



COMPETING CLAIMS Self-Determination and Security in the United Nations

A report of the project on “Self-Determination and Security in the United Nations,” Graduate School of International Studies, University of Denver, and the International Peace Academy

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EXECUTIVE SUMMARY

- Civil wars that pit claims of self-determination by aggrieved minority groups against claims of state sovereignty and territorial integrity are among the most deadly and intractable conflicts on the peace and security agenda of the United Nations. Where minorities seek secession, the resulting conflicts pose particularly difficult challenges for conflict resolution because the competing claims may be irreconcilable.
- At present, whether in the practice of states or the writing of legal scholars, state claims of sovereignty and territorial integrity tend to trump minority group claims to independent statehood. There is, however, a need to reconcile the aspirations of peoples to control of their lives with the needs and constraints of the international system, which emphasizes stability of borders and state authority.
- There is a general consensus that secession should not be encouraged. However, there is no consensus on three important issues:
 1. Should a right to secession be conceded where all other means of protecting minority rights have been exhausted?
 2. Should there always be international action when a self-determination struggle leads to gross violations of human rights?
 3. Should recognition of secessionist claims occur when denial of minority claims to cultural or local autonomy threatens violent conflict?
- To foster increased cooperation among leading states within and outside the UN, the emphasis in diplomatic discourse should be on addressing self-determination claims in terms of preventing deadly conflict. This may be pursued by: encouraging respect for minority rights, constitutionalism and local democracy; decreasing the significance of frontiers through regional organization and more open borders; and ending gross violations of human rights.
- When self-determination is not narrowly defined in terms of secession, many states that are ordinarily reluctant to acknowledge its applicability to internal conflict are, in practice, more flexible in their positions. Such states may be willing to engage in discussion about minority rights and the role of the international community in encouraging protection of vulnerable minorities.
- The international community’s capacity for monitoring and fact-finding should be improved. Some participants suggested creating an international ombudsperson for minority rights, with a mandate, profile and mission similar to that of the OSCE’s High Commissioner for National Minorities. Another option proposed is to create an International Conciliation Commission to mediate ethnic disputes.

This policy brief highlights the principal findings and recommendations emanating from a research project, “Self-Determination, Security, and the United Nations” conducted by the University of Denver’s Center for China-United States Cooperation in the Graduate School of International Studies, in cooperation with the International Peace Academy. The project brought together specialists and scholars from eleven countries for a three-day dialogue held in Vail, Colorado, from November 29 through December 1, 2000. The project evaluated ways for greater cooperation at the United Nations as the organization responds to violent conflicts on the international peace and security agenda that involve competing claims of self-determination and sovereignty.

The meeting was held on a not-for-attribution basis. The conclusions and recommendations included here incorporate ideas stemming from the deliberations of project participants and from papers prepared in advance to facilitate their dialogue. Individual participants do not necessarily agree with all of the conclusions and recommendations, although every effort has been made to reflect differences of opinion and perception. All direct quotations have been approved.

I. Introduction

Today’s peace and security agenda at the United Nations is crowded with cases in which protagonists invoke the principle of self-determination to justify a struggle for independent nationhood. The problem is vexing because there is disagreement whether such a right exists in international law outside the context of classical colonialism and annexation of national territory by a foreign state. When conflicts over this principle remain below the threshold of significant violence, as in Quebec, they generally fall within the exclusive domain of sovereign states. The international community has played little role in the direct management or mitigation of such disputes, even where the Security Council clearly has authority under Chapter VI of the Charter.

At least half of today’s wars feature claims by aggrieved groups that their right to self-determination has been breached by the states from which they seek to separate. A glance at the most devastating of these wars—such as Indonesia (Aceh, East Timor, and West Papua), India (Kashmir), Russia (Chechnya), Yugoslavia (Kosovo), the Israeli/Palestinian dispute, Sri Lanka and Sudan—highlights how difficult such conflicts are to resolve. Many other tense situations, once violent (Bosnia) or which could become more violent (Taiwan), feature competing claims of this nature.

Some of these conflicts feature maximal claims by groups for secession; in others, the goals of minorities are for autonomy (sometimes in the early stages of a developing conflict, before violence has erupted).

When an internal “war” (defined as a major armed conflict, causing more than 1,000 politically-related deaths in a twelve month period) erupts, and the war or its consequences have damaging effects across borders (through escalation, refugee flows, or other “externalities”), or when there are allegations of severe violations of human rights, the competing claims of groups and states take their place at the top of the international peace and security agenda.

