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International Law and Security Dilemmas in Multiethnic States

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INTERNATIONAL LAW AND SECURITY DILEMMAS IN MULTIETHNIC STATES

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I. INTRODUCTION

Regardless of the fact that many scholars have contributed to the discourse on the legal relationship between international legal principles of self-determination of peoples and the territorial integrity of states, the question as to why and how disputes between these two principles, associated with principles of non-intervention in the internal affairs of states and the international recognition of states, can encourage sub-national groups and a central government (neither of which necessarily wishes to trigger violent confrontation) to make a rational choice that, in conjunction with the other's choice, leads to armed conflict, remains controversial.[1]

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1. Nathaniel Berman, *Sovereignty in Abeyance: Self-determination and International Law*, 7 WIS. INT'L L.J. 51 (1988); Allen Buchanan, *Self-determination and the Right to Secede*, 45 J. INT'L AFF. 347 (Winter 1992); Allen Buchanan, *Toward a Theory of Secession*, 1991 ETHICS 101; ALLAN BUCHANAN, SECESSION: THE MORALITY OF POLITICAL DIVORCE FROM FORT SUMTER TO LITHUANIA AND QUEBEC (Westview Press 1991); LEE C. BUCHHEIT, SECESSION: THE LEGITIMACY OF SELF-DETERMINATION 18-25 (Yale University Press 1978); Lea Brilmayer, *Secession and Self-Determination: A Territorial Interpretation*, 16 YALE J. INT'L L. 177 (1991); ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES (Cambridge University Press 1995); Herb Feith & Alan Smith, *Self-determination in the 1990s: Equipping the UN to Resolve Ethno-Nationalist Conflict, in* CONFLICT TRANSFORMATION 143-161 (Kumar Rupesinghe ed., 1994); JOHN HARRIS ED., THE POLITICS OF HUMANITARIAN INTERVENTION (1995); Alexis Heraclides, *Secession, Self-Determination, and Nonintervention*, 45 J. INT'L AFF. 399 (Winter 1992); STANLEY HOFFMAN, THE

This paper considers how the international legal system may be reconstructed through the introduction of new legal relationships among these principles of international law to encourage different ethnic and religious communities, which rely on the principle of self-determination, and central governments, which invokes the principle of territorial integrity of its state, to make rational choices that will reduce the likelihood of minority/government conflict in the future. Sub-national groups understand self-determination of peoples to include the right of secession,[2] which threatens the territorial integrity of a state, while the territorial integrity of a state prohibits self-determination to be understood as statehood.[3] Since the principles of international law, self-determination of peoples and integrity of states have equal international status,[4] this creates legal confusion in political relations, and constrains

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ETHICS AND POLITICS OF HUMANITARIAN INTERVENTION (Univ. of Notre Dame Press); Martti Koskenniemi, *National Self-Determination Today: Problems of Legal Theory and Practice*, 43 INT'L & COMP. L.Q. 241 (1994); Ruth Lapidoth, *Sovereignty in Transition*, 45 J. INT'L AFF. 325 (Winter 1992); Helen Quane, *The United Nations and the Evolving Right to Self-Determination*, 47 INT'L & COMP. L.Q. 537 (1998); MARGARET MOORE ED., NATIONAL SELF-DETERMINATION AND SECESSION (Oxford University Press 1998); REIN MULLERSON, INTERNATIONAL LAW, RIGHTS AND POLITICS: DEVELOPMENTS IN EASTERN EUROPE AND THE CIS 58-105 (Routledge 1994); ROBERT PHILLIPS & DUANE CADY, HUMANITARIAN INTERVENTION (Rowman and Littlefield Publishers); L. Wildhaber, *Territorial Modification and Breakups in Federal States*, 1995 CAN. Y.B. INT'L L. 41.

2. Article 1 of both the International Convention on Economic, Social and Cultural Rights and the International Convention on Civil and Political Rights states that all peoples have the right to self-determination. By virtue of this right they freely determine their political status and freely pursue their economic, social, and cultural development. *See* W. Fuatey-Kodjoe, *Self-determination, in* 1 UNITED NATIONS LEGAL ORDER 385 (Schachter & Joyner eds., 1994); Ian Brownlie, *The Rights of Peoples in Modern International Law, in* THE RIGHTS OF PEOPLES 1-16 (J. Crawford ed., Clarendon Press 1988); Ruth Lapidoth, *Sovereignty in Transition*, 45 J. INT'L AFF. 325 (Winter 1992).

3. The U. N. General Assembly Declaration of 1970 on Friendly Relations states: "Nothing in the foregoing paragraphs shall be construed as authorising 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 government representing the whole people belonging to the territory without distinction as to race, creed or colour. Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country." G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. (No. 28), U.N. Doc. A/8028 (1970).

4. Article (1) UN Charter establishes the principles and purposes of the UN. Paragraphs (1) and (2) of the Article state two of the principal purposes of the UN: to maintain international peace and security and to develop friendly relations among nations. Both purposes must be based on the principles of "equal rights and self-determination of peoples." Article 2(4) of the UN Charter protects the territorial integrity of any state from the threat or use of force as an absolute and general principle of international law. Paragraph 1 of the same Article recognizes the sovereign equality of all members. In other words, the territorial basis of sovereignty is guaranteed. The final paragraph, (7), then extends this guarantee in its prohibition on the United Nations, except for enforcement measures under Chapter VII, against interference within the jurisdiction of the sovereign state over its territory. *See generally,* Kathryn Eliot, *The New Worlds Order and the Right of Self-Defence in the United Nations Charter*, 15 HAST. INT'L & COMP. L. REV. 55 (1991); Thomas D. Grant, *Territorial Status, Recognition, and Statehood*, 33 STAN. J. INT'L L. 305 (1997); C. Schreuer, *The*

participants, ethnic groups, and central governments from focusing on primary goals: secession and protection of states' territorial integrity.

In a typical dispute between ethnic groups and a central government, each claims one principle to justify its position and to regulate the outcome of the dispute. Rather than contribute to peace, the original intention of each, the two principles intensify internal conflict. The conflict between these international legal principles often tends to promote and legalize internal armed conflict and violence.

The international community must remain aloof from these internal disputes within states until they threaten international peace. "International law prohibits intervention, in the sense of coercion against a state – or to use political science parlance attempts to alter 'the authority structure' of a state – except in exceptional circumstances, such as in case of self-defense or intervention pursuant to a U. N. or regional IGO decision. Humanitarian intervention has not been universally accepted as a justifiable pretext for the use of force, and concern for human rights violations – which by today's standards can not be structured as interference – is not considered a legitimate platform for coercive intervention."[5] In such legal situations, the principle of "humanitarian intervention" is associated with international peace, that is, absence of armed conflict between sovereign states. In the relationship between these norms of international law, human rights loses an active role in the process of internal democratization of states and peace-building in the current international order.[6]

The solution presented in this paper includes the corollary that a modification to the existing relationship among principles of

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Winning of the Sovereign State: Towards a New Paradigm for International Law, 1993 EUR. J. INT'L L. 447.

5. Alexis Heraclides, *Secession, Self-determination and Intervention*, 45 J. INT'L AFF. 399, 402 (Winter 1992). *See* also, Adam Roberts, *Humanitarian War: Military Intervention and Human Rights*, 69 J. INT'L AFF. 429 (1993); Stephen Salarz & Michael O'Hanlon, *Humanitarian Intervention: When Is Force Justified?*, 1997 WASH. Q. 3; Richard Falk, *The Haiti Intervention: A Dangerous World Order Precedent for the United Nations*, 36 HARV. INT'L L.J. 341 (1995); M.E. O'Connell, *Commentary on International Law: Continuing Limits on UN Intervention in Civil War*, 67 IND. L.J. 903 (1992); J.A. Gallant, *Humanitarian Intervention and Security Council Resolution 688: A Reappraisal in Light of a Changing World Order*, 881 AM. U. J. INT'L POL'Y 890 (1992); J. Delbruck, *Commentary on International Law: A Fresh Look at Humanitarian Intervention Under the Authority of the United Nations*, 67 IND. L.J. 887 (1992).

6. Elsa Stamatopoulou, *The Development of United Nations Mechanism for the Protection and Promotion of Human Rights*, 1998 WASH. & LEE L. REV. 687; Hilary Charlesworth, *The Mid-Life Crisis of the Universal Declaration of Human Rights*, 1998 WASH. & LEE L. REV. 781; Geoffrey Best, *Justice, International Relations and Human Rights*, 71 INT'L AFF. 775 (1995).

international law will affect how the parties to a dispute can avoid mutual armed conflict, and how the international community can obtain an active role in the prevention of internal armed conflict and internal democratization of a state.

Consequently, if this relationship can be modified, it will encourage the parties to make decisions that will lead to democratization. In a new relationship between these principles of international law, the principles of self-determination of peoples and territorial integrity of states coexist with principles of human rights, peace and development.[7] Through this change in the international legal system, the principles of non-intervention of the international community in the internal affairs of states and of international recognition of states, are inherently associated with principles of human rights, making the doctrine of human rights an effective tool of internal democratization of states and of peace-building.

The logical implications and the intended political results of these changes are that internal peace is no longer associated with either of the competing principles of self-determination of peoples or territorial integrity of states. Instead, peace becomes associated with the principles of respect for human rights, development, and democracy. This change requires a new definition of international peace, one that is no longer associated with threats to interstate relationships, but rather to threats to human rights and democratization.

