," 6.

⁸⁵ Conversations with Transnistrian leaders and NGOs, the Moldovan Reintegration Ministry, and the Association for Foreign Policy, August 12–18, 2008.

⁸⁶ TV Channel One (Tiraspol), 17:40 GMT, May 30, 2008, cited in *BBC Monitoring*, May 30, 2008.

⁸⁷ See Popescu, "'Outsourcing' De Facto Statehood," 7.

⁸⁸ For Andrei Kokoshin (chairman of the Russian State Duma Committee on Commonwealth of Independent States Affairs), Moldova has a clear choice: "If Moldova continues to count on integration into EU institutions, it will risk its status as a strategic partner of Russia"; *Infotag News Agency*, November 26, 2005.

⁸⁹ See Gwendolyn Sasse, "The 'New' Ukraine, a State of Regions," in *Ethnicity and Territory in the Former Soviet Union*, eds. James Hughes and Gwendolyn Sasse (London: Cass, 2002), 69–100, 69; Gwendolyn Sasse, *The Crimea Question: Identity, Transition, and Conflict* (Cambridge, MA: Harvard University Press, 2007).

⁹⁰ See Protsyk, "Moldova's Dilemmas," 31–2.

⁹¹ European Communication, "Building our Common Future: Policy Challenges and Budgetary Means of the Enlarged Union 2007–13," COM (2004) 101, February 26, 2005. See Vlad Kulminski and Hans Marin Sieg, "Die Europäisierung Moldovas: Strategie zur Lösung des Transnistrienkonflikts," *Osteuropa* 59, no. 5, (2009): 17–28 ["The Europeanization of Moldova: A Strategy for Solving the Transnistria Conflict"].

⁹² See European Council, "Appointment of an EU Special Representative for Moldova," 7023/05 (Presse 53), March 23, 2005, Brussels, 23 March 2005.

⁹³ European Council, "Moldova: Council Adopts Restrictive Measures against the Transnistrian Leadership," 6679/03 (Presse 56), February 27, 2003.

⁹⁴ Deployed December 1, 2005. An independent study found that EUBAM had "exceeded expectations," see Xymena Kurowska and Benjamin Tallis, "EU Border Assistance Mission: Beyond Border Monitoring?" *European Foreign Affairs Review* 14, no. 1 (2009): 47–64, 67.

⁹⁵ See Kurowska and Tallis, "EU Border Assistance Mission," 63.

⁹⁶ In the elections on July 29, 2009, the Alliance for European Integration defeated the Communist Party. The Alliance, composed of the Liberal Democrats, Liberals, Democrats, and Our Moldova, took office on August 29, 2009.

⁹⁷ On benefits of being a single customs area, see Center for Strategic Studies and Reforms, "Moldova's and Transnistria's Economies: From Conflict to Prospects of Peaceful Development," Chisinau, 2007.

⁹⁸ A common problem in conflict resolution is that "Track Two" (e.g., people to people) activities are not linked to "Track One": The elites are not affected. See Tony Vaux and Jan Barrett, *Conflicting Interests: Moldova and the Impact of Transnistria* (Stonesfield: Humanitarian Initiatives, 2003), 21. One "Track Two" programme,

“Transnistrian Dialogues” (organized by the British Embassy in Chisinau and the Association for Foreign Policy), started as a series of youth workshops between 2006 and 2009, bringing together rising stars from both sides of the Nistru, but then expanded upwards to include senior players. This resulted in a conference at Wilton Park in the United Kingdom in October 2008, which brought together such players and culminated in an informal onsite meeting of the “5+2.”

⁹⁹ *Olvia Press* (Tiraspol), December 4, 2008, cited in *BBC Monitoring*, December 4, 2008.

¹⁰⁰ See Kokoshin’s comments in *Infotag News Agency*, November 26, 2005.

Book Reviews

Aleksander Pavković with Peter Radan. *Creating New States: Theory and Practice of Secession*.

Aldershot: Ashgate, 2007. 252 pp. £55 (hbk).

ISBN: 0754671631.