- Of the three new major armed conflicts that broke out in 1999, in Russia (Chechnya), Yugoslavia (Kosovo), and Indonesia (East Timor), all featured a regionally based group claiming violation of its national self-determination rights by the central government.
- Of the fourteen wars raging in 1999, eight wars in the following countries involved claims by one group or another for some degree of self-determination: Afghanistan, Democratic Republic of Congo, Indonesia (East Timor), India (Kashmir), Russia (Chechnya), Sri Lanka, Sudan, and Yugoslavia (Kosovo). (Wars in Angola, Algeria, Colombia, Congo, Sierra Leone, and between Eritrea and Ethiopia did not significantly feature current self-determination claims.) In 2000, the Israeli-Palestinian dispute re-erupted into significant violence, thus returning to a pattern of conflict reminiscent of the *Intifada* in the late 1980s.

Some of these disputes, such as the Israeli-Palestinian imbroglio, have been on the United Nations agenda for decades. Others, such as fighting over independence by groups in Indonesia (Aceh and West Papua), have been simmering for many years, but only recently have

breached the threshold of international consequence. When violence reaches high levels, and the interests of major states are affected, self-determination disputes become global issues of critical importance to the peace and security of the international community.

The chart presents the most recent data on self-determination disputes through 1999, the latest year for which the tally is in and has been sufficiently evaluated.



Participants at the Vail Dialogue

Wars Featuring Self-Determination Claims, 1990-1999*
(by region)

<i>Americas</i>	Guatemala
<i>Asia</i>	India (Assam, Punjab, Kashmir) Indonesia (Aceh, East Timor) Myanmar (Karen, Shan)
<i>Africa</i>	Burundi Democratic Republic of Congo Ethiopia (Oromiya) Rwanda Senegal (Casamance) South Africa Sudan (southern Sudan)
<i>Europe</i>	Azerbaijan (Karabagh) Former Yugoslavia (Bosnia, Croatia) Yugoslavia (Kosovo) Georgia (Abkhazia) Russia (Chechnya)
<i>Middle East</i>	Iraq (Kurdistan) Turkey (Kurdish Question) Yemen

* A war is defined as major armed conflict that includes more than 1,000 politically related deaths in a twelve-month period. The authors of this report coded these disputes as featuring some self-determination claim or assertion of minority rights by at least one (usually ethnically based) party to the conflict during the period 1990-1999. Principal source: "Armed Conflict, 1989-1999," Peter Wallensteen and Margareta Sollenberg, *Journal of Peace Research* 37(5) (September 2000): 635-649. This data represents the last years for which firm data was compiled and evaluated by these researchers.

II. The Evolution of Self-Determination Norms

The principle of self-determination emerged in the nineteenth century as a rallying cry for large groups of people. Its prominence increased significantly during World War I when U.S. President Woodrow Wilson included it in his famous Fourteen-Points plan for peace. Wilson's rhetoric reflected many of the tensions that exist today. He called for "a free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined."

Wilson recognized the importance of assuring some nationalities, such as the Hungarians and Czech-Slovaks, national independence while other minorities, such as nationalities under Turkish rule, should be given a lesser degree of autonomy and minority rights. Conspicuous in its absence from Wilson's now famous speech is the term "self-determination." When he later used the term, he made clear his view that, while well-defined national aspirations should be addressed, this should be done in a manner that did not introduce new antagonisms threatening international peace.

The principle further evolved in the League of Nations system, especially the Minority Rights Treaties that provided guarantees of group autonomy to vulnerable peoples in new states. The mechanisms of protection included the right of minorities to petition the League if they felt their rights under the treaties were being violated, special Minorities Committees of the League to review disputes arising under the treaties, and the Permanent Court of International Justice's advisory jurisdiction over the treaty regime.

An Outdated Concept?

This principle found its way into the Atlantic Charter and then into the United Nations Charter as a cornerstone of the organization. Article 1(2) of the Charter declares that a fundamental aim of the organization is "to develop friendly relations among nations based on respect for the principle of equal rights and *self-determination of peoples*, and to take other appropriate

measures to strengthen universal peace." The principle has subsequently evolved in international law into the notion of a right. The *right* to self-determination appears in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It also appears in the Helsinki Final Act; and it appears as a right in the norms developed by regional organizations, such as the Organization for Security and Cooperation in Europe.

Some scholars and political leaders view the self-determination norm as self-liquidating and, in fact, now nearing its life-end since the project of decolonization is almost completed. If the decolonization definition applies, the principle has served its original purpose and has very little relevance to the contemporary period. To be sure, it would remain applicable to "uncontested" splits, on which all sides agree to create one or more new states (e.g., the breakup of Czechoslovakia into the Czech and Slovak Republics), or to reunion of previously split territories (e.g., Germany or Yemen). These are, however, exceptional and uncontroversial cases.

Others view self-determination as a permanent and vital element in global affairs. In international law or practice, there has been no definitive clarification of the term "self-determination of peoples" although, at the UN, the principle generally has applied to territories and not to peoples.

