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SELF-DETERMINATION AND SECESSION UNDER INTERNATIONAL LAW[†]

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I. INTRODUCTION

Self-determination and secession pose major challenges for international lawyers—the former for its ambiguity and difficulties of operationalization and the latter for the uncertainty of its status, since it is neither permitted nor prohibited under international law. This essay is aimed at analyzing the concepts in a historical context. Sections II and III will provide the context, followed by a general discussion of self-determination. Section IV discusses the Canadian Supreme Court's opinion on Quebec's claim unilaterally to secede; Section V reviews two recent cases—Kosovo and East Timor. The concluding section recommends a few criteria to be used in determining the validity of claims to secede.

II. THE CONTEXT

President Bill Clinton's address on October 8, 1999, in Quebec, Canada, illustrated the dilemma for U.S. foreign policy on these issues.[1] President Clinton said that the United States would "oppose the breakup of Canada, a country with a relatively decent record of observance of human rights, especially those of the Quebecois. . . ."[2] He contrasted the situation in Quebec with that in East Timor, where Indonesia's military and militia had slaughtered hundreds of innocent civilians and forced expulsion of tens of thousands of others.[3] He also explained the United Nations invasion of Serbia, where Serbs had oppressed a rebellious Kosovar population.[4]

President Clinton considered questionable the assertion that every

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[†] This is an adapted version of a presentation at the Americas' Regional Conference on Secession and International Law, Santa Clara University School of Law, February 2001.

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1. *See* Arnold Beichman, *Secessions vs. Praise for Unity*, WASH. TIMES, Oct. 18, 1999, at A16.

2. *Id.*

3. *See id.*

4. *See id.*

ethnic, religious or tribal group seeking secession should have the right to secede. For both political and economic reasons he implicitly rejected the creation of too many mini-states. He extolled instead the virtues of federalism, that is, the sharing of power between a central government and sub-national units such as states or provinces. I quote him at length:

> It seems to me that the suggestion that a people of a given ethnic group or tribal group or religious group can only have a meaningful communal existence if they are an independent nation - not if there is no oppression, not if they have genuine autonomy, but they must be actually independent - is a questionable assertion in a global economy where cooperation pays greater benefits in every area of life than destructive competition. . . . And so we have spent much of the 20th century trying to reconcile President Woodrow Wilson's belief that different nations had the right to be free - nations being people with a common consciousness - had a right to be a state. . ..
>
> When a people thinks it should be independent in order to have a meaningful political existence, serious questions should be asked: Is there an abuse of human rights? Is there a way people can get along if they come from different heritages? Are minority rights, as well as majority rights, respected? What is in the long-term economic and security interests of our people? How are we going to cooperate with our neighbors? Will it be better or worse if we are independent, or if we have a federalist system? . . .
>
> And the practical knowledge that we all have that if every racial and ethnic and religious group that occupies a significant piece of land not occupied between others became a separate nation - we might have 800 countries in the world and have a very difficult time having a functioning economy or a functioning global polity. Maybe we would have 8,000 - how low can you go?[5]

President Clinton's rhetoric notwithstanding, his message was that the right to self-determination, perhaps resulting in secession, was appropriate in Yugoslavia and Indonesia, both authoritarian societies, but not in a democratic Canada.

A year earlier, the Supreme Court of Canada had responded to a Reference from the government of Canada on whether Quebec had the right to unilateral secession under Canadian constitutional law and international law.[6] The advisory opinion rendered by the Court will be analyzed later, but it will suffice here to note the Court's conclusion

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5. Arnold Beichman, *Secessions vs. Praise for Unity,* WASH. TIMES, Oct. 18, 1999, at A16.