MICHAEL URBAN (Balliol College, University of Oxford)

In *Creating New States: Theory and Practice of Secession*, Aleksander Pavković and Peter Radan seek to provide a broad overview of secession and many of the issues which surround it. Their project is ambitious, aiming to cover a wide expanse of diverse material in only 255 pages. While the authors offer a helpful synopsis of the state of the subject, as well as some insightful conceptual advancements, this ambition appears to be the source of the volume's main problems.

The introductory chapter elaborates key terms and concepts and fleshes out the relationships between them. Its second part consists of eight empirical case studies, divided into three chapters, each focusing on a distinct type of secession: peaceful secession, violent secession, and multiple secessions/state dissolution. These chapters are largely devoted to discussion of the history and facts of the cases. The third part of the book comprises three theoretical chapters devoted to questions of (1) explanation/prediction of secessions, (2) the ethical grounds on which secessions are/can be justified, and (3) the status of secession under international and domestic law.

This organizational structure lies at the root of many of the book's difficulties. The counter-intuitive placement of the empirical section prior to the theoretical chapter reduces the value of the cases as evidence against which the theories can be evaluated comparatively; without any theoretical guidance it is not clear to the reader which aspects of the cases are most important to evaluate. Moreover, in the empirical section, the authors often refer to particular theoretical positions without elaborating on their relevance. This renders the case study discussions somewhat disjointed and undermines the insight into the cases that the theoretical interventions might otherwise have supplied.

The rationale for adopting this structure is probably an ambition to cover as much ground as possible—a laudable aim, given the underdeveloped state of secession studies. Indeed, with the number and diversity

of theoretical frameworks under consideration—not to mention the large number of cases—it would have been next to impossible to produce a comprehensible empirical section documenting the facts of the cases and engaging in a meaningful theoretical discussion without significantly expanding the book. However, it is unclear why the authors did not adopt the most obvious solution to this problem: namely, to reorder and expand the book through the creation of a third, evaluative section. For an introductory text such as this, the improved clarity of presentation would likely have been worth the extra pages.

In their attempt to offer a broad introduction, the authors forswear any claim to provide an original or comprehensive theory of secession in the explanatory, ethical, and legal aspects under discussion. Their aim is to evaluate the extent to which others manage this task. And, indeed, they succeed in providing a useful, if sometimes blurry, panorama of the field. They also offer helpful conceptual innovations along the way, such as their delineations of different types of secession, including *sequential* and *recursive* secessions in cases of multiple secessions from a single state. Unfortunately, however, without an obvious central thesis or explicit hypotheses of their own, Pavković and Radan's engagement with other authors' positions often feels ad hoc, leaving the non-expert reader disoriented and unsure of the authors' own positions.

Overall, the authors have produced a useful introductory text on secession, which, despite the aforementioned flaws, provides a serviceable conceptual survey of the discussion of secession and highlights the major theoretical areas of contention, major schools of thought within them, and some of the most important empirical cases. Radan's chapter concerning the legality of secessions is particularly well-written. In the final analysis, however, Pavković and Radan may have taken on more than they could chew in so short a volume, keeping what is ultimately a useful book from being a great one. ■

Avery Kolers. *Land, Conflict, and Justice: A Political Theory of Territory*.

Cambridge: Cambridge University Press, 2009. 252 pp. £50 (pbk).

ISBN: 0521516773.

FRANK DIETRICH (University of Bielefeld, Germany)

Avery Kolers' *Land, Conflict, and Justice* is an original contribution to the current debate on the justification of territorial claims. In his theory of territory he attempts to develop a culturally neutral approach to the value of land that is not biased toward Western perspectives. He also highlights ecological concerns and connects the legitimacy of state control over territory to the idea of environmental sustainability. Secession is not essential for Kolers' theory, but he considers his ideas to be applicable to separatist conflicts and makes a number of interesting remarks on this issue.

The central argument of the book is stated as follows: "A territorial right exists if and only if an ethnogeographic community demonstrably achieves plenitude in a juridical territory; this right grounds independent statehood only if there is no competing right and the territory is a country" (p. 5). The key terms of the theory—ethno-geography, plenitude, and country—are in need of some explanation. In Kolers' view, only ethno-geographic communities are eligible to claim the right to control a particular territory. These are groups that actively shape a piece of land and have a shared conception of its meaning (pp. 86–90).