Today, entrepreneurs of ethnicity routinely invoke the principle when demanding a right to adjust "artificial" state boundaries. In part as a means of deflecting these claims and in part as a means of enhancing human dignity, opponents of secession have sought to widen the concept of self-determination so that it refers primarily either to democratic governance or cultural autonomy and respectful treatment.

At present, whether in the practice of states or the writing of legal scholars, state claims of sovereignty and territorial integrity tend to trump minority group claims to independent statehood. Almost all of the recent exceptions have had a previously ambiguous status in international law. They were either: (1) former colonies that achieved long-delayed independence due to errors or disputes that arose during an earlier period of decolonization (East Timor or the latent Palestinian entity); or (2) were former units of collapsed federations (the former Yugoslavia and the former Soviet republics). Few

outright attempts at secession have been successful in recent years.

Some Needed Clarification

Self-determination means many things to many people. There are at least five contemporary interpretations of the term.

The first two definitions are not particularly controversial:

1. The *decolonization interpretation* relates the norm to the right of occupied territories to independence. With traditional decolonization—sometimes known as “saltwater” decolonization—more or less complete, this definition is considered by most to be fulfilled or obsolete. Most of the territories that once were colonial dominions have achieved freedom from colonial domination, meaning the 1960 UN Declaration on the Granting of Independence to Colonial Peoples has, for the most part, been implemented. Namibia was perhaps the last major instance of decolonization in this narrow meaning of the term. In practice, more importantly, self-determination did not allow for secession from the colonial-era administrative unit at the moment of decolonization by groups previously bundled together by the colonial powers for their convenience. The pre-existing borders of ex-colonial states are now seen as “inviolable.”
2. The *freedom from foreign domination interpretation* means that sovereign states should be free of occupation by foreign troops or interference from abroad. This interpretation refers to freedom from aggression or foreign control.

The third definition is especially controversial, and is usually held only by aggrieved groups who seek statehood or greater autonomy:

3. The *nationalist interpretation* equates self-determination with the right of major national groups to their own state, or to effective control of their own territory within a recognized state. A variant of this definition is that the Charter implicitly offers the “right” of self-determination to “peoples” or nations that aspire to independence. In the most extreme form of this interpretation, all ethnic groups predominating in a part of the territory of a

recognized state should be able to gain sovereignty over that territory. This meaning has not been accepted in the United Nations’ practices and most scholarly writings.

A less controversial application of this definition equates self-determination with a minority rights regime:

4. The *minority rights interpretation* means that minority peoples have the right to a degree of cultural and political autonomy within existing multinational states. In this view, the principle is articulated in emerging norms of minority and indigenous rights formulated in the covenants of regional and international organizations and in the human right to participate in governance. It also applies to freedom from religious discrimination.

A final interpretation—somewhat controversial in nature—equates self-determination with democratic governance:

5. The *democratic governance interpretation* means that people have the right to determine their own destiny within existing states through democratic practices, such as regular, free and fair elections, freedom of speech, thought, and association.

As a consequence of the rise or increased intensity of ethnic conflicts in the early 1990s, new emphasis is given to self-determination. Although the incidence of new violent ethnic conflicts lessened to some extent in the late 1990s and early 2000, internal conflicts are still the predominant form of mass violence.

Because of such ethnic conflicts, the norm of self-determination remains critical to resolution of ethnic conflicts—in one view, through its concrete expression in the evolution of new international norms on minority rights and democratic participation. Internal power sharing, territorial autonomy, language and cultural rights are seen by many as the basis for a new, more modern interpretation of the right to self-determination.

One of the most difficult aspects of the minority rights regime is determining a group’s eligibility for national minority status, as well as assessing claims of an elite to authoritative representation of the group.

International Norms on Minority Rights: A Sample

Article 27 of the *International Covenant on Civil and Political Rights* provides a right to identity and, by inference, to minority protection. In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Article 3 of the 1992 *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* provides for exercising such rights as individuals or in community with other members of a group.

Article 1 of the *UNESCO Declaration on Race and Racial Prejudice* describes and condemns discrimination on the basis of race or other identity.

The 1990 *Copenhagen Document* of the Conference on Security and Cooperation in Europe (CSCE), together with the 1999 *Lund Recommendations on the Effective Participation of National Minorities in Public Life*, drafted for the Organization for Security and Cooperation in Europe (OSCE) by the High Commissioner on National Minorities, are non-binding instruments that provide further support for the right of self-determination.

The Inter-American Commission on Human Rights has prepared a *Proposed American Declaration on the Rights of Indigenous Peoples*, which is under consideration by the Organization of American States and was debated at a March 2001 gathering of indigenous peoples in Ottawa, Canada.