II. AN INTERNATIONAL LEGAL AMBIGUITY

The legal relationship between principles of self-determination of a people and the territorial integrity of a state is one of the most complex questions in the area of international law.[8]

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7. Despite the philosophical arguments concerning the relationship between self-determination and sovereignty of states, many commentators tend to justify secession in terms of respect for individual human rights and a remedy for injustice. However, they entirely ignore how the legal relationship between these principles can be a powerful tool for the internal democratization of a state and the respect for human rights as a basis of societal development. "There is a tendency to view these two profound political changes – the spread of democracy and the surge of secessionist movements – as distinct and unrelated phenomena. The scholarly literature tends to concentrate on the one or the other, without attempting to provide a systematic analysis that links the two." Allen Buchanan, *Democracy and Secession, in* NATIONAL SELF-DETERMINATION AND SECESSION 15 (Margaret Moore ed., 1998).

8. The principle of self-determination of a people was first enunciated in Lenin's Theses on the Socialist Revolution and the Right of Nations to Self-Determination. In these theses three components of these principles were emphasized: the right of ethnic or national groups to freely

The issue of this relationship in international law is often reduced to one of diffusion of power between a central government and sub-national groups,[9] but, unfortunately, without emphasis on the internal democratization of states.[10]

The UN Charter and other UN documents leave many crucial questions open on this issue, which, in conjunction with principles of recognition of states and non-intervention in internal affairs of states, create many problems in contemporary internal and international political relations.

Article (1) of the UN Charter establishes the principles and purposes of the international community. Article 1(1) states that one of the purposes of the UN is "to maintain international peace and security." Paragraph (2) of Article 1 states as another purpose to develop "friendly relations among nations." This purpose is based on the principle of "self-determination of peoples." The Preamble of the Charter of the UN has previously related these two purposes to an obligation of member states to "live together in peace with one another as good neighbours" while prohibition of the threat or use of force has been emphasized in Article 2 (4) of the UN Charter.[11]

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determine their own destiny, the prohibition of territorial annexation against the will of the people, and the liberation of all colonial countries. ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLE 14-18 (1995).

9. "In a case of diffusion of power, both the central government and the regional or autonomous authorities could be the lawful bearer of a share of sovereignty, without necessarily leading to the disappearance or dismemberment of the state." R. Lapidoth, *Sovereignty in Transition*, 45 J. INT'L AFF. 325, 345 (Winter 1992).

10. "Secessionist attempts, and the efforts of states to resist them, have usually led to severe economic dislocation and massive violations of human rights. All too often, ethnic minorities have won their independence only to subject their own minorities to the same persecutions they formerly suffered." Buchanan, *supra* note 7, at 14.

11. Article (1) of the UN Charter states that preservation of peace is the main goal of the UN. With regard to this goal, the UN Charter has set forth measures and procedures for UN activities in case of a threat to peace.

(a) Charter prohibition on the use of force: The UN Charter includes the commitment of all countries to use their armed forces solely in the common interest of the international community, to resolve disputes by peaceful means and without the threat of the use of force, or the use of force against the territorial integrity and political independence, which protected the principle of the "sovereign equality" of states as a principle of the legal system of the Charter, banning all forceful settlements of conflicts. The ban of the use of force or the threat of the use of force became one of the fundamental norms of international law.

(b) Charter guaranteed right of self-defence: The UN Charter goes further than simply forbidding the use of force. In Article 2, Para. 4 of the Charter the use of force or the threat of the use of force is forbidden in any form and Para. 6 of this Article stresses that even non-UN members must act in line with this principle, which gives it a universal meaning. In a bid to eliminate the right to use force in international relations without at the same time reducing the natural right to individual or collective self-defense of states, the Charter confirms in Article 51 the right of states to self-defense only in cases of armed attack and until the UN Security Council undertakes measures to

Article 55 of the UN Charter uses the same language as does Article 1(2), and adds to it an argument about how to realize the principle of "self-determination of peoples." It seeks to create "conditions of stability and well-being" that are necessary to the realization of the purpose of "friendly relations among nations" based on the principle of "self-determination of peoples."

The meaning and significance of "self-determination of peoples" have become more significant and complex. With the beginning of the post-Cold War period, the international community faced the problem of implementing simultaneously and with reference to the same state the principles of "self-determination of peoples" and respect for "the territorial integrity and political independence of any state."

Article 2(4) of the UN Charter protects the territorial integrity of any state from the threat or use of force as an absolute and general principle of international law. Paragraph (1) of the same Article recognizes the sovereign equality of all members.[12] In other words, the territorial basis of sovereignty is guaranteed. The final paragraph (7) of the same Article extends this guarantee in its prohibition on the international community, except for enforcement measures under Chapter VII, against interference within the jurisdiction of a sovereign state over its territory.[13]

The General Assembly Declaration on the Inadmissibility of Intervention provides that "armed intervention is synonymous with aggression,"[14] while

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maintain international peace and security. S.G. Simon, *The Contemporary Legality of Unilateral Humanitarian Intervention*, 24 CAL. W. INT'L L.J. 117, 126 (1994).

12. "All states enjoy sovereign equality including the following elements: a) States are judicially equal, b) Each enjoys the rights inherent in full sovereignty, c) Each State has the duty to respect the personality of other States, d) The territorial integrity and political independence of the state are inviolable, e) Each State has the right freely to choose and develop its political, social, economic, and cultural systems, f) Each State has the duty to comply fully and in good faith with its international obligations and to leave in peace with other States." G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. (No. 28), at 76, U.N. Doc. A/8028 (1970).

13. "No State or group of the States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State, Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law." Declaration on Principles of International Law, G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. (No. 28), U.N. Doc. A/8028 (1970); *see also* Oran R. Young, *Intervention and International Systems*, 2 J. INT'L AFF. 22 (Summer 1968); JOHN NORTON MOORE ED., LAW AND CIVIL WAR IN THE MODERN WORLD (John Hopkins University Press 1974).

14. "No state has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the state, or against its political, economic and cultural elements, are condemned." G.A. Res. 2675, U.N. GAOR, 25th Sess., Supp. (No. 28) at 76, U.N. Doc. A/8028 (1971).

U.N. G.A. Resolution 36/103 provides a detailed formulation of the principle of non-intervention.[15]

By adopting U.N. G.A. Declaration 2625 (XXV), which reaffirmed that "no state may use or encourage the use of economic, political or any other type of measures to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind," prohibition of intervention has clearly been reaffirmed as a positive norm of international law.[16] This makes conflict over territory an international legal question since a claim to secession as a matter of self-determination conflicts with another, equal principle of international law, the territorial integrity of a state, also inseparable from a land base and jurisdiction over the land base.

Since the principles of territorial integrity and non-interference halt the influence of self-determination at the borders of a state, this legal conflict becomes much more complex, despite the strong regard given in international law to preserving the territorial integrity of a state. One of the practical repercussions of this controversial relationship between principles of sovereignty and non-intervention is that human rights remain without effectual international protection in the case of a conflict between principles of self-determination of a people and the territorial integrity of a state.[17] In this circumstance, both the central government of a sovereign state and a group moving toward self-determination may decide to settle their claims by resorting to armed hostilities.

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15. "(a) The duty of states to refrain in their international relations from the threat or use of force in any form...disrupt the political, social or economic order of the other states, to overthrow or change the political system of another state or its Government; (b) The duty of states to ensure that is territory is not used in any manner which would violate the sovereignty, political independence, territorial integrity and national unity, or disrupt the political, economic, and social stability of another state; (c) The duty of states to refrain from armed intervention, subversion, military occupation or any other form of intervention and interference, overt or covert, directed to another state or group states; (f) The duty of states to refrain from the promotion, encouragement or support, direct or indirect, of rebellious or secessionist activities within other states, under any pretext whatsoever, or any action which seems to disrupt the unity or to undermine or subvert the political order of other countries; (g) The duty of states to refrain from any economic, political or military activity in the territory of another state without its consent." G.A. Res. 36/103, U.N. GAOR, 36th Sess., 91st plenary meeting (1981) available at http://www.un.org/documents/ga/res/36/a36r103.

16. Martin Griffiths, Iain Levine and Mark Weller, *Sovereignty and Suffering*, *in* THE POLITICS OF HUMANITARIAN INTERVENTION 40 (John Harrison ed., 1995).

17. "Offences against human rights are a matter of international concern, but they do not trigger intervention except perhaps when outrageous conduct shocks the conscience of mankind." Adam Roberts, *Humanitarian War: Military Intervention and Human Rights*, 69 INT'L AFF. 429, 433 (1993).

A. SELF-DETERMINATION AS A RIGHT OF SECESSION

In this circumstance the meaning of the principle of self-determination and its relation to the principle of territorial integrity of a state becomes one of the most intricate questions in international law. It has provoked intense scholarly debate, for no other legal question has as much influence on internal and international political relations.

Some scholars understand self-determination to be the central issue of the globalization of democracy. For this group of scholars, self-determination means liberty and the free development of all peoples that justify the right to independent statehood.[18] They argue that the Article 1(2) principle of "self-determination of peoples" is an absolute legal principle whose purpose is to strengthen international peace. They contend that all other norms and rules in the UN Charter must harmonize with its absolute principles. Thus, the principle of Article 1(2) includes all "peoples" and overrides the understanding that "peoples" reside exclusively in colonial or trust territories and that a "people" coincides with existing international borders of colonies or trust territories.