The restriction of legitimate territorial claims to ethno-geographic communities has important consequences for the normative assessment of secessionist claims. The Québécois, for instance, do not qualify as a distinct ethno-geographic community because their relationship to the land is very similar to that of other Canadians. According to Kolers, they have no right to a territory of their own and are thus not permitted to gain political independence. The Québécois are, however, a distinct linguistic community and may believe that a sovereign state would be more capable of protecting the Francophone culture. In dismissing their possible claim to a territorial right, Kolers seems to overemphasize the significance of a group's conception of land.

The requirement of plenitude, which plays a crucial role in Kolers argument, is met if the members of a group experience a place as diverse and meaningful. Plenitude is a universalistic notion as all claimants of territorial rights must demonstrate their attachment to the area

they wish to control. Since the claim of each ethno-geographic community is assessed on the basis of its own conception of land, it entails a strong particularistic element as well. By introducing the criterion of plenitude, Kolers hopes to account for the normative relevance of territory and to provide an impartial standard for the recognition of rights (pp. 111-120).

Another noteworthy feature of plenitude is its incompatibility with the intentional exhaustion of land. If an ethno-geographic community engages in exploitative land-use practices, it forfeits any right to govern the area. The idea of ecological sustainability, to which Kolers attaches great importance, is thus built into the notion of plenitude. The integration of an environmental element into the theory has far-reaching practical implications. In Kolers' view, the Anglo-American ethno-geographic community, which he accuses of "treating land as merely a commodity," does not possess a territorial right (p. 135). Unless societies fundamentally change their relationship to land, they are not morally entitled to exert territorial authority.

According to Kolers, ethno-geographic communities may only establish a sovereign state if the territory to which they have a right constitutes a country. A stretch of land qualifies as a country if two conditions are met. First, it must be large enough to allow for the implementation of a legal system, and second, it must be resilient. The term resilience denotes the capacity of a territory to recover from "foreseeable or not-wholly-improbable" ecological and socio-economic shocks (p. 75). Resilience is—perhaps unavoidably—a vague notion and its adequacy as a criterion for statehood is debatable. Since ecological threats, such as global warming, require a high degree of international co-operation, one wonders why each state must be capable of meeting this challenge on its own.

Kolers' book offers a thought-provoking analysis of territorial rights supported by many case studies. In particular, the link between environmental protection and political authority, suggested by his theory, merits serious discussion. *Land, Conflict, and Justice* is a highly recommended read for scholars who are interested in the normative aspects of territorial disputes. ■

Deon Geldenhuys. *Contested States in World Politics*.

Basingstoke: Palgrave MacMillan, 2009. 304 pp. £55 (hbk).

ISBN: 0230575528.

KYRIAKOS PIERRAKAKIS (St Antony's College, University of Oxford)

Deon Geldenhuys is one of South Africa's best-known professors of international politics. In his latest book, *Contested States in World Politics*, the author attempts to shed light on the topic of non-recognized state entities, or contested states. He begins by acknowledging that the topic he has decided to examine does not necessarily constitute either the most popular or the best-studied issue in the field of international affairs. Borrowing a quote from former President Clinton regarding development, Geldenhuys claims: "I like working on it because it's not a particularly sexy topic" (p. 1).

Only two years ago, Abkhazia and South Ossetia dominated the international news cycle in the midst of the Russian intervention in Georgia. The 1999 NATO intervention in the Federal Republic of Yugoslavia proved central to the political future of Southeastern Europe, and led to Kosovo's declaration of independence in 2008. It seems needless to note that the strait of Taiwan remains one of the "hottest" international focal points, while the issue of the reunification of Cyprus has been a singularly important topic in EU affairs. Contested states are central to the conduct of international affairs, and a systematic way of theoretically treating them can be helpful for both students and practitioners.

The book is split into two parts. The first involves a theoretical analysis, which the author begins by elaborating on the notion of "contested" versus "confirmed" states through the lenses of international law and historical analysis. Geldenhuys then shifts his focus to the origins of contested statehood, namely the notions of self-determination and secession, and the potential responses of the international environment to the proposed state entity. The theoretical analysis concludes with a chapter on possible outcomes for contested states, or potential alternatives to independence along the lines of a looser connection to the "parent" state.