Participants generally agreed that the international community must be especially careful not to set standards for recognition of minorities that could be construed as implying that groups who turn to violence for global attention will be rewarded with recognition and legitimacy in the international arena. A troublesome problem in this context is determining the legitimate representatives of aggrieved groups. Consulting the views of minorities seeking either independence or autonomy directly, rather than through self-proclaimed representatives, is sometimes desirable in theory but difficult in practice. Even when the conditions for meaningful referendums are present, there often remains the difficulty of determining who is eligible to participate.

Use of Referendums

The international community has traditionally turned to the holding of a referendum or plebiscite to determine the wishes of the people in disputed territories. Several participants expressed great concern about this practice. Where such votes have been held, they argued, the outcome has been violence before or after the poll. In several recent situations, such as Bosnia in 1991 and East Timor in 1999, referendums were turned into all-out, winner-take-all contests. Groups that lose in majority-rule decisions on independence may turn to

war due to a deep insecurity about their future in the new political environment and structure.

In some longstanding self-determination disputes, such as Kashmir and Western Sahara, concern about the winner-take-all nature of a referendum has been one of the most important stumbling blocks to peaceful resolution of the conflict. The use of plebiscites or referendums in resolving self-determination claims should be examined more closely. Possible alternatives include processes in which voters choose delegates to constitution-making assemblies, in which the details of living together can be carefully negotiated.

In some situations, such as New Caledonia, referendums have been explicitly deferred in favor of increased autonomy and development. Some have suggested that contentious referendums—sometimes sponsored by the UN—have aggravated disputes such as in West Papua (Indonesia). In an effort to moderate the stakes and hence the tensions often associated with elections in territories exiting dependent status, the United Nations Department of Electoral Assistance at times has encouraged adoption of proportional representation as one alternative to winner-take-all electoral contests in divided societies. Proportional representation is not a panacea. Electoral and constitutional formulas must be chosen and adapted on the basis of a very close appreciation of the particular

context and with unblinking awareness that the goal is not abstract justice but conflict avoidance or at least reduction.

Recognition

Recognition by the United Nations is usually deemed decisive for groups aspiring to independent statehood, in part because powerful governments shape the decision to treat the problematical entity as a sovereign state. However, the United Nations needs the freedom to deal with entities that have at least temporarily achieved *de facto* autonomy and to do so without committing itself on the question of sovereignty. In particular, it cannot shun responsibility for the well being of ordinary people living in such entities. Northern Somalia or Somaliland is a case in point. There, proponents of a state separate from Somalia (as it was during the colonial period) effectively control the territory with the apparent consent of the population. Yet, because it has not been recognized and the UN and individual states have been very cautious about appearing to commit themselves on the recognition question, the *de facto* government has found it relatively difficult to secure assistance for the territory's rehabilitation and development.

Recognition by influential states in the international community remains a troubled and sometimes arbitrary process. Some argue that the central question in assessing the applicability of the right to independence for aggrieved groups is the question of viability of the new states. Others contend that in a world with open borders and a transnational economy, and one where independence is protected by the Charter, long-held notions of viability have little relevance.

In the past, the theoretical test for state viability has been a defined population, control of specific territory, a functioning government, and capacity to govern. In recent years, this notion of viability has altered. In Bosnia, Kosovo, and East Timor, the state does not yet meet the strict criteria of the past; yet in each of them, the United Nations is working to build the elements of state capacity that are a condition of operational independence.

These recent instances of independence without the elements traditionally associated with a judgment of viability raise the question of whether the UN has implicitly accepted an obligation to protect from external attack or internal incapacity territorial entities that have become effectively autonomous through UN-

endorsed interventions. So-called "multidimensional peacekeeping operations" are necessary for the performance of those tasks.

Creating New States?

There remains an important debate on whether the taboo on creating new states from parts of older ones in the international arena is the best approach to managing today's deadly conflicts over nationhood and territory. Is the creation of new states inherently conflict-inducing? Participants debated whether the creation of new states out of today's larger states inevitably would induce conflict; or whether, especially in the long run, separation of hopelessly polarized ethnic groups might prove the least worst solution.

Some view the creation of new states as leading inevitably to brutal wars of separation; others see greater long-term gains in conflict resolution by allowing secession in limited circumstances where it appears that peaceful co-existence in a single country is not really possible. In certain circumstances, the possibility of separation might in fact serve to *minimize* the likelihood of an actual struggle for self-determination. This is a plausible interpretation of the situation in Quebec, where the threat of secession—mediated through law—has sometimes served as a safety-valve for releasing tension.