In accordance with this opinion, the right of a people to self-determination means the right to establish a state or to choose the state to which the people wish to belong, and the right to the free choice of government. As van Praag recently defined it, "This means that the right of self-determination is a right of choice, emphasizing once again its inextricable link to the core notion of democracy. One choice could be political independence, but there are many other choices, both political and social, cultural or economic which a people can make."[19]

However, within this school of opinion there are significant differences regarding valid claims to secession. In accordance with a historical-territorial approach, justification for secession might be found in the existence of a historical claim for a particular piece of land. L. Brilmayer emphasizes that "Separatist movements cannot be understood or evaluated without reference to claims to territory. Groups do not seek to secede merely because they are ethnically distinct, and if they did, they would probably not get much support. It is hard even to understand what

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18. D. Copp, *Democracy and Communal Self-Determination, in* THE MORALITY OF NATIONALISM (McMahan and McKim eds., Oxford University Press 1997); D. Philpott, *In Defence of Self-Determination*, 105 ETHICS 352 (1995).

19. Michael C. van Walt van Praag, *Self-Determination in a World Conflict - A Source of Instability or Instrument of Peace?, in* REFLECTIONS ON PRINCIPLES AND PRACTICE OF INTERNATIONAL LAW 281 (Gill and Heere eds., Martinus Nijhoff Publishers 2000).

a separatist group would demand absent historical claim to territory. When a group seeks to secede, it is claiming a right to a particular piece of land, and one must necessarily inquire into why it is entitled to that particular piece of land, as opposed to some other piece of land – or to no land at all."[20]

Other groups of scholars find the historical-territorial approach controversial and too rigid to include the right to secession.[21] In their opinion, the so-called Human Rights Approach, the right of self-determination is a human right that should be applied to all situations where people are subject to oppression by subjugation, domination, and exploitation by others.[22]

The third stream in this academic view is the most liberal in regard to justification of a claim to a right of secession. This academic opinion recognizes the theoretical correctness of historical-territorial and human rights approaches to justify a claim of secession. However, scholars of this theoretical concept emphasize cases in which secession should be justified even if there has been no oppression by subjugation, domination, or exploitation, or in the absence of a justified historical claim to territory. The central point of this opinion is that secession can be justified if sub-national groups can show that they are victims of "discriminatory redistribution" at the hands of a state and that they cannot "preserve their distinctive culture ... even if it is no longer the case that they are victims of discrimination or other injustice."[23]

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20. Lea Brilmayer, *Secession and Self-Determination: A Territorial Interpretation*, 16 YALE J. INT'L L. 177, 199 (1991).

21. "The standard account pits the principle of self-determination against the principle of territorial integrity. The first assumes government is defined as a collection of individuals; the latter, as an area of land. Defining government in terms of land better explains what secessionists are trying to accomplish. When individuals seek to secede, they are making a claim to territory. They wish a piece of land for their future, a piece of land on which they will be able to make their own claims of integrity of territorial borders. Their claim is typically centered on a piece of land that they possessed in the past, and upon which they claimed territorial integrity. Territorial integrity properly understood accommodations the principle of self-determination. Whatever conflict exists is not between principles, but over land." *Id.*

22. "After the recognition by the international community of disintegration as unitary States of the Soviet Union and Yugoslavia, it could now be the case that any government which is oppressive to peoples within its territory may no longer be able to rely on the general interest of territorial integrity as a limitation on the right of self-determination. It appears that only a government of a State which allows all its people to decide freely their political status and economic, social and cultural development has an interest of territorial integrity which can possibly limit the exercise of the right of self-determination." Robert McCorquodale, *Self-determination: A Human Rights Approach*, 43 INT'L & COMP. L.Q. 857, 880 (1994).

23. "Perhaps the most compelling of these, and the one that is most often applicable in actual cases of secession, is for the secessionists to show that they are victims of 'discriminatory

This group of scholars holds that the principle of self-determination of a people has general application and support in UN General Assembly (UNGA) resolutions and other international legal instruments.

The Third Committee Working Group on the Final Draft of the Human Rights Covenant declared in 1955 that the "UN had used the word 'peoples' in a broad sense, that is to say, to include nations and ethnic groups."[24]

In Res. 1514 (XV), December 14, 1960 and Res. 1803 (XVII), the UN General Assembly went a step further in referring to self-determination as a right. Further, by defining its opposite, the subjection of a people, it identified the denial of the right, thus preparing the ground for evaluation of several government policies. Already regarded as an absolute and general principle of international law, it raised a claim to self-determination to the status of a claim to a right. Seen in the context of other General Assembly resolutions, it defines self-determination as a right to be realized through independence and self-government.

The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, drafted at the same time as the Declaration, affirmed the position taken in the Declaration. Article (1) of both Covenants states:

> All peoples have the right to self-determination. By virtue of the right they freely determine their political status and freely pursue their economic, social, and cultural development.[25]

Some scholars argue that the formulation of self-determination in the Covenants has made it a *jus cogens* norm of international law.[26]

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redistribution' at the hands of the state. A state engages in discriminatory redistribution whenever it implements taxation schemes, regulatory policies or economic programs that systematically work to the disadvantage of some groups while benefiting others, in morally arbitrary ways. A clear example would be a government imposing higher taxes on one group while spending less on it or placing special economic restrictions on the region the group occupies, without any sound moral justification for this unequal treatment. In this sense, a moral theory of the right to secede depends upon the theory of distributive justice. Different theories of distributive justice may yield different answers to the question of whether a certain pattern of redistribution counts as discriminatory redistribution and thus can serve as a sound basis for claiming the right to secede." Allen Buchanan, *Self-determination and the Right to Secede*, 45 J. INT'L AFF. 347, 354 (1992); *see also* DONALD A. HOROWITZ, ETHNIC GROUPS IN CONFLICT (University California Press 1985).

24. M.H. HALPERIN AND D.J. SCHEFFER, SELF-DETERMINATION IN THE NEW WORLD ORDER 11-17 (Carnegie Endowment for International Peace 1992).

25. G.A. Res. 3314, U.N. GAOR, 29th Sess., Supp. (No. 31), at 142, U.N. Doc. A/963 (1974).

The General Assembly subsequently began to read the meaning of self-determination as contained within the context of decolonization in Article 1(2). Self-determination as a right to self-government and independence for all people came to be understood as the principle of "self-determination of peoples," whose pursuit would realize the purpose of the development of "friendly relations among nations." Thus, by 1970, the interpretation had come full circle to where it began in 1945, but with a significant new dimension. The resolution on Principles of International Law Concerning Friendly Relations and Co-operation among states not only makes the above associations, but also adds language from Article 55-56 as to how member states should act in order to achieve UN purposes. By then, however, the purposes referred to in Article 56 were not the development of friendly relations among states, but the realization of the right of all peoples "freely to determine, without external influence, their political status."[27]

By the time of the Helsinki Final Act, the signatories had fully accepted the UN General Assembly formulation. They expressed and confirmed their full respect for the equal right of peoples and their right to self-determination, which allowed all people(s) 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."[28]

Universal recognition of the right to self-determination was unanimously reaffirmed in the final Declaration and Programme of Action which was adopted at the United Nations World Conference on Human Rights in June 1993.[29]

However, the question of which groups qualify for self-determination creates problems in this theoretical view. Namely, in this interpretation only "people" have a right to self-determination, while ethnic groups do not. The lack of a clear definition of the notion of people, and the difficulty in drawing a distinction between people and ethnic groups introduces an element of subjectivity into the recognition of a right to self-determination, which often leads to a double standard in the recognition of the right of self-determination in specific cases.[30]

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26. Cassese, *supra* note 8, at 133-40.
27. G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. (No. 17), at 66, U.N. Doc. A/5217 (1970).
28. Helsinki Final Act, art. 8, para. 1(a), 14 I.L.M. 1292 (1975).
29. *Vienna Declaration and Programme of Action*, G.A. Conf. 157/23, UN Department of Public Information, New York, 1993.
30. Lapidoth, *supra* note 9, at 338.

"The term 'peoples' is used in a different sense in Chapters XI and XII of the Charter. Chapter XI is concerned with Non-Self-Governing Territories (NSGTs'). Article 73 provides that member States which administer NSGTs will, *inter alia*, "develop self-government, to take due account of the political aspirations of the peoples." Article 73 uses the term "peoples" to refer to the inhabitants of NSGTs. These territories are defined as 'territories whose people have not yet attained a full measure of self-government. Consequently, there is uncertainty over the identity of the peoples referred to in Article 73."[31]

A definition of the term "people" developed by a committee of experts mandated by UNESCO made this situation clearer but did not dispel controversy. The Committee defined 'people' as a group of individuals who enjoy some or all of the following common features: a common history, racial or ethnic identity, cultural homogeneity, linguistic unity, religious or ideological affinity, territorial connection and a common economic life.[32]

With this definition, the international community adopts a purely territorial and personal concept of people. As Quane has postulated, "Recent events in Eastern Europe might suggest that it also applies to the highest constituent units of federal States in the process of dissolution but this is unlikely given the very limited and equivocal nature of State practice on this issue. Attempts to define people on the basis of personal criteria such as ethnicity or language have been unsuccessful and the international community has consistently denied a legal right to self-determination for ethnic, linguistic and religious groups within State."[33] With this double approach to the definition of people, the principle of self-determination becomes more a political than a legal issue.

B. SELF-DETERMINATION AS SELF-GOVERNANCE

Another group of scholars argues that this approach to self-determination is fraught with practical problems.[34] These international lawyers argue that

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31. Helen Quane, *The United Nations and the Evolving Right to Self-determination*, 47 INT'L & COMP. L.Q. 537, 540 (1998).

32. UNESCO, International Meeting of Experts on Further Study of the Concept of the Rights of Peoples: Final Reports and Recommendations (1990).