The second and longer part of the book includes a series of case studies. Four of these cases (Abkhazia, South Ossetia, Transnistria, Nagorno-Karabagh) are bundled together in one chapter (the Eurasian Quartet). Six more cases (Kosovo, Somaliland, Palestine, Northern Cyprus, Western Sahara, Taiwan) are developed in separate chapters.

Geldenhuijs' volume does not include the total set of contested regions. Nonetheless, his case selection is well thought through. The author justifies this on the basis that the entity concerned must have existed as a purportedly independent state for at least three years, desiring to be treated as a peer by confirmed states. This "cut off" excludes, for example, regions or communities such as the Kurds of Turkey and Iraq, Republika Srpska in Bosnia and Herzegovina, Chechnya (which ended its contested claim to statehood in 2000, when it was reincorporated into the Russian Federation), the Ogaden in Ethiopia, and Anjouan in the Comoros.

At a time when sovereignty is increasingly considered *passé* due to the emergence of hybrid sovereign arrangements (such as the EU) and increased international financial integration, the existence of contested state entities itself underlines the symbolic and substantive benefits of recognized statehood. In that context, Geldenhuijs develops an analytical framework designed to investigate the three phases in the life cycle of contested states: their emergence, their behaviour in the international and domestic environment, and their future evolution. The author does not limit himself to a descriptive analysis of the case studies, but tries to develop a roadmap of how contested states can move towards full international recognition. While concise, the present volume does not lack historical depth and political relevance, and constitutes an excellent introduction to the major issues pertaining to contested, or "wannabe," states. ■

Marc Weller. *Contested Statehood: Kosovo's Struggle for Independence*.

Oxford: Oxford University Press, 2009. 328 pp. £40 (hbk).

ISBN: 019956616X

James Ker-Lindsay. *Kosovo: The Path to Contested Statehood in the Balkans*.

London: IB Tauris & Co Ltd, 2009. 272 pp. £54.50 (hbk).

ISBN: 1848850123

GEZIM VISOKA (University of Sussex)

This review examines two recent publications about Kosovo, both of which promise to investigate Kosovo's "contested statehood." Marc Weller provides a detailed analysis of the most important developments during the last two decades of Kosovo's struggle for statehood, including the abolition of Kosovo's autonomy within the Socialist Federal Republic of Yugoslavia (SFRY) in 1989, rising tensions during the 1990s, the conflict in 1998-9, the establishment of international administration under UN Security Council Resolution 1244, the final status negotiations, the 2008 Declaration of Independence, and the consolidation of statehood under the Kosovo Constitution. By contrast, James Ker-Lindsay focuses on recounting the twists and turns of the final status negotiations, which ran from October 2005 to February 2008, and argues that the unsatisfactory conduct of these negotiations led Kosovo down the path to "contested statehood."

Ker-Lindsay provides a detailed narrative of the main events during the three-year negotiation period. These include the appointment of Ahtisaari as the UN mediator, the Vienna Final Status negotiations, the abandonment of the discussion of the Ahtisaari Proposal and the abandonment of a draft UN Security Council resolution, and the 2007 Troika talks. Surprisingly, Ker-Lindsay does not give Kosovo's Declaration of Independence, or the reactions to it, much consideration. This may be due to a publication deadline, but after 106 pages of narrative the unilateral declaration of independence comes as something of an anticlimax. Containing 125 pages of text, Ker-Lindsay's book is actually quite short—a further sixty pages are devoted to annexes and another sixty to endnotes. Since Ker-Lindsay bases his analysis on a variety of sources

ranging from official documents and journalistic articles to confidential interviews, it is particularly important that the reader can measure the evidence presented in support of his claims. Formatting the citations as endnotes is cumbersome for the critical reader.

Such technical observations aside, Ker-Lindsay argues that the contestation of Kosovo's independence came as a result of a flawed negotiation process, which contained "predetermined outcomes" (p. 112). Since the US and some EU countries declared strong support for independence, Ker-Lindsay argues that the Kosovo Albanians were encouraged to fixate on independence as the only solution. According to his analysis, Russia responded to this situation by threatening to veto any solution not acceptable to Belgrade. Ker-Lindsay makes the case that Kosovo's final status would have been resolved decisively if it had gone through a mediated solution (rather than Ahtisaari arbitration) (p. 126), which would have taken into account the potential options for autonomy, territorial partition, protracted status quo, and delay of status.