Those who see the proliferation of new states as intolerably destabilizing argue that self-determination should focus on autonomy and power-sharing because secession is universally abhorred in principle and is usually a bloody, troubled process in practice. Advocates of this position suggest that the international community should focus on fostering autonomy regimes that will be responsive to self-determination claims, and insist that secession remains and should remain internationally taboo. On the other hand, some are concerned that granting autonomy claims may be a "slippery slope" to eventual secession; they especially caution against solutions to internal conflict that will result in territorial autonomy.

Proponents of creating new states suggest that, in the long run, smaller and more ethnically homogenous states will lead to greater peace and stability, and that the current bias toward territorial integrity likely will engender new wars as groups become unhappy about sharing their power or territory. They do not always address the difficulty and desirability of maintaining homogenous states in a world of porous borders and increasingly mobile populations.

III. Management by States of Self-Determination Claims

Participants recognized that, for the most part, self-determination claims are resolved by states negotiating with minority groups over the extent of power sharing and autonomy. The preferred solutions are those reached by the parties themselves without interference from the international community and without potentially destabilizing adjustments to national boundaries. When a state's breakup is consensual, the international community should simply recognize the wishes of the parties.

In recent years, there has been renewed interest in autonomy—territorial self-rule or group-based “corporate” autonomy—as a way to resolve self-determination claims. Autonomy solutions have been proffered in many situations of violent ethnic conflict, such as in Indonesia, Kashmir, Sri Lanka, and Sudan. As a concept, autonomy has its supporters and detractors.

Advantages & Disadvantages of Autonomy

Supporters of autonomy see some form of territorial or group-based right to self-rule as a just balance between competing claims of groups and states. Autonomy makes particular sense, these supporters suggest, because it does not lead to the breakup of a state, can be flexibly designed, usually leaves important security and foreign policy issues to central governments, and preserves a principle of multiethnic coexistence. Russia in Tartarstan, and Finland in the Åland Islands, are seen by some as successful models of autonomy arrangements that could be replicated to resolve self-determination disputes elsewhere.

Some participants were concerned with autonomy because it assumes a static and usually territorial solution to a self-determination problem, which is contrary to modern realities in which migration and ever-growing admixture of peoples is a fact. Moreover, in autonomous regions, there is still the need for protection of vulnerable minority groups; autonomy does not solve the problems of multiethnic coexistence, it simply rearranges majorities and minorities. Identity, too, is flexible and groups should not be viewed as fixed, either in their own perception of the group's borders or that of outsiders.

In some cases, other solutions, such as free association, should be considered in seeking to resolve self-determination claims. There are innovative forms of “intermediate” sovereignty that could form the basis of sustain-

able arrangements to give a measure of independence without the formal breakup of states.

In other cases, de facto intermediate sovereignty arrangements are part of the problem, not the solution. Resolving the Taiwan issue likely will require some formal consolidation of sovereignty—the operative model appears to be “one country, two systems”—rather than formalized separation.

Evaluating Practices of States

Should there be common yardsticks by which states are judged in their management of self-determination claims? Participants debated whether the behavior of states toward minorities and indigenous groups was relevant to decisions on international involvement in conflicts involving self-determination claims.

If a state is democratic, participatory and acting in good faith, should the international community actively help defeat those bent on nothing less than independence? (Such assistance might take the form of joint military and police operations, expedited extradition, or a clamp-down on fund-raising and proselytizing activities in third countries.) Basque separatism in Spain may be an example of such a situation. Despite efforts by the central government to achieve a negotiated solution within the boundaries of the current state, some Basque groups continue to use violence to press their claims for territorial independence.

Some participants believed that state responses to ethnic grievances should be judged by a common set of criteria. Others argued that it is dangerous to use a common yardstick, preferring to look at each case and assess the context and consequences of self-determination claims. Chinese participants argued that the Taiwan issue, for example, is historically unique and cannot be assessed in terms of universally applied criteria.

Could regional integration make a difference? While some suggested that regional integration, as in Europe, may be a means to lower the stakes of sovereignty claims, others noted how it has failed to satisfy Basque and Corsican nationalists and that it may be encouraging centrifugal forces in countries like the United Kingdom and France. Many participants felt that regional integration generally does help dampen separatist tendencies by reducing the importance of intra-union frontiers.

Another effect of regional integration is incentives for cooperation. For example, the European Union has used the prospect of membership in its institutions as an incentive to reach a negotiated solution to the problems in Cyprus.

IV. Intervention: Perspectives of Pivotal States

Of the many situations worldwide in which self-determination claims have not been well managed by states, and which have led or may soon lead to violence, the international community has an important interest in their amelioration. Participants broadly agreed that, in point of fact, the UN becomes extensively involved in self-determination disputes—especially those involving aggrieved ethnic groups—only when such disputes become internally violent, with consequences spilling over frontiers.