6. *See* Supreme Court of Canada: Reference Re Secession of Quebec, *reprinted in* 37 I.L.M. 1340 (1998).

that under international law neither the National Assembly, nor the legislature, nor the government of Quebec could claim the right to secede unilaterally from Canada. The Court observed that under the international law principle of self-determination of peoples, a right to secede arises only where "a people" is governed in a colonial setting, where "a people" is subject to alien subjugation, domination or exploitation, and possibly where "a people" is denied within the state of which it forms a part a meaningful exercise of its right to self-determination.[7]

It should be noted that, despite President Clinton's clear statement, the United States finds it hard to espouse or implement a consistent policy on sub-nationalism, or the "right" of self-determination. To illustrate, there has been no support for the Tibetans seeking independence from China, the Kurds seeking to establish the independent state of Kurdistan, and people in Aceh, once an independent kingdom in Sumatra and now part of Indonesia, seeking independence from Jakarta for the past three decades, although each of these claims is based on purported flagrant human rights violations. Perhaps Russia's use of force in Chechnya has raised similarly difficult issues.

And as to President Woodrow Wilson's declaration regarding the right of self-determination, as noted by President Clinton, one must recall Wilson's Secretary of State, Robert Lansing's, warning about the "danger of . . . such ideas." In his often-cited words, "the phrase is loaded with dynamite. It will raise hopes that can never be realized. It will, I fear, cost thousands of lives. . . . What calamity that the phrase was ever uttered! What misery it will cause!"[8] The continuing validity of that statement, made originally in connection with the Versailles Peace Conference at the end of World War I, is self-evident, as the world community is daily confronted with ethnic and national self-determination claims.

III. WHAT DOES SELF-DETERMINATION MEAN?

A. Introduction

The concept is multi-faceted. To illustrate, a claim may be to external self-determination (the establishment of a sovereign and independent state, the free association or integration with an independent state, or the emergence into any other political status freely determined by a people) and/or internal self-determination (the

7. Reference Re Secession of Quebec, *supra* note 6, at 1370, para. 154.

8. ROBERT LANSING, THE PEACE INITIATIVES – PERSONAL NARRATIVE 97 (1921), *quoted in* ALFRED COBBAN, NATIONAL SELF-DETERMINATION 19 (1945).

pursuit of a people's political, economic and social development within the framework of an existing state). Questions of federalism, devolution and autonomy can also arise. In one of its incarnations—in the colonial context—the principle was constantly and successfully invoked in the post-World War II period. The period of de-colonization attests to its dynamism. Since then, it has been increasingly invoked again as a right.

It should be noted that the concept is still invoked at the United Nations by the Special Committee of 24 on Decolonization. At its October 1999 session,[9] the Committee advocated the right of self-determination by the people of the Non-Self-Governing Territories. In the general debate, most speakers urged the administering Powers to facilitate visiting missions and to address programs to promote the political, social, economic, educational and human development of the Non-Self-Governing Territories. They said that the right of the Non-Self-Governing Territories to self-determination remained unfulfilled, emphasizing unjust treatment of indigenous peoples and the slow progress toward self-government.[10]

The representative of Spain said that the principle should not always be applied.[11]. He was referring to the case of Gibraltar, which, he said, could not be a nation with sovereign rights, for decolonization there had been achieved through restoration of the territorial integrity of Spain.[12]

Similarly, the representative of Morocco said that Western Sahara was not a problem of colonization but rather a question of territorial integrity.[13] While Morocco had no objection to the referendum in Western Sahara, it asserted that the rights of the whole population must be respected.[14]

The difficulty in the non-colonial context is primarily one of reconciling the principle of *"uti possiditis, ita possiditis"* (rough translation: "you may keep what you had"), which protects the borders of colonies achieving independence with self-determination, if it is read to authorize secession. This is principally because of the sacrosanct quality of the principle of territorial integrity enshrined in the U.N. Charter and embraced by states and international intergovernmental organizations—the U.N. and regional organizations—alike.

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9. For a summary report, *see U.N. Special Political and Decolonization Committee Concludes General Debate,* M2 PRESSWIRE, Oct. 8, 1999.