While this argument seems plausible at first glance, Ker-Lindsay's presentation of parties' positions in the negotiation process is somewhat unbalanced. He gives little attention to the detailed positions of the Kosovo Albanian leadership and of countries that supported independence as the only solution. Ker-Lindsay's conclusion spends pages criticizing Ahtisaari, claiming his approach aimed to "formulate a blueprint for a new independent state" (p. 110). He gives ample attention to Serbia's position—Serbia's suggestions outlining autonomy for Kosovo during the 2007 Troika negotiations are reproduced in Appendix F. However, Ker-Lindsay neglects to include the Kosovo-Serbia Treaty of Friendship and Cooperation, which the Kosovo delegation proposed in response. He repeats calls for renewed negotiations emanating from Sergey Lavrov, the Russian Foreign Minister, and Serbian politicians. All this, in addition to Ker-Lindsay's limited consideration of the human rights abuses experienced by Kosovars before and during the 1998-9 war, leads the suspicious reader to interpret his emphasis as a subtle revocation of claims made by those who attach significance to what Weller describes as "remedial self-determination." Weller suggests that this principle comes into effect when a "constitutionally relevant, defined segment of the state population has been persistently repressed, excluded from the central state, and exposed to a systematic and widespread campaign of its permanent displacement" (p. 239). Ker-Lindsay certainly does not come down on the side of an independent Kosovo, when his final sentence concludes that "the question of Kosovo's final status has yet to be resolved conclusively" (p. 126).

While Ker-Lindsay's narrative can be criticized for lacking impartiality and analytical depth, the same cannot be said of Weller's book, which provides a comprehensive analysis of the key events and positions of international actors during Kosovo's long struggle for statehood. In his study, Weller draws on documents from his previous publication *The Crisis in Kosovo 1989-1999*, as well as his attendance at most stages of the conferences concerning Kosovo's status, to provide detailed insights into the status negotiations. He does not concentrate on reconstructing a historical narrative, providing instead an analytical dissection of events. Weller offers a relatively balanced account of structural factors, which shaped the dynamics of the final status process and made it difficult for any mediator to negotiate an agreement. First, Belgrade's position coincided with the strong emphasis of the classical international system on maintaining the territorial integrity and unity of states. Second, it seemed impossible to reach an agreement without Serbia's consent—reflecting a feature of the classical international system that obligations cannot be imposed upon states against their will. However, Weller holds that the hard principles of territorial integrity and state consent were undermined by a new emphasis on the rights of peoples and populations, as well as a growing recognition of the relevance of human rights as illustrated by international responses to the suffering of Kosovo Albanians under the Milosevic regime, which culminated in the displacement of over 800,000 Kosovo Albanians.

While Kosovo's independence raised questions concerning the applicability of the right to self-determination, Weller explains that states supporting Kosovo argued that it was a *sui generis* case and not a precedent for action in the future. This view is asserted due to three factors: Kosovo's status as a federal unit removed by a federation that subsequently dissolved; the atrocities committed during the 1999 conflict; and the fact that the territory had been subjected to international administration for over eight years. While Ker-Lindsay fails to consider why over fifty governments support Kosovo's independence, Weller notes that, in addition to the brutality of Serbia's action against ethnic Albanians and Bosniaks, independence became internationally acceptable as Belgrade showed inflexibility in the various international attempts to address the crisis. Furthermore, Weller argues that Kosovo's Declaration of Independence was not quite unilateral. First, important limitations on its fledgling sovereignty were negotiated—or, rather, imposed by the Ahtisaari team and reinforced by strong pressure from the US government. The unfortunate irony is that Kosovo thus became subject to the obligations that would have been contained in a negotiated settlement, without the legitimacy benefits of a negotiated outcome.