33. Quane, *supra* note 31, at 571.

34. "The more I think about the President's (Wilson's) declaration as to the right of self-determination, the more convinced I am of the danger of putting such ideas into the minds of certain races. It is bound to be the basis of impossible demands on the Peace Congress and create trouble in many lands. Will it not breed discontent, disorder, and rebellion? The phrase is simply loaded with dynamite. It will raise hopes which can never be realised. It will, I fear, cost thousands of lives. In the

within states, self-determination does not go as far as independence, as it did for colonies and trust territories. Self-determination requires no independent territory to govern.[35]

These scholars argue that the UN Charter recognizes self-determination as a right of self-governance but not as a right of a people to possess its own territory for an independent state. In this view, there is no conflict between the principle of self-determination of a people and the principle of territorial integrity, since self-governance does not require a people to "own" the territory it governs; it can remain the state's.[36] The principle of self-determination was accepted only insofar as it implied a right to self-government of a people and not a right to secession. Thus, as long ago as 1945, the territorial integrity of states, which has acquired enormous importance in recent years, was held to be paramount.

This view has pointed specifically to Articles 1(2), 73 and 76. One scholar has noted: "Taken together, therefore, Articles 1(2), 73 and 76 clearly set out the meaning of self-determination as it is expressed in the Charter: "Peoples" in Article 1(2) refers to all distinct groups, such as "nations", and the right to self-determination is intended to mean the right to self-government. In practical terms, the objective of invoking this right would be to apply it to "peoples" who were not self-governing at the time, either because they had been deprived of self-government or because they were not yet able to exercise self-governance. Acquiring self-government through total independence was considered a possibility for a special category of peoples, namely the inhabitants, of UN Trust Territories."[37]

A state's practice also tends to deny people the right to secede. As remarked by Quane, "During the decolonization period a legal right of self-determination emerged for colonial people. For these peoples, self-

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end it is bound to be discredited, to be called the dream of an idealist who failed to realize the danger until too late to check those who attempt to put the principle in force. What a calamity that the phrase was ever uttered! What misery it will cause!" ROBERT LANSING, THE PEACE NEGOTIATIONS: A PERSONAL NARRATIVE 97-8 (Houghton Mufflin Company 1921). *See also* Amitai Etzioni, *The Evils of Self-determination*, 89 FOR. POL'Y 21 (Winter 1992-93).

35. This opinion is predominantly represented by a liberal view of national issues. *See* discussion in E.J. HOBSBAWM, NATIONS AND NATIONALISM SINCE 1780, PROGRAMME, MYTH, REALITY (1990); *see also* HURST HANNUM, SOVEREIGNTY AND SELF-DETERMINATION: THE ACCOMMODATION OF CONFLICTING RIGHTS (University of Pennsylvania Press 1990), and MICHLA POMERANCE, SELF-DETERMINATION IN LAW AND PRACTICE (Nijhof 1982).

36. Hector Gros Espiell, *The Right to Self-Determination: Implementation of United Nations Resolutions [Relating to the Right of Peoples Under Colonial and Alien Domination]*, U.N. Doc. E/CN.4/Sub.2/405/Rev. 1 (1980), para. 90.

37. W. Ofuatey-Kodjoe, *Self-determination*, *in* 1 UNITED NATIONS LEGAL ORDER 385 (Schachter & Joyner eds., 1994).

determination meant the right to independence or any other international status. The development of this legal right to self-determination represents a further stage in the general evaluation of the principle. However, attempts to apply this right outside the colonial context are futile. It is clear from State practice during this unique historical period that the right was only ever intended to apply to colonial peoples. Attempts to overextend the principle simply generate confusion and possibly create or reinforce unrealistic expectations among groups of non-colonial peoples whose claim to self-determination will not be recognised by the United Nations."[38]

These international lawyers do not believe that recent cases regarding decomposition of old and composition of new states in Eastern Europe and the former Soviet Union raise the issue of a right of secession. They find the legal basis for recognition of successor states of the former Soviet Union and the former Yugoslavia in the restoration of independence, in an agreement between a successor state and the predecessor state, and in internal dissolution of a state.[39]

Although the international community is not inclined to recognize the practice or legality of secession, large numbers of people desire separation. Many states' self-determination movements have found justification for secession in the norms of international law, despite their ambiguity and controversial nature.[40]

Although both self-determination and territorial integrity are general and absolute principles of international law, the conflict in their relationship has developed rather quickly and perhaps unexpectedly. Consequently, the conflict in the relationship between these two legal norms results in unavoidable internal political conflict. At present, it allows only a political, and usually a violent, solution. The international community has neither

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38. Quane, *supra* note 31, at 558.

39. James Crawford, *State Practice and International Law in Relations to Unilateral Secession*, report to the Supreme Court of Canada, no. 25505 (1996); S. Blay, *A Reassessment in the Post-Communist Era*, 22 J. INT'L LAW & POL'Y 275, 292-93 (1994).

40. "State practice during the decolonisation period consistently affirmed the right of peoples everywhere to self-determination. This led to the mistaken belief that the principle was intended to be universally applicable. When groups in non-colonial States unsuccessfully invoked the right, the international community was accused of double standards and the existence of a legal right to self-determination was denied on the grounds of this perceived inconsistency. However, when many States affirmed the right of peoples everywhere to self-determination they did not intend to affirm the universality of the right as a commonly understood. For them, peoples in independent States had already exercised the right to self-determination. By affirming the universality of the right, they were seeking to extend its application to peoples who had not yet exercised it." Quane, *supra* note 31, at 571.

managed to establish norms to resolve the conflict between self-determination of a people and the territorial integrity of a state, nor has it managed to settle outstanding disputes between sub-national groups and majority governments that threaten each other with annihilation.

However, the United Nations is moving away from its rigid anti-secession position, as evidenced in the recognition of the numerous Eastern European states that have seceded from the former Soviet Union.[41]

III. INTERNAL CONFLICT IN THE CONTEMPORARY INTERNATIONAL LEGAL ORDER

The relationship between these two apparently conflicting principles of international law creates a great dilemma between minority groups and central governments that wish to maximize their gains. In these circumstances it is difficult for either party to assume the other will cooperate, as each has a competing claim.

Moreover, relative to the principles of a people's self-determination, including secession, and preservation of the territorial integrity of a state, each side is concerned with what strategy the international community will apply and how this will affect its relative gains.[42] Because of this ambiguity in the contemporary international legal order, the key to solving the dilemma between a central government and a sub-national group lies in the relationship among international legal norms, rather than in a political relationship between the participants.

In light of the contemporary international legal system, a central government postulates that the international community will recognize its right to protect the territorial integrity of the sovereign state. The UN Charter particularly prohibits attack on states. Self-defense against armed attack is spelled out in Article 51 as a fundamental right of states. "All members shall refrain from the threat or use of force against the territorial integrity or political independence of any state."[43]

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41. The European Community's recognition policy is set out in the declaration of December 16, 1991, in guidelines for the recognition of new states in Eastern Europe and the Soviet Union. I.L.M. (1992),1486.

42. See more about relative gains and co-operation in Grico Joseph, Anarchy and the Limits of Co-operation, International Organisations, 42:885-507.

43. U.N. Charter art. 2, para. 4.

Article 53(1) of the UN Charter emphasizes that no enforcement action shall be taken without authorization of the UN Security Council. The Declaration on Friendly Relations and Co-operation Among States says that any form of unilateral intervention in a state is a violation of international law. The Declaration calls on states to abstain from any form of compulsion against the territorial integrity and independence of a state.[44]

The Declaration on the Inadmissibility of Intervention says that threatening the economic or cultural elements of a state, encouraging any type of coercion to subordinate a state's sovereign rights, or inviting or tolerating terrorist or armed activities directed at the violent overthrow of a government, must be considered an illegal intervention.[45]

Further, contemporary international law provides no norm as to the clear obligation of a state to refrain from the use of force against sub-national groups claiming secession. There is no clear norm of international law that allows the international community to use force against a state employing force against rebels under its jurisdiction. Employment of force in internal relations remains exclusively under the internal jurisdiction of a state.

Central governments might postulate that the international community would not intervene in its internal affairs, since international law prohibits external intervention in the domestic affairs of a sovereign state. The famous Article 2(7) of the UN Charter declares that "nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII." Since Chapter VII is entitled "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression," it is obvious that just threats to the international peace, breaches of the international peace and acts of aggression, can be legal reason for UN intervention in matters which are essentially within domestic jurisdiction. Taking threats and breaches of international peace as reasons for intervention in internal affairs of states, international law largely excludes internal situations in states as a reason for

44. Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States. G.A. Res. 2525, U.N. GAOR, 25th Sess., U.N. Doc. A/8028 (1970).

45. Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty , G.A. Res. 2131, U.N. GAOR, 20th Sess., U.N. Doc. A/6014 (1965).

outside intervention.[46] "The Security Council may take action only to maintain international peace and security. Moreover, the Council must avoid interfering in internal affairs of member states by altering a state's political arrangements."[47]

Bearing in mind that international law deals with crimes against international peace, defined in the Statute of the International Court of Justice as planning, preparing, inciting or undertaking a war of aggression or a war undertaken through a violation of international agreements, treaties or assurances, or as participation in a joint plan or plot for the undertaking of any of the above, it is difficult to predict that the international community would view even the most drastic violations of human rights and freedoms occurring within states as threats to or breaches of international peace. In fact, many scholars believe that Article 2(7) and Article 39 of the UN Charter should be read in light of the non-interventionist stipulation in Article 2(7). In such situations, the international community is inclined to view human rights as matters within a state's domestic jurisdiction.[48]

A central government might speculate that decentralization of a state with a high level of autonomy could encourage sub-national groups to seek secession that could be recognized by the international community as an internal dissolution of a state. Luzius Wildhaber remarks that "Precisely because minorities may enjoy autonomy as the member units of a federal state and because they can articulate their claims and build up their political elite and administrative infrastructure, secession is easier for them to effectuate than it would be in centralist or dictatorial regimes.