10. *See id.*

11. *See id.*

12. *See id.*

13. *See id.*

14. *See id.*

B. International Legal Pronouncements

Article 1 of the United Nations Charter states the principle of "equal rights and self-determination of peoples" as among the purposes of the United Nations.[15] At the same time, Article 2 enumerates as one of the principles, in accordance with which the U.N. and its Members are to pursue, that "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."[16]

As Professor Cassese states, the principle of self-determination has become so widely recognized in international conventions that it may be considered a general principle of international law, conferring on the people the right to self-determination.[17] Aside from the second paragraph of Article 1 mentioned previously, the United Nations Charter embodies the idea self-determination in Article 55,[18] and it is further enshrined in Article 1 of both the International Covenant on Civil and Political Rights[19] and the International Covenant on Economic, Social and Cultural Rights.[20]

The principle of self-determination has also been addressed in several U.N. resolutions, declarations and conventions. To illustrate, the United Nations General Assembly's 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (the "Friendly Relations Declaration") states:

> By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.[21]

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15. U.N. CHARTER, art. 1, para. 2.

16. U.N. CHARTER,*supra* note 15, at art. 2, para. 4.

17. A. CASSESE, SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL 171-72 (1995).

18. U.N. CHARTER,*supra* note 15, at art. 55.

19. *International Covenant on Civil and Political Rights*, Dec. 19, 1966, art. 1, 999 U.N.T.S. 171, *reprinted in* 6 I.L.M. 360, 369 (1967).

20. *International Covenant on Economic, Social and Cultural Rights*, Dec. 16, 1966, G.A. Res. 2200 (XXI), Annex, pt. 1, art. 1, U.N. GAOR, 21st Sess., Supp. No. 16, at 165, U.N. Doc. A/6316 (1966).

21. *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations*, G.A. Res. 2625 (XXV), U.N. GAOR, 25th Sess., Supp. No. 28, at 123, U.N. Doc. A/8082 (1970). [Hereinafter Friendly Relations Doctrine].

The Declaration obligates a State to refrain from any forcible action that deprives people claiming the right to self-determination of the exercise of such right. On the issue of territorial integrity, the Declaration states:

> Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which will 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 people . . . and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.[22]

The logical reading is that, to be entitled to protection of its territorial integrity against secession, a State must possess a government representing the whole people.

A similar statement was adopted ten years earlier by the U.N. General Assembly in its Declaration on the Granting of Independence to Colonial Countries and People.[23] In 1993 the United Nations World Conference on Human Rights adopted the Vienna Declaration and Programme of Action, reaffirming Article 1 of the two international covenants mentioned above.[24] Finally, the U.N. General Assembly's Declaration on the Occasion of the Fiftieth Anniversary of the United Nations emphasizes the right to self-determination by providing that U.N. Member States will, *inter alia*,

> [c]ontinue to reaffirm the right of self-determination of all peoples, taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, and recognize the right of peoples to take legitimate action in accordance with the Charter of the United Nations to realize their inalienable right of self-determination. This shall not be construed as authorizing or encouraging any action that 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 and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.[25]

Among other international legal instruments, the Final Act of the

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22. *Id.* at 124.

23. *Declaration on the Granting of Independence to Colonial Countries and People*, G.A. Res. 1514 (XV), U.N. GAOR, 15th Sess., Supp. No. 16, at 66-67, U.N. Doc. A/4684 (1960).

24. *Vienna Declaration and Programme of Action*, pt. I, art. 2, U.N. GAOR, 48th Sess., U.N. Doc. A/Conf.157/23 (1993).