Weller frames his analysis within wider theoretical perspectives, which gives his study an element of durability that is missing from Ker-Lindsay's book. In his introduction and conclusion, Weller considers more generally the impact of the Kosovo crisis on current developments in international relations and law, considering in particular the evolving position of the international community towards human rights, self-determination, non-intervention, and forcible humanitarian action. In describing how the Kosovo issue was internationalized, Weller suggests that international responses to Kosovo may mark the beginning of a new, more advanced form of international politics, that of a post-modern international constitutional system in which people matter more than states. In contrast to Ker-Lindsay, Weller analyses the background to and content of Kosovo's unilateral Declaration of Independence and the responses to it at the Security Council. He also devotes a chapter to analysing the formulation and content of the Constitution of Independent Kosovo, leaving the reader with a stronger sense that Kosovo's long struggle is making progress on the path towards independence. ■



Responding to Crises: The Past, Present, and Future of International Financial Institutions

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Papers due November 1, 2010

Today, as in the past, the global influence of international financial institutions (IFIs) is tied to their role in responding to crises. With the fall in export revenues, foreign investments, and other global financial flows in the wake of the recent financial crisis, IFIs such as the International Monetary Fund (IMF) and the World Bank have seen many low- and high-income countries forced to turn to them for new loans.

Yet, the consequences of the rising influence of IFIs in the context of crisis-response have not always been regarded as positive. The IMF and the World Bank were strongly criticized for their response to the debt crisis of the 1980s, where the largely neoliberal reforms they advocated had extensive economic, political, and social ramifications in debtor countries. In responding to present and future crises, the IFIs not only need to avoid repeating past failures but must also adapt to a changing landscape of global power with, for instance, the ascendance of the so-called BRIC countries (Brazil, Russia, India, and China).

The critical evaluation of the role of the IFIs in past crises, the significant role of the IFIs in responding to the present economic and financial crisis, and the uncertain future of the IFIs in the context of changing global power structures all necessitate new debate and reflection. Therefore, *STAIR* invites academics, policymakers, and political commentators to submit articles focusing on one or more of the following questions:

- How have the role and the policies of IFIs evolved in the past thirty years, especially in relation to the developing world?
- What lessons have been learnt from the failure of the structural adjustment programmes (SAPs) and the identity crisis of the Bretton Woods organizations in the 1990s?
- What political and institutional legacies of SAPs can be seen in the current practice of the Poverty Reduction Strategy Papers?
- How effective were IFIs in responding to the Asian financial crisis of 1997–8?
- What measures have the IFIs taken in response to the recent global financial and economic crisis, and how effective have these measures been?
- What is the role of regional financial institutions, such as the African Development Bank and the Inter-American Development Bank?
- How are changes in the global power structures, such as the emergence of the BRIC countries, affecting the IFIs?

STAIR welcomes abstracts of up to 500 words in length. In conjunction with this call for papers, *STAIR* also seeks to publish book reviews of works that relate to the theme of the issue.

Notes for contributors are available at www.stair-journal.org
Please send submissions to stair.ifi@gmail.com

General Section of *STAIR*

Call for Papers



Following five years of successfully publishing themed issues, forthcoming issues of the *St Antony's International Review (STAIR)* will also include a General Section. *STAIR* therefore invites authors to submit original research manuscripts on topics of contemporary relevance in international affairs. Submissions from the fields of political science and international relations, international law, area studies, international economics, development studies, philosophy, and international history will all be considered. Articles may take either a theoretical or a policy-oriented approach. We caution that *STAIR* has a broad readership and prizes accessibility of language and content.

STAIR is the only peer-reviewed journal of international affairs at the University of Oxford. Set up by graduate students of St Antony's College in 2005, the *Review* has carved out a distinctive niche as a cross-disciplinary outlet for research on the most pressing contemporary global issues, providing a forum in which emerging scholars can publish their work alongside established academics and policymakers. Distinguished past contributors include John Baylis, Robert O. Keohane, James N. Rosenau, and Alfred Stepan.

Please note that *STAIR* will continue to devote at least half of each issue to a special theme of contemporary significance. The two issues to be published in 2011 will be on "China's Rise: An Adapting Global Structure," and "Responding to Crises: The Past, Present, and Future of International Financial Institutions," respectively. Authors with a particular interest in these areas should therefore refer to the themed Calls for Papers available at www.stair-journal.org.

STAIR will review manuscripts that contain original, previously unpublished material of up to 6,000 words (including footnotes with complete bibliographic information). Authors are asked to include a word count and an abstract of no more than 300 words. Submissions are sent to external reviewers for comment. Decisions can generally be expected within three months. For further information on manuscript preparation, referencing, and diction, please refer to the "Notes for Contributors" available at www.stair-journal.org.

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