In particular, it was widely agreed that intervention occurs when the interests of powerful states are substantially engaged, and that the uneven nature of intervention can be explained in classic *realpolitik* terms: that is, powerful states intervene in the affairs of others when their particular interests are affected. In terms of what the UN should do, many participants argued that today's ad hoc approach to military intervention after a catastrophe strikes should be replaced with much earlier dispute-resolving initiatives under Chapter VI of the Charter.

There is a dearth of consensus among major powers over when, if ever, gross violations of human rights in internal conflicts, stemming from self-determination claims, should be the subject of diplomatic or military intervention by the United Nations or other states.

If secession is at stake, most states believe that coercive intervention in self-determination conflicts as such is illegal and unjustifiable, that states should be left alone to address these conflicts and arrive at feasible solutions, assuming that the conflict does not produce crimes against humanity.

At the same time, most states believe that intervention may be justified not to facilitate self-determination but to end massive violations of human rights where they are an incident of the conflict. Even states reluctant to agree to intervention, such as China, have agreed that in certain instances it may be justifiable. Still other states, such as Canada, believe that when human security is fundamentally at risk and international norms (such as the Genocide Convention) are violated, the international community has an *obligation* to intervene to protect vulnerable groups. (The difficulty of mustering forces for such interventions remains; even a state like Canada,

which advocates intervention to protect human rights, may be reluctant to participate in risky military adventures overseas.)

All of today's major powers, including the permanent members of the Security Council, are wary of intervention in internal conflicts. Some wariness arises from the concern about casualties to intervening troops. Other concerns stem from a deep-seated skepticism about the utility of intervention. Still others see such intervention as a fundamental violation of the right of states to noninterference in domestic affairs.

Humanitarian Intervention & Self-Determination

How related is the concept of humanitarian intervention to intervention in self-determination claims?

When intervention occurs, most participants agreed, it should not be justified in terms of the principle of self-determination; rather, humanitarian concerns should be the justification for intervention. Still, international intervention may incidentally affect the resolution of self-determination claims that lie at the root of these types of armed conflicts. The international community is biased toward preserving the integrity of existing states. When the international community becomes involved, it has traditionally tended to tip the balance toward preserving the territorial integrity—the current borders—of existing states.

A 1995 Report of the Secretary General ("Protection of Minorities: Possible Ways and Means," 14 June 1995), noted "As a general rule, solutions to minority problems had to be found within the framework of existing states. Legitimate claims by individuals and groups should normally be accommodated within the state constitutional system by creating adequate political arrangements, structures, and procedures. Thus, the starting point of a model world order [is acceptance of the fact that there is] no generally recognized right of secession...."

As one participant argued, humanitarian intervention may be indirectly related to resolving self-determination claims. This participant noted, "The point of humanitarian intervention is to halt mass murder, nothing more and nothing less. Pursuit of that simple object may temporarily promote secessionist objectives, as it did

when NATO and the UN established a de facto independent state in Kosovo *prior* to Milosevic's ouster. But it can also impede these objectives—as it did *after* Milosevic's ouster when the Kosovar Albanians saw their secessionist balloon suddenly pop under the weight of that same NATO/UN protectorate.”

The Importance of Consent

There is a serious and long-standing debate over whether the Security Council has the authority to intervene in internal conflict situations of any kind involving self-determination when the affected state does not consent. Some argue that a close reading of the Charter does not permit it; others suggest that, in practice, the Charter has evolved and that the authority to intervene is now accepted by most states.

Clearly there is serious gap in attitudes between East and West, North and South, on the role of the Council in authorizing intervention in internal conflicts without consent. Although there is broad consensus that the international community should act to stem gross violations of human rights, the principle of humanitarian intervention—when it implies coercive military force—is simply not accepted by a considerable number of member states. For them, sovereignty still trumps other global norms.

Some participants suggested that good faith efforts by leading blocs and states to develop clear criteria for intervention by the international community could gradually close that gap. This might happen by reassuring weaker states that the norm of intervention, whether under Chapter VI or forcibly under Chapter VII, will deal only with truly exceptional situations and be even-handedly applied.

Others responded that caution and careful, case-by-case analysis is needed most. A common yardstick to evaluate the causes and consequences of internal conflicts is simply not achievable; that each situation needs to be handled in its own context. Formalized criteria are not desirable, it was argued, because they may lead to more, often unwise, interventions by the international community in complicated imbroglios.

Insisting on the centrality of human security may be a way to recast the debate on self-determination by focusing on the reasonableness of claims of minority groups to various forms of autonomy and/or equal

treatment within the framework of existing states.