25. G.A. Res. 50/6, U.N. GAOR, 50th Sess. Agenda Item 29, U.N. Doc. A/RES/50/6 (1995).

Conference on Security and Co-operation in Europe should be mentioned, which states:

> The participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States.
>
> By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.[26]

C. *The Claim of the Katangese Peoples to Independence*

In 1992 the President of the Katangese Peoples' Congress requested the African Commission on Human and Peoples' Rights to:

> -recognize the Katangese Peoples' Congress as a liberation movement entitled to support in the achievement of independence for Katanga;
>
> -recognize the independence of Katanga;
>
> -help secure the evacuation of Zaire from Katanga.[27]

The Commission ruled on this request in 1995. In denying the request, the African Commission said that the claim had no merit under the African Charter on Human and Peoples' Rights, since there was no evidence of violations of any rights under the African Charter. In its words, the Commission noted that:

> In the absence of concrete evidence of violations of human rights to the point that the territorial integrity of Zaire should be called to question and in the absence of evidence that the people of Katanga are denied the right to participate in Government as guaranteed by Article 13(1) of the African Charter, the Commission holds the view that Katanga is obliged to exercise a variant of self-determination that is compatible with the sovereignty and territorial integrity of Zaire.[28]

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26. *Conference on Security and Co-operation in Europe: Final Act (Helsinki Final Act)*, art. VIII, *reprinted in* 14 I.L.M. 1292, 1295 (1975).

27. AFRICAN COMM'N ON HUMAN AND PEOPLES' RIGHTS, Eighth Annual Activity Report of the Commission on Human and Peoples' Rights, 31st Sess., Case 75/92, Katangese Peoples' Congress v. Zaire, para. 1 (1995).

28. *Id.* at para. 6.

D. Quebec's Claim to Secede

In its opinion on Quebec's claim to secede unilaterally from Canada, the Supreme Court of Canada stated, "international law expects that the right to self-determination will be exercised by peoples within the framework of existing sovereign states and consistently with the maintenance of the territorial integrity of those states. Where this is not possible, in the exceptional circumstance . . . a right of secession may arise."[29] While the next section analyzes the Court's opinion, one more statement by the Court will be noted here:

> There is no necessary incompatibility between the maintenance of the territorial integrity of existing states, including Canada, and the right of a "people" to achieve a full measure of self-determination. A state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its own internal arrangements, is entitled to the protection under international law of its territorial integrity.[30]

E. The Arbitration Commission on Yugoslavia's Opinions on Boundaries of Successor States

In the aftermath of the breakup of the Socialist Federal Republic of Yugoslavia, the boundaries of the successor states became a critical issue. The European Community initially endorsed the *uti possiditis* principle.[31] Subsequently, the European Community (EC) Arbitration Commission on Yugoslavia (the Badinter Commission on Borders) provided the legal justification for the EC's position. In *Opinion No. 3*, the Commission responded to a question asked by the chairman of the EC Conference on Yugoslavia, "Can the internal boundaries between Croatia and Serbia and between Bosnia and Herzgovina and Serbia be regarded as frontiers in terms of public international law?"[32] The Badinter Commission on Borders advised that, following the secession of four of the Yugoslavian Federation's republics, former internal federal borders would become international borders for seceding entities once they received international recognition as states.[33] These borders

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29. Reference Re Secession, *supra* note 6, at 1370, para. 122.

30. Reference Re Secession, *supra* note 6, at 1372, para. 130.

31. EUROPEAN COMMUNITY, *Declaration on Yugoslavia*, Aug. 27, 1991, *reproduced in* YUGOSLAVIA THROUGH DOCUMENTS: FROM ITS CREATION TO ITS DISSOLUTION 333-34 (Snezana Trifunovska ed., Martinus Nijhoff Publishers 1994).

32. Conference on Yugoslavia Arbitration Commission: Opinions on Questions Arising from the Dissolution of Yugoslavia, Opinion No. 3, January 11, 1992, *reprinted in* 31 I.L.M. 1488, 1499 (1992).

33. *Id.*; *see also* European Community: Declaration on Yugoslavia and Guidelines on the Recognition of New States, U.N. Doc. S/23293, Annexes 1 & 2 (1991), *reprinted in* 31

would be internationally protected and neither internal nor external borders could be changed by the use of force.