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46. In the Preamble to the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States, which is approved by G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970), the words "the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security..." are particularly emphasized. G.A. Res. 3314 (XXIX), U.N. GAOR, 29th Sess., Supp. (No. 31), U.N. Doc. A/9631 (1974), defined aggression as the invasion or attack by the armed forces of a state of the territory of another state, or any military occupation, however temporarily, resulting from such invasion or attack. By adopting this definition of aggression, UNGA has reduced unilateral intervention on aggression. In the same Resolution, Article 3(a), the UN Security Council is given discretion to conclude that a determination that an act of aggression has been committed would not be justified in light of other relevant circumstances. G.A. Res. 3314 (XXIX), U.N. GAOR, 29th Sess., Supp. (No. 31), U.N. Doc. A/9631 (1974). *See also* B.F. Burmester, *On Humanitarian Intervention: The New World Order and Wars to Preserve Human Rights*, 1994 UTAH L. REV. 269, 278.

47. Mary Ellen O'Connell, *Commentary on International Law: Continuing Limits on UN Intervention in Civil War*, 67 IND. L.J. 903, 904-5 (1992).

48. "As important as human rights are to international peace and security, they do not override the fundamental interest in state sovereignty, as long as the violation does not directly affect affairs in other states" Yoshiko Inoue, *United Nations' Peace-keeping Role in the Post-Cold War Era: The Conflict in Bosnia and Herzegovina*, 16 LOY. L.A. INT'L & COMP. L.J. 264 (1994).

Respect for minorities, which is inherent in genuine federalism, simplifies not only cohabitation but also the breaking apart. If one also claims – like the Arbitration Commission of the Conference for Peace in Yugoslavia – that the borderlines between federal member units must be inviolable, one would seem to be punishing federal states for their respect for minorities and, as institutions, treating them worse then unitary states are treated."[49] Such a situation could encourage central governments to employ a policy of centralization.

At the same time, minority groups might speculate that the international community would support their right to self-determination. Some movements toward self-determination find justification for their claim to secession in discriminatory redistribution, in preservation of their distinctive culture, or in their right to reclaim legitimate title to the territory that was unjustly annexed by the state from their indisputable descendants.[50]

Moreover, in the context of the contemporary international legal system, it is difficult to provide evidence of a discriminatory or non-discriminatory policy, economic redistribution, or non-preservation of a distinctive culture of a sub-national group. Even if a central government accepts a sub-national group's objections and improves its regulatory policies or economic programs to preserve its distinctive culture, there is no guarantee that the sub-national group would desist from claiming a right to secession. Nor is there any guarantee that the sub-national group would cooperate with the central government with the aim of improving its own political, economic and cultural position. Since "discriminatory redistribution" appears to be a moral basis for justification of its claim for secession, this might encourage the sub-national group to display its own position as worse than it is, or create reluctance in the group to cooperate with the central government to better its position. In such a situation, it is difficult to anticipate cooperation between a central government and a sub-national group. Logically, in the current international legal order, if sub-national groups cooperate with central governments that could mean that sub-national groups are decreasing their opportunities to be separated from the state, which is not in their self-interest. On the other hand, if central governments cooperate with sub-national groups and allow them a high level of autonomy, that could be dangerous for the territorial integrity of the state. In a situation in

49. Luzius Wildhaber, *Territorial Modifications and Breakups in Federal States*, 33 CAN. Y.B. INT'L L. 41, at 43 (1995).

50. *See* A. Buchanan, *Self-determination and the Right to Secede*, 45 J. INT'L AFF. 353 (1992).

which self-determination and protection of the territorial integrity of the state are legal claims for both but mutually exclusive of each other, there is no perspective for cooperation between a sub-national group and the central government.

Sub-national groups might also postulate that some states would recognize their right to secede,[51] and that the international community might intervene in the internal affairs of the state in case of internal armed conflict and great humanitarian crisis,[52] thereby supporting their right to secede. Sub-national groups that rely on international intervention know that the creation of a human disaster within a state might provoke military intervention from outside,[53] which could encourage them to provoke or intensify inter-communal conflict.[54]

Sub-national groups might also speculate that the centralization of a state would encourage the international community to refuse to recognize their right to self-determination, and so justify a high level of constitutional, political and administrative centralization of a state. As a result, a sub-national group would lose its cultural and historical identity, its political independence, and its economic influence in a common state. This might

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51. *See* IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 87-106 (4th ed. 1995); David O. Lloyd, *Succession, Secession, and State Membership in the United Nations*, 26 J. INT'L L. & POL. 784 (Summer 1994).

52. *See* Tom J. Farer, *Intervention in Unnatural Humanitarian Emergencies: Lessons of the First Phases*, 18 HUM. RTS. Q. 1, 15 (1996).

53. See more about justification of external military intervention with an aim to end suppression within state and to protect refugees and other inhabitants in Adam Roberts, *Humanitarian War: Military Intervention and Human Rights*, 69 INT'L AFF. 434 (1993).

Also, many international lawyers are inclined to see a legal basis for intervention of the international community in the internal affairs of state in the case "when government is acting in a tyrannical manner its population, in the aim protect minorities from genocide or violent oppression, combat gross and persistent violation of human rights, and act to protect extreme cases of violence against a people." J.A. Gallant, *Humanitarian Intervention and Security Council Resolution 688: A Reappraisal in Light of a Changing World Order*, 1992 AM. U.J. INT'L POL'Y 881, at 890. A similar opinion can be seen in the statement of former UN Secretary General Javier Perez de Cuellar: "We are clearly witnessing what is probably an irresistible shift in public attitudes toward the belief that the defence of the oppressed in the name of morality should prevail over frontiers and legal documents." DAVID J. SCHEFFER ET AL., POST-GULF WAR CHALLENGES TO THE U.N. COLLECTIVE SECURITY SYSTEM: THREE VIEWS ON THE ISSUE OF HUMANITARIAN INTERVENTION 4 (United States Institute of Peace).

54. "Ambassador Richard Holbrooke of the United States succeeded in brokering an agreement with Yugoslavia's president, Slobodan Milosevic, which permitted the return of those who had fled their homes and the positing of a group of 2000 unarmed human rights monitors. In the end only 1400 monitors were deployed, but the vast majority of refugees return to their homes. Still it was unstable peace. According to the International Herald Tribune, 'US intelligence reported almost immediately (following the Agreement) that the Kosovo rebels intended to draw NATO into its fight for independence by provoking Serbian force into further atrocious.' More attacks did occur." Mary Ellen O'Connell, *The UN, NATO, and International Law After Kosovo*, 22 HUM. RTS. Q. 78 (2000).

encourage minority groups to provoke a conflict with the central government and employ a strategy of secession.

In such a circumstance the most attractive strategy for each participant is to pursue its own self-interest (secession or centralization), and try to persuade the international community to support its interest. Consequently, conflict will ensue.

Even if a central government decentralizes and democratizes, no one can guarantee that a sub-national group would not claim a right of secession if it were in its own self-interest. In that case, secession could be understood in reference to international law as an internal dissolution of the state.[55]

Nor is there any guarantee to a sub-national group that a central government would undertake measures of decentralization and democratization even if the sub-national group were to discard its claim to secession.[56]

In such a circumstance, even if there is cooperation, one party might be concerned that the other would achieve relatively greater gains from their cooperation[57] and that leads participants to be concerned about gaps in any gains from mutual cooperation.[58]

Democratization in the contemporary international legal order is thus highly risky, and central governments and sub-national groups have no interest in cooperating even if cooperation produces a better outcome for both than does a conflict.

While it is clear that cooperation would result in the best possible outcome for both sub-national groups and central governments, it is also clear that the contemporary international legal order supports mutual uncertainty and mistrust between participants.[59] This lack of mutual confidence and

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55. The Arbitration Commission of European Community in the case of Yugoslavia, in opinion no. 1, stated that the federation of Yugoslavia was dissolving, and the federal organs were no longer representative. Luzius Wildhaber, *Territorial Modifications and Breakups in Federal States*, 33 CAN. Y.B INT'L L. 68 (1995); On the dissolution of the former Yugoslavia see more in Marc Weller, *Current Developments: The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia*, 86 AM J. INT'L L. 569, 576 (1992).

56. O'Connell, *supra* note 47.

57. WALTZ N. KENNETH, THEORY OF INTERNATIONAL POLITICS 105 (1986).

58. Joseph Grico, *Relative-Gains Problem for International Co-operation*, 87 AM. POL. SCI. REV. 734 (September 1993).

59. In this part of the article the author demonstrates how international law contributed to the dissolution of the former Yugoslavia. The analysis shows that strengthening international human rights law, and considering the rival claims of self-determination and territorial integrity in relation to human rights law, can prevent such conflict.

The Yugoslav crisis began in 1980 with the death of Josip Broz Tito, as the institutions of power he had brought under his control began to lose their authority. Tito had been President of the Communist League of Yugoslavia (CLY), President of the Presidency of the Socialist Federal Republic of Yugoslavia (SFRY), and the Commander of the General Staff of the Yugoslav Peoples' Army (YPA). After his death two strategies for solving the crisis developed. One strategy saw the separation of the Republics, Slovenia and Croatia in particular, and their recognition as new states as the main threat to the preservation of Yugoslavia. Its proponents thought the political, constitutional, and economic re-centralization of the state to be the most effective way to maintain the state. The other strategy started from the opposite viewpoint. It argued that re-centralization would impede political liberalization and democratization and economic realization within Yugoslavia, which its adherents considered to be the best way to maintain the state and to resolve the crisis.