External involvement in self-determination disputes is usually not neutral. The international community's bias in favor of maintaining the borders of existing states pushes mediators to stress the option of autonomy or power sharing as a way to end the conflict. The system's bias has been a high hurdle to overcome for most groups that seek to carve their own state out of today's recognized sovereigns.

National Perspectives of Some Key Actors

By virtue of their weight on the geopolitical scales and their roles as permanent members of the Security Council, China and Russia's positions on authorization of intervention in self-determination disputes are crucial. The views of these countries cannot be conflated, of course, though there are some similarities in their fairly consistent opposition to intervention—China more so than Russia, it having been very reluctant to cast a positive vote in favor of resolutions authorizing humanitarian intervention. Each has also resisted international involvement in its perceived domestic domain (Tibet and Taiwan for China, Chechnya for Russia).

While some view China's position as unqualified and implacable opposition to intervention, in fact there is nuance in its principles and practices. China has tolerated intervention in a number of circumstances. It appears to favor strongly case-by-case review, preferably within the Security Council, and without the articulation of general criteria. Thus principle and practice for China, as for many other states, do not completely coincide.

The U.S. does not typically justify efforts to intervene in self-determination terms. Where it has endorsed intervention or intervened itself, whether unilaterally, in coalition, or under a Security Council mandate, it has done so exclusively in the name of international security and/or protection of fundamental human rights.

Participants saw the practice of the U.S. and other Western powers as inconsistent: effectively blocking intervention to stop genocide in Rwanda, while acting outside the Security Council structure through NATO to halt serious but not yet genocidal action by Yugoslavia in Kosovo. Indeed, the Independent International Commission on Kosovo, chaired by South African Justice Richard Goldstone, concluded in its report that “the world has not given the same priority to humanitarian

catastrophes outside Europe as it gave to Kosovo. It is the Commission's hope that, after the Kosovo experience, it will be impossible to ignore tragedies such as the genocide in Rwanda and other parts of the world, and that the lessons of the Kosovo conflict will help us to develop a more effective response to future humanitarian catastrophes wherever they occur."

Below is a selection of participant comments that provide some sense of the national perspectives of some of today's pivotal countries. These comments were made by the participants in their individual capacities (i.e., the comments do not necessarily reflect government policy); the quotations have been approved by them for publication here.

Perspectives on Self-Determination and International Security

Australia

When Australian policymakers consider the threats to regional security created by self-determination movements in the Asian-Pacific region, they are increasingly concerned with a sub-region dubbed the "arc of instability" as a focus for much internal conflict over self-determination.

The "arc of instability" is a term widely used by analysts in Australasia to describe the increasingly conflictual regions of maritime Southeast Asian and South Pacific island chains—in geographic terms, the Malay and Oceanic archipelagos which comprise greater Indonesia and Melanesia—that encircle Australia's north. A defining characteristic of the region as a whole is the weakness of existing states and their fragility in the face of secessionist claims.

Ben Reilly, Australian National University

Canada

The recent and not-so-recent history of UN peacekeeping intervention in inter-communal conflicts and national self-determination struggles shows that the consensus is weak; Western liberal democratic states have found themselves at odds not just with developing countries, but also great powers like Russia and China.... Human security values [favoring intervention] have therefore tended to sit somewhat uneasily alongside more traditional international norms like sovereignty and the principle of noninterference in the internal affairs of states.

Fen Osler Hampson, Carleton University

China

In the future, the primary role of the UN Security Council in maintaining international peace and security should be strengthened, because the Security Council is still the core of the international collective security mechanism. The international community should come together to safeguard the continued authority of the Security Council to handle international disputes rather than to impair it.

It is against the will of many member states for any country to bypass the Security Council and do what it wishes on major issues concerning world peace and security. When consensus among the five permanent members of the Security Council does not exist, the international community should not take any military action to intervene in the internal issues of a state.

Xia Liping, Shanghai Institute of International Studies

Japan

Can a Japan, so long obsessed with peace by any means, come to support interventions? Japan has begun to shed its willful innocence of international politics understood to be a system of war. Since the end of the cold war, Japan gropes to define for itself a new international military role.

As the Australian-led military force moved into East Timor, the Japanese government explained why its troops could not participate. That the force was not officially a United Nations force stood as one critical reason. The United Nations has played a more important role in Japanese thinking about security than is commonly acknowledged.

Masaru Tamamoto, World Policy Institute

Russia

The development of the situation in the Russian Federation as regards self-determination will depend upon many factors: the progress of economic reforms, the pace of democratization and the formation of a civic society, a settlement in Chechnya. In any case, it is difficult to expect that the problem of federal integrity will move to the back burner in the near future. Concern with this problem will inevitably influence Russian attitudes to self-determination conflicts in other countries.