The Badinter Commission on Borders justified its response by reference to the principle of territorial integrity of existing internationally recognized states and the principle of *uti possiditis*. Professor Peter Radan has persuasively argued that the Badinter Commission on Borders erred in applying these principles to Yugoslavia's border issues.[34] The principle of territorial integrity was inapplicable because federal Yugoslavia's internal borders were not international borders and also because a prerequisite for the application of the principle is that the borders be established by treaty or agreement.[35] The principle of *uti possiditis* would also be inapplicable to the resolution of the dispute in question—whether existing colonial borders should become future international borders – because, an "[a]greement that existing colonial borders were to be international borders was a precondition to the application of *uti possidetis juris* in the decolonization context in Latin America and Africa."[36] The Badinter Commission on Borders' response left unanswered the question whether *uti possiditis* applies only to questions of dissolution of states or also to situations of secession. As Professor Radan suggests, the Badinter Commission on Borders should have employed a more flexible approach in the case of secession from federal states.[37]

The Badinter Commission on Borders especially noted that its reading was made in the context of Yugoslavia's being "in the process of dissolution," a situation that the Court had already found in its *Opinion No. 1*. This response was given to a question whether Yugoslavia had disintegrated or the republics had seceded. The Commission said that when the organs of a federal state do not meet the "criteria of participation and representativeness inherent in a federal state," when violence is prevalent, when the federal authorities fail to "enforce respect for . . . cease-fire agreements," and when the republics express their wish to be independent, a federal state is under these circumstances "in the process of dissolution."[38] I submit that this statement is overly broad; it lacks precision and fails to provide

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I.L.M. 1485, 1486 (1992); *see also* International Conference on the Former Yugoslavia Documentation on the Arbitration Commission Under the UN/EC Geneva Conference: Advisory Opinions Nos. 11-15 of the Arbitration Commission, Opinion No. 11, July 16, 1993, *reprinted in* 32 I.L.M. 1586, 1587 (1993).

34. Peter Radan, *Post-Secession International Borders: A Critical Analysis of the Opinions of the Badinter Arbitration Commission,* 24 MELB. U. L. REV. 50, 53 (2000).

35. Radan, *supra* note 34, at 58.

36. *Id.* at 65; *see generally id.* at 59-65.

37. *Id.* at 74-76.

38. Conference on Yugoslavia Arbitration Commission: Opinions on Questions Arising from the Disintegration of Yugoslavia, Opinion No. 1, *reprinted in* 31 I.L.M. 1488, 1494 - 1497 (1992).

workable guidelines as to when parts of a federation may secede or when the federation is "in the process of dissolution."

In *Opinion No. 2* the question asked was whether the Serbs in Croatia and Bosnia had the right to self-determination. The Commission acknowledged a lack of clarity in international law on the subject, but added, however, that it was nonetheless clear that any such right "must not involve changes to existing frontiers at the time of independence (*uti possiditis juris*) except where the states . . . could agree otherwise."[39] Here again the Commission failed to provide guidance on what kind of self-determination rights the Serbs could have in Croatia and Bosnia. It equated the right to self-determination solely to secession and changes in boundaries, and thus lost an opportunity to clarify alternatives to secession as a valid exercise of self-determination. Perhaps the Commission could have recommended a negotiated redrawing of the boundaries of Yugoslavia based upon plebiscites under international supervision. This may have provided peaceable resolution of the dispute and avoided the years of bloody civil war that followed. Since this was not a colonial situation, the Commission's invocation of the concept of *uti possiditis juris* was not appropriate.

F. Appraisal

The normative scope of the principle of self-determination lacks precision. Specifically, it is unclear first whether the definition of "peoples" includes ethnic minorities and second what the appropriate remedy for a claim of self-determination should be – creation of a sovereign independent state, free association with an independent state, integration with an independent state, or any other political status freely determined, as stated in the Friendly Relations Declaration.[40]

It is, however, often asserted that the exercise of the right of self-determination should normally not violate the "territorial integrity" of a state, that the right is normally to be exercised within the framework of existing sovereign states, assuming that the government represents the people. Consequently, secession as a remedy may be available only in exceptional circumstances involving gross breaches of fundamental human rights.[41]

Professor Allen Buchanan is the leading proponent of the position that secession is a remedial right that can be exercised only in exceptional circumstances when there is clear evidence that groups

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39. *See* Conference on Yugoslavia Arbitration Commission: Opinions on Questions Arising from the Disintegration of Yugoslavia, Opinion No. 2, *reprinted in* 31 I.L.M. 1488, 1497-1499 (1992).

40. Friendly Relations Doctrine, *supra* note 21.

41. Prof. Cassese suggests this formulation. *See supra,* note 17, at 108-25.

have suffered certain kinds of injustices.[42] He argues that secessionists' claims can be valid only against a state that fails to act as a "trustee for the people, conceived of as an intergenerational community."[43] Implicit in this argument is the suggestion that such claims cannot be valid against a democratic state in which basic individual rights may be exercised.

IV. THE SUPREME COURT OF CANADA'S PRONOUNCEMENT ON QUEBEC'S CLAIM TO SECEDE[44]

The Supreme Court of Canada responded to References from the Governor in Council on three questions related to the unilateral secession of Quebec from Canada. The first question related to the Constitutional capacity of the National Assembly, legislature or government of Quebec to effect the unilateral secession of Quebec from Canada. The second question related to the role of international law in authorizing these bodies to so act. The third question was, "In the event of a conflict between domestic and international law on the right of the National Assembly, legislature or government of Quebec to effect the secession of Quebec from Canada unilaterally, which would take precedence in Canada?"[45]

In responding to the first question, the Court considered whether Quebec has a right to unilateral secession. It stated that "a clear majority vote in Quebec on a clear question in favour of secession would confer democratic legitimacy on the secession initiative which all of the other participants in Confederation would have to recognize."[46] It added, however:

> Quebec could not, despite a clear referendum result, purport to invoke a right of self-determination to dictate the terms of a proposed secession to the other parties to the federation. The democratic vote, by however strong a majority, would have no legal effect on its own and could not push aside the principles of federalism and the rule of law, the rights of individuals and minorities, or the operation of democracy

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42. *See* ALLEN BUCHANAN, SECESSION: THE MORALITY OF POLITICAL DIVORCE FROM FORT SUMTER TO LITHUANIA AND QUEBEC (1991) for his earlier work favoring group rights [hereinafter POLITICAL DIVORCE]. More recently, however, he argues for a pretty restrictive approach. *See, e.g.*, Allen Buchanan, *Democracy and Secession*, *in* NATIONAL SELF-DETERMINATION AND SECESSION 14 (M. Moore ed., 1998); Allen Buchanan, *What's So Special About Nations?*, *in* RETHINKING NATIONALISM 283 (CAN. J. PHIL., Supp. Vol. 22, 1998).

43. POLITICAL DIVORCE, *supra* note 42, at 9.

44. *See* Reference Re Secession of Quebec, *supra* note 6.

45. Reference Re Secession of Quebec, *supra* note 6, at 1342.

46. *Id.* at para. 150. I have cited from the Court's Conclusions because of their precision. For a detailed discussion of these issues elaborated in the Court's opinion, see *id.* at 1348-75.

> in the other provinces or in Canada as a whole. Democratic rights under the Constitution cannot be divorced from Constitutional obligations. Nor, however, can the reverse proposition be accepted. The continued existence and operation of the Canadian Constitutional order could not be indifferent to a clear expression of a clear majority of Quebecers that they no longer wish to remain in Canada. The other provinces and the federal government would have no basis to deny the right of the government of Quebec to pursue secession should a clear majority of the people of Quebec choose that goal, so long as in doing so, Quebec respects the rights of others. The negotiations that followed such a vote would address the potential act of secession as well as its possible terms should in fact secession proceed. There would be no conclusions predetermined by law on any issue. Negotiations would need to address the interests of the other provinces, the federal government, Quebec and indeed the rights of all Canadians both within and outside Quebec, and specifically the rights of minorities.[47]

As to the nature of negotiations, the Court acknowledged that:

> [w]hile the negotiators would have to contemplate the