Before intervention of the international community in the Balkan conflict, two coalitions were participants in the conflict: the Slovenian-Croatian coalition, which demanded self-determination, and the Federation-Serbian coalition which focused on the territorial integrity of the former Yugoslavia as a unit state. Each coalition had two possible strategies: the Slovenian-Croatian coalition could continue to cooperate with the Federation-Serbian coalition and seek further decentralization and democratization of the state, or it would seek to separate knowing its goal could be realized only through conflict. The Federation-Serbian coalition could continue to cooperate with the other coalition and negotiate for further decentralization and democratization, or it could opt for re-centralization of constitutional and political authority, knowing that could come only through conflict. Each coalition in the Yugoslav crisis faced the crucial question: given the alternatives, what is the rational choice? Each coalition had an interest in maximizing its self-interest and avoiding the conflict it knew would result if it pursued the irreconcilable policies of re-centralization or separation. In these circumstances, the Slovenian-Croatian coalition had an interest in cooperating with the Federation-Serbian coalition conditioned on further decentralization and democratization of the federal state, which would open the door for its secession. In spite of its interest in changing the regime, the Slovenian-Croatian coalition had no confidence in the Federation-Serbian coalition's desire to promote decentralization and democratization in Yugoslavia. Furthermore, the Slovenian-Croatian coalition had no confidence that the status quo would be maintained and that the Federation-Serbian coalition would not attempt to re-centralize political, economic, and constitutional relations in a common state.

The Federation-Serbian coalition found itself in the same position as the Slovenian-Croatian coalition. Were Yugoslavia to disintegrate, federal cadres and Serbia would experience catastrophic economic and political consequences. About two million Serbs would be beyond the borders of the Serbian state (the borders of the former Republic). In addition, the status of about two million Albanians in Kosovo (in the Republic of Serbia) would draw international attention in any reorganization along national-ethnic lines. In this case, if the Serbs in the Republics of (the future states of) Bosnia-Herzegovina and Croatia relied on self-determination to separate and join Serbia, Serbia would face the question of the status of the Kosovo and Sandzak regions where Muslims were the dominant population and the status of the (former) Autonomous Province of Vojvodina which had a mixed population.

In spite of the political, national and economic interests in preserving, decentralizing, and democratizing the state, that is, cooperation, the Federation-Serbian coalition did not have any confidence that the Slovenian-Croatian coalition wanted to remain in even a reformed common state of Yugoslavia. Moreover, it had no guarantee that the Slovenian-Croatian coalition would not secede even in the event of further decentralization and democratization of the federal state.

In these circumstances, the best solution for the Federation-Serbian coalition was to adopt the strategy of centralization and to eliminate or curtail the capacity of the coalition of Slovenia and Croatia to secede.

This strategy would remove the threat to the territorial integrity of the state and avoid the problem of pan-Yugoslavian Serbian nationality and the problem of non-Serbian nationalities within Serbia. Relative to the Slovenian-Croatian strategy of secession, it would lead the Federation-Serbian coalition into conflict.

Since each side loses more in conflict than in cooperation, as rational participants they should cooperate. Both the Slovenian-Croatian and the Federation-Serbian coalitions should realize they must agree to preserve the state and change the economic and political regime. But despite

mistrust between participants leads them into conflict, the worst possible outcome.[60]

Because of the lack of mutual confidence and the conviction that the international community will support principles of international law, each participant accepts inevitable conflict rather than risk greater loss from foolish cooperation.[61] In this circumstance, each participant chooses its

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cooperation being a better common strategy than confrontation and conflict, each side decided upon a strategy that resulted in conflict. The Slovenian-Croatian coalition decided upon secession, and the Federation-Serbian coalition decided upon re-centralization. The combination resulted in conflict.

60. Why, considering that the payoffs for cooperation are better than those for conflict, did the participants in the Yugoslav crisis choose strategies that resulted in conflict rather those that produced cooperation? Why were the strategies of re-centralization and secession the chosen strategies in the Yugoslav crisis? Both participants in the crisis were rational decision makers; they correctly calculated their interests and knew how to accomplish them. One of the main reasons for deciding against strategies that would lead to cooperation was the undefined relationship between the norms of the international legal system that added to the lack of mutual confidence and trust of each participant that the international community would protect its self-interest: secession or the territorial integrity of the state. Although each participant was tempted to try to negotiate their differences within Yugoslavia, it would not do so since it could not be certain the other would not forsake cooperation, and each believed that the international community would support its own self-interest as a lawful claim in accordance with the norms of international law. This resulted in the worst possible outcome: armed conflict. Politically, Slovenian-Croatian and Federation-Serbian authorities had mutual contacts and theoretically could have negotiated confidence-building measures and then a cooperative agreement for the realization of their interests within a preserved Yugoslavia, but they did not do so, and their mutual distrust led them to reject cooperation and preservation of an intact Yugoslavia as a rational option. The international legal context was ambiguous in the Yugoslav crisis, and this contributed significantly and, in the author's view, definitively, to the progressive deterioration of mutual confidence and to decisions that resulted in conflict.

61. From the points of view of the Slovenian-Croatian and Federation-Serbian coalitions the most important factors in the international context were the relations between principles of self-determination of peoples and the territorial integrity of the state. The coalitions had to consider how the international community would react to their respective positions and decisions in light of these principles as the crisis evolved. The conflict in the relationship of the principles deepened the uncertainty of each coalition as to the behavior and motives of the other. Each presumed which principle of international law, the self-determination of peoples including secession, or preservation of the territorial integrity of the state, the international community would recognize. This presumption made a great difference, for two reasons. First and foremost, it contributed decisively to the mutual calculation not to cooperate. The ambiguity of the international reaction made it that much easier to believe the other coalition would forsake cooperation. This is due to the second reason. If the international community were to come down on the side of self-determination, this would support secession and strengthen the Slovenian-Croatian position against that of the Federation-Serbian. If, on the other hand, external states were to support the preservation of the Yugoslavian state, that would strengthen the Federation-Serbian coalition's position relative to that of the Slovenian-Croatian.

If centralized control were to be abandoned and the state were to disintegrate, Serbia would be in a difficult situation. The Federation-Serbian coalition would disintegrate since the Federal state apparatus would disappear. Serbia would be on its own and would face several problems. As discussed, Serbs would be national minorities in neighboring states, and Serbia would have to contend with the problem of national minorities within Serbia. If the international community were to follow through on the policy that condoned dissolution of Yugoslavia, then these national minorities would also have to be recognized as states or given a good deal of autonomy. The Federation-Serbian coalition would not only lose the advantages of being part of Yugoslavia, but

dominant strategy: secession for sub-national groups and centralization for central governments, believing that will achieve the best possible result.

Each party can claim its desire is legitimate under international law. Self-determination is legal and contributes to international peace, but so does respect for the territorial integrity of a state. Both participants can invoke legal authority for their respective positions and each is increasingly convinced that it is right and that the other participant threatens the achievement of its goal. In this situation principles of international law, self-determination of people and territorial integrity of states, in conjunction with principles of non-intervention and recognition of states, inevitably lead participants into conflict.[62]

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would have serious internal problems in a rump Serbian state. As a former nation and Republic in Yugoslavia, Montenegro would become an independent state. Serbia would then be land-locked, and might lose its access to the Adriatic coast and to the Mediterranean basin through Montenegro. In addition, as a result of the national minority problem within Serbia, it would lose control or would have restricted access to resources in Kosovo and Vojvodina.

In terms of international law, the secession of the Republics represented the worst possible outcome for the Federation-Serbian coalition. The best outcome for the coalition resulted from eliminating or curtailing the possibilities of Slovenian-Croatian secession, thus discouraging the secession of the Republics of Bosnia-Herzegovina, Macedonia, and Montenegro and the disadvantageous independence or autonomy of the Autonomous Provinces. But this re-centralization would lead to conflict with Slovenia and Croatia since they knew that coalition would neither accept them, nor believe them if they said they would preserve the state but reform the political, constitutional and economic regime. With conflict, the outcome was worse than the strategy of democratization and decentralization resulting in cooperation would have been. While conflict is worse than cooperation, it was better than the ultimate outcome if Slovenia-Croatia abandoned cooperation to reform the regime and that resulted in secession and dissolution of the state. In those circumstances, both coalitions should choose strategies that result in cooperation, but as discussed, that requires mutual confidence, which they lacked. Since both sides considered their options in an international context, each became certain it could not count on the cooperation of the other. In light of the conflict in the relationship between the principles of self-determination and territorial integrity, the absence of an unambiguous approach by the international community, and the predictability of the international reaction, re-centralization appeared to be the rational policy for the Federation-Serbian coalition.

Like the Federation-Serbian coalition, the Slovenian-Croatian coalition was reluctant to cooperate. Based on lack of mutual confidence, each coalition accepted inevitable conflict rather than risk a greater loss from foolish cooperation. Internal historical, political, constitutional, and economic relations contributed to this decision, but ambiguity in the international legal order supported and deepened each side's suspicions.

Regardless of what the other coalition decided, by accepting conflict each coalition believed it not only protected itself against the worse possible outcome, it also denied the other side its best possible outcome. The crisis could not be resolved by negotiating a change of regime within Yugoslavia; Slovenia-Croatia and the Federation-Serbia each had to avoid the respective risk of domination and dissolution and adopt policies that prevented the other from achieving the most damaging outcome. Believing cooperation was impossible, the crisis was resolved by conflict. In an ironic but tragic effort to deny each other its goal, conflict would result in either independence or domination.

62. Nedzad Basic et al, *International Legal Order and Minority-Government Conflict, in* MINORITY RIGHTS IN THE NEW EUROPE 288-91 (Cumper & Wheatley eds., 1999).

IV. THE RIGHT OF SECESSION AND THE RATIONALITY OF COOPERATION

While neither sub-national groups nor central governments can predict from contemporary international law whether the international community will exclude self-determination or territorial integrity, the resulting armed conflict prevents any chance for state-wide respect for democratization and human rights. Ironically, current international law directly contributes to this situation.[63]

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63. The formal logic of the model of the Current International Legal Order indicates that the Federal-Serbian coalition knew that threat of force would not maintain the territorial integrity of Yugoslavia. Similarly, Slovenia and Croatia knew that failure to accept re-centralization would not preserve Yugoslavia's territorial integrity. The central question this analysis poses is why each coalition chose strategies--re-centralization at the Federal-Serbian level and independence at the Republican level--it knew would involve the threat and use of force. Why did one coalition decide upon force knowing it would provoke the disintegration of the state it sought to preserve? Why did the other decide to provoke the threat and necessitate a response in kind when that would make independence more costly to achieve than would negotiation?

These choices reflected the mutual lack of the confidence necessary to choose strategies that would result in cooperation to resolve the crisis. The answer to why the perceived solution in those circumstances was to accept the counter-productive use of force lies in an understanding of the relationship between the international legal order and the behavior of the international community to the thinking of the participants in the crisis. The Federal-Serbian coalition realized that Slovenia and Croatia might not remain in Yugoslavia even if it agreed to some degree of democratization and decentralization. If it were to agree to decentralize, and Slovenia and Croatia were to secede anyway, it would have to accept the worst possible outcome--Slovenian and Croatian independence and the loss of a Serbian controlled Federal state. In that case, re-centralization, even though it would lead to conflict because Slovenia and Croatia would decide to secede anyway, appeared to be the rational decision. But the attitude of the international community toward the position of the parties in the crisis encouraged the Federal-Serbian coalition in its decision to threaten and use force. The first phase of the conflict in Yugoslavia confirmed that thinking. The international community rejected the secession of the Republics, Slovenia and Croatia in particular, and regarded the crisis as an internal Yugoslavian matter in which it would not intervene. This attitude confirmed that conflict would not only resolve the crisis, but also that its outcome depended on the political and military power of the Federal-Serbian forces relative to that of the Slovenian and the Croatian forces. The parties believed that the international community would recognize the result of the use of force. If the Federal-Serbian coalition had sufficient political and military power, it would resolve the crisis by preserving the state and giving Serbia a dominant position in the new re-centralized political, constitutional and economic structure, and the international community would accept this outcome. But the international community would likewise accept the outcome if the Slovenian-Croatian coalition prevailed through force. This would allow it, as well as the other Republics, Montenegro, Macedonia and Bosnia-Herzegovina, to secede, and the international community would recognize them as new states.

The combination of internal circumstances and the posture of the international community could only encourage and intensify the use of force and the ambitions it feeds. This situation affected both coalitions in an ironic manner. In the first phase of the conflict (the separation of Slovenia and Croatia), the incapacity of the Federal-Serbian coalition to preserve Yugoslavia contributed to the attitude that if separation of the Republics were the result, then the existing borders of the Republic of Serbia would not be acceptable; there would have to be a "Greater Serbia." On the other hand, one of the Republics that sought independence in the first place, once it saw that it could be accomplished, also sought to expand into a "Greater Croatia." The "ethnic cleansing" or genocide

If self-determination included secession, either as a variant or as a single option, that would challenge the principle of respect for the territorial integrity of a state as the cornerstone of the modern international state system. Movement toward recognition of a right to secession would produce huge internal problems. If the international community is inclined to recognize the process of internal dissolution of a state as a basis for the recognition of unilateral secession it must also recognize the risk to internal peace.[64] If the international community accepts the position that self-determination means self-government within a state, but not independence through secession, that would also provoke internal and international conflict. Giving governments a free hand to act against sub-national groups by denying them the right to secede gives governments opportunities to refuse democratization and to violate the human rights of sub-national groups.[65] In these circumstances, the international community could not intervene to improve democratization or prevent human rights violations.

Whichever position it adopts, the international community confronts the same consequences: increasing internal disorder and human rights violations. In considering a new international legal and political order, the main question is how the international community can employ the right of self-determination of peoples, including the right to secession, to prevent multi-ethnic conflict, while providing new opportunities for governments to preserve their territorial integrity. The two principles might possibly be brought together by focusing the attention of the parties on internal democratization, development, and respect for the highest standards of human rights.[66]

In attempting to remedy so confused a situation in international law, the author proposes a change in the relationship between the self-interested principles of self-determination and territorial integrity of states by

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that both ventures required, since newly acquired territory would have to be entirely Serbian or Croatian or Bosnaks, testifies to the extremes to which the use of force can lead. When it became clear that its strategy of re-centralization would not be successful, the Federal-Serbian coalition sought greater gain on the basis of a resolution along the original lines of conflict-preservation and re-centralization of Yugoslavia or independence of the Republics with its existing borders respected. It saw the opportunity to reduce its losses through expansion. On the other hand, Croatia, realizing it would get its original goal of independence, also sought to increase its gains through expansion.

64. "So long as this clash between claims for the right to self-determination and insistence on state sovereignty persists, an intractable impasse will remain. Without a solution based on law, we are practically back to when the issue was settled by force. Obviously, this is not satisfactory." Ofuatey-Kodjoe, *supra* note 37.

65. HEATHER A. WILSON, INTERNATIONAL LAW AND THE USE OF FORCE BY LIBERATION MOVEMENTS (Clarendon Press 1988).

66. Nedzad Basic et al., *The Right of Secession as a Tool to Protect the Territorial Integrity of State*, 49 INT'L PROBS. 453 (n.4 1997).

introducing a new relationship between these international legal principles in which the international community respects both.

What change in the relationship between these international law principles could achieve this goal? The competing self-interests of ethnic groups and central governments primarily focused on land issues (secession of sub-national groups and the territorial integrity of a state) can only be achieved if democratization, development, and peace are respected. Changing the strategies of both participants would transform the conflict between legal principles of self-determination and territorial integrity, thereby transforming the outcomes for both sub-national groups and central governments.

By introducing a new relationship between these principles of international law, the parties must consider that neither self-determination nor territorial integrity can be achieved without respect for human rights, development, and peace, and must adopt strategies that result in democratization but not necessarily in cooperation. This would effectively reduce the likelihood of armed conflict.

If central governments and ethnic groups are given to understand that protection of territorial integrity of states and independence of ethnic groups can only be realized if human rights, peace, and development are respected, then the conflict is not about land but rather about how each can attain its goals within a context of observation of human rights, peace, and development, which leads to democratization.

Thus, if a central government adopts measures of decentralization (constitutional, political, administrative) and democratization, while the sub-national groups seeks secession and disintegration of the state, the international community should not recognize the right of sub-national groups to secede. By realizing that a policy of conflict is self-defeating, even if the central government adopts a strategy of centralization, a sub-national group may understand that it is better to adopt a strategy of democratization than a strategy of conflict, since only then can it obtain the best outcome, independence, as opposed to the worst outcome, remaining in the centralized state. The same logic applies to central governments. By realizing that a policy of conflict is self-defeating, even if a sub-national group adopts a strategy of secession, a central government may understand that it is better to adopt a strategy of decentralization and democratization than a strategy of centralization and conflict, since only then can it obtain the best possible outcome, preserving territorial integrity, as opposed to the worst possible outcome, disintegration of the state.

This has two effects: since observation of democratization and human rights affects the achievement of either or both principles of self-determination or territorial integrity, democratization becomes the focal point and the active factor in resolving internal conflict and establishing internal and external peace.[67] The other effect is that the international community will not stand aside and allow force to proceed; rather, it will use observation of democratization and human rights as the legal basis of intervention in the internal affairs of a state.[68]

In a new international legal system, central governments and minority groups are in the same position. Whatever the sub-national group or central government decides, each can attain its best possible outcome only if it adopts policies of cooperation, decentralization, and democratization rather than pursuing strategies of centralization or secession.[69]

In this new international legal system each participant, sub-national group or central government, will be either closer to or further from the achievement of its self-interest, to be independent or to protect the territorial integrity of the state, depending on whether it offers: a) a

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67. Assuming these changes in the case study of Yugoslavia, each coalition would realize that neither could achieve its self-interest if it violated human rights. Slovenia and Croatia could not secede if that led to human rights violations; likewise, Federal and Serbian authorities could not attempt to preserve Yugoslavia and re-centralize the regime that led to violations of human rights. Thus, since the threat and use of force results in human rights violations, and since each side knows that the other must respect human rights, the change in the international legal and political order would have precluded the use of force in the resolution of the Yugoslavian crisis.

The change in the relationship between the principles of self-determination and territorial integrity and the watchfulness of the international community over each coalition's observation of human rights also addresses the problem of mutual lack of confidence. The Federation-Serbian coalition would realize, as would the Slovenian-Croatian coalition, that it could not adopt a strategy that resulted in conflict. This would eliminate the options of forceful re-centralization and secession, which together result in conflict, and leave only democratization. The Federal-Serbian coalition would have confidence the Slovenian-Croatian coalition, regardless of its desire to separate as a solution, would not abandon democratization and use force to secede. The Slovenian-Croatian coalition would have confidence that the Federal-Serbian coalition, regardless of its desire to re-centralize as a solution, would not abandon decentralization and democratization and use force to re-centralize.

68. "[The] thesis defended here is that the rights of states recognised by international law are derived from human rights, and that as a consequence war on behalf of human rights (humanitarian intervention) is morally justified in appropriate case." FERNANDO R. TESON, HUMANITARIAN INTERVENTION 314 (Transnational Publishers, Inc. 1997).

69. The posture of the international community would guarantee this. The Federal-Serbian coalition would know the international community would not tolerate the forcible secession of Slovenia and Croatia and that it would respect its right to maintain the territorial integrity of Yugoslavia. Similarly, Slovenia and Croatia would know that the international community would not tolerate the forcible preservation of territorial integrity through re-centralization and that it would recognize their right to self-determination. Democratization to realise the interests of each other would be the meeting point or fulcrum between the two coalitions.

higher or lower level of democratization; b) a higher or lower respect for human rights and freedom; c) a better or worse prosperity for its own people; d) a better or worse future for minority groups; e) a higher or lower degree of implementation of its own political program; and f) a higher or lower degree of persuasiveness that it is capable of carrying out its proposals.

In this new international legal system, state and ethnic leaders must gather around them prominent scholars, businessmen, and liberal politicians who will be the main guarantors of the creation and implementation of democratic programs of national development and democratization of ethnic communities.

Through this change in the international legal system, the central governments and sub-national groups would be involved in a new conflict game in which it would be possible to implement the rights of protecting territorial integrity or of secession only through development, internal democratization, respect for peace and human rights, and minorities' rights and freedoms, not through mutual killing, devastation, and expulsion of minority groups.

But why in this model would the parties not abandon cooperation and end up in conflict as they do in the current international legal system?

Both parties will avoid strategies that could lead to conflict. As a rational participant, each party will avoid a strategy that could lead to the worst possible outcome. Thus, in theory and in practice, neither self-determination (secession) nor the maintenance of territorial integrity should undermine the human rights of the the other participant.[70]

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70. Considering this in terms of the Yugoslav case study in which the central government is the Federal-Serbian coalition and the sub-national group is the Slovenian-Croatian coalition, if Slovenia and Croatia were to abandon cooperation and use force to secede, they would face the worst possible outcome: a re-centralized, Serbian dominated state. On the other hand, this is the best outcome for the Federal-Serbian coalition. Since the Slovenian and Croatian use of force would entail human rights abuses, the international community would permit re-centralization. The Slovenians and Croatians would know they must avoid re-centralization since they would lose any political and economic benefits they sought. So they would have to accept democratization, prevent the loss of benefits, and negotiate to gain the benefits they sought. If the Federal-Serbian coalition were to abandon decentralization and democratization and attempt to re-centralize through the use of force, it would face its worst possible outcome: the secession and recognition of Slovenia and Croatia. On the other hand, this would be the best possible outcome for Slovenia and Croatia. Since Federal-Serbian re-centralization would entail the use of force and human rights violations, the international community would permit the secession of Slovenia and Croatia and would recognize them as new states. Federal and Serbian leaders would know they must avoid Slovenian and Croatian secession to prevent the loss of any political and economic benefits they sought. So they

The change in the relationship between the principles of self-determination and territorial integrity, and the watchfulness of the international community over each party's observation of human rights and peace, also addresses the problem of mutual lack of confidence. The central government and the sub-national group would each realize that it cannot adopt a strategy that results in conflict. This eliminates the options of centralization and secession, which together result in conflict. Neither can abandon democratization, thus eliminating the dilemma caused by thinking the other will abandon mutual collaboration. The central government would have confidence that the sub-national group, regardless of its desire and its right to separate, would not abandon democratization and use force to secede. The sub-national group would have confidence that the central government, regardless of its desire to centralize and its right to protect its territorial integrity, would not abandon democratization and use force to centralize.

These proposed changes in the international legal system would guarantee this outcome. The central government would know that the sub-national group has no interest in employing violent secession, and can be confident that the international community will not recognize violent secession of the sub-national group and will respect and support its right to maintain the territorial integrity of the state. Similarly, the sub-national group would know that the central government has no claim to centralization simply because the territorial integrity of the state can be maintained through decentralization and democratization, and can be confident that the international community will not tolerate the brutal preservation of territorial integrity through forceful centralization, and would recognize its right to self-determination, including the right to secession.

Democratization would be the meeting point between the participants. Since neither would jeopardize cooperation, that would eliminate the concern that the other party would abolish mutual collaboration, a concern that is currently enhanced by the conflict between the principles of self-determination and territorial integrity in the international legal order.

Considering this in terms of a new international legal system, if a sub-national group were to abandon democratization and use force to secede, it would face the worst possible outcome. Since the use of force would entail human rights and peace abuses, the international community would support centralization of the state and protect human rights. The minority group

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would have to accept decentralization and democratization, prevent the loss of benefits, and negotiate to gain the benefits they sought.

would know it must avoid centralization of the state since it would lose any political and economic benefits sought. It would accept democratization and prevent the loss of benefits, including the right of secession.

If the central government abandons democratization and attempts to centralize through the use of force, it faces the worst possible outcome. Since this would entail the use of force and violations of human rights and peace, the international community would permit and support secession of the sub-national group and would recognize new states. A central government would know it must avoid secession of sub-national groups, so it would accept decentralization and democratization and prevent the loss of its territory.

These changes in the international legal order would give both participants clear rules of international law and unambiguous obligations to the international community, and so support and deepen their trust of each other, leading to an elimination of their dilemma.

Thus, the conflict between sub-national groups and central governments would shift from territorial questions to issues of development and democracy.

V. CONCLUSION

In a new international legal system, the relationship between principles of self-determination and territorial integrity of states, associated with principles of humanitarian intervention and international recognition of new states, should promote the peaceful resolution of disputes and the internal democratization of multiethnic states if their application is governed by adherence to international human rights, development, and principles of peace.

This position implies that if the right of self-determination were limited to self-governance within a state, the principle of self-determination would itself reduce pressure for internal democratization and thus eliminate it as an inherent force of internal democratization. On the other hand, a people who seek self-determination should also have to respect and develop the highest standards of human rights, peace, and development. Similarly, if they do not, they should be obligated to remain in the centralized state. This implies that self-determination cannot grant an immediate and unconditional right to secede. If a people has a right to secede without having to observe human rights, peace, and development while they are in the state, then equally, there is no inherent pressure on them to do so, and

any overtures toward internal improvement through democratization, including respect for human rights, peace, and development, can be easily rejected. Protecting territorial integrity without obliging the government to respect human rights, peace, and development, and allowing secession without a previous obligation to observe human rights, peace and development have the same consequence: the state descends deeper into autocracy and retreats further from democracy as all parties resort to force to settle issues that quickly become, if they are not already, scores.

Without the right of secession of sub-national groups the central government is not under any inherent pressure to compromise and democratize. Sub-national groups, knowing this, will also be reluctant to compromise and accept any promises of internal reform. If, on the other hand, international law were to recognize an unconditional right of secession, sub-national groups would have no motive to cooperate in internal reform and progressive development of respect for human rights, peace, and development. By recognizing the right of secession of sub-national groups and holding the possibility of secession open, the primary responsibility of international law and of the international community in these cases is to create non-violent democratic routes for achieving self-determination that encourage and develop respect for human rights, peace, and development. The international community can use international law to gradually reduce the inherent conflict between self-determination and territorial integrity, as the use of these principles in light of the forces of democratization and respect for human rights, peace, and development, makes the parties view them as less and less irreconcilable.

Moreover, if self-determination excludes secession as an international legal norm, the conflict remains within the domestic jurisdiction of a state. The international community has no legal basis to intervene unless the conflict jeopardizes international peace. Meanwhile, conflict often provokes human rights violations and extensive social, political, and economic destruction. Although the international community has made self-determination into a *jus cogens* norm of international law[71] and has developed international human rights law, neither is able to deal with the most prevalent threat to peace.[72]

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71. CASSESE, *supra* note 8, at 133-40.

72. "Considerable human rights efforts have been expended in recent years to establish free elections and to achieve political rights by instituting democratic electoral processes. For the most part, insufficient attention has been paid to protecting human rights once a freely-elected government is in place." Dinah Shelton, *Challenges to the Future of Civil and Political Rights*, 55 WASH. & LEE L. REV. 669, 671-72 (1998).

The international community will assess the policies and actions of each party against their respect for human rights. It will allow secession if the central government fails to respect human rights, peace, and development. Similarly, the group seeking self-determination must not use force and must not violate human rights; otherwise, the international community will respect the state's territorial integrity against the group's desire to secede. Assessment against a human rights standard produces competition between the parties to outperform the other.

If a central government wants to preserve the territorial integrity of a state, it will develop a program for the development of human rights standards, peace, and development. This will encourage the group seeking self-determination to initiate or improve performance in this regard.

Through these chain reactions, the desire to preserve the state's territorial integrity and the desire to realize independence work to produce a guarantee of human rights, peace, and development for all. As both parties engage in human rights activities to retain their respective principles, the joint focus on human rights becomes a trend toward peace, democratization, and development. In the end, the principles of self-determination, territorial integrity, and human rights harmonize rather than conflict. Influenced by this new constellation of international legal order, the parties' political interests gradually refocus away from territorial issues and toward the all-important process of democratization.