It is unrealistic to expect that the Russian position (as well as the positions of some other major countries) on "humanitarian intervention" will be universal and independent of geo-strategic interests. It was much easier to agree on intervention in Somalia, Haiti, or Rwanda, where Moscow's interests were minimal. But the Balkans was regarded as a region of special interests. It does not mean that Moscow will condone human rights abuses by its allies, but it will definitely oppose any humanitarian intervention against them.

Vladimir Kulagin, Moscow State University

United States

The entire debate around the limits of UN or other military intervention in a sovereign state's affairs is currently phrased in terms of "humanitarian intervention." There is no reference to intervention to redress violation of the principle of self-determination or on behalf of a politically rather than a physically aggrieved party. Nevertheless, the implication is that where internal conflict arises from a lack of human rights protection, international intervention may be justified on behalf of the oppressed. Even when the issue of self-determination might be at the heart of the conflict, the Security Council has shied away from addressing that issue directly except in a few cases.

The Secretary General, speaking for the UN as a whole, has moved the argument in a new direction. By emphasizing human rights, rather than the self-determination of peoples, by emphasizing internal democracy and pluralism rather than political self-determination, the Secretary General has elevated individual rights and internal political processes to being as much the focus of international concern as the relationship among nations. The Secretary General's position is coincident with the direction of United States thinking. Issues of ethnic rights are now to be resolved within the context of democracy and human rights, and through regional institutions allowing freer movement of people rather than through endless redrawing of national boundaries.

This shift in doctrine away from self-determination and toward human rights is more than a reflection of the problems arising from intervening in matters of internal conflict. It is a reflection of the pluralistic realities of the contemporary world of states.

Princeton Lyman, Aspen Institute for Humanistic Studies

V. Recommendations

The following recommendations emerged at the Vail dialogue. No effort was made to achieve consensus on these points. However, out of the cordial yet spirited exchange among the participants came ideas for achieving greater agreement on international action to ameliorate self-determination conflicts.

Participants generally agreed that it is impossible to separate the humanitarian issues from the political ones; and there was awareness that, at present, there is not a consensus on how the international community should respond to self-determination conflicts that promise or create humanitarian crises.

- Self-determination remains a troubled and troubling concept, which, in practice, has demonstrated a capacity to polarize international opinion. To foster increased cooperation, within and outside the UN and among leading states, the emphasis in diplomatic discourse should be on addressing self-determination claims in terms of preventing deadly conflict. This may be pursued by: encouraging respect for minority rights, constitutionalism and local democracy; decreasing the significance of frontiers through regional organization and more open borders; and mitigating violations of human rights.
 - Advancing the notion of human security may be a way to recast the debate on self-determination by focusing on the reasonableness of claims of minority groups to various forms of autonomy and/or equal treatment within the framework of existing states.
 - Further development of specific norms and guidelines on minority rights is necessary and feasible, particularly in those regions (Africa, South Asia, Southeast Asia) where the regional normative and institutional framework for evaluating claims and mediating disputes is weak.
 - The notion of integration without forced assimilation for all groups in a state should be further explored. While no one system of minority participation applies to all situations, efforts should be made to develop general principles that can guide states in constructing responsive laws and policies that will ensure fairness, political participation, and the absence of discrimination.
- ### *Concerning Intervention in Self-Determination Disputes*
- UN-authorized use of force as a last resort still may not resolve the underlying issues grounded in self-determination claims; ultimately, these claims are usually only resolved through peacemaking. Such peacemaking likely will involve autonomy, power sharing, or other means of assuring fair and equal treatment and respect for cultural diversity consistent with the right of majorities to foster by non-coercive means a society-wide civic and political culture.
 - Non-consensual intervention should be considered *only* when conflicts threaten international peace or cause massive violations of human rights *and* when other options have been exhausted or are predictably futile. The goals of such intervention should be ending the commission of international crimes, such as genocide, and creating an environment for negotiated peacemaking.
 - New options should be explored such as free association and forms of intermediate sovereignty that may involve external (including UN) guarantees. Additionally, formal confederations of states—such as the European Union—may be a way to balance some competing claims to self-determination and territorial integrity.
 - The presumption against nonconsensual creation of new states should continue. Thus, premature recognition of new states will continue to be seen as illegal interference in the internal affairs of a state.
 - The bias toward territorial integrity (maintaining existing boundaries) may be overcome by Security Council-authorized intervention in cases involving crimes against humanity, when all other efforts to protect basic human rights have failed or are manifestly certain to fail if tried.
 - The international community's capacity for monitoring and fact-finding should be improved. Some participants suggested creating an international ombudsperson for minority rights, with a mandate, profile and mission similar to that of the OSCE's High Commissioner for National Minorities. Another option is to create an International Conciliation Commission to mediate ethnic disputes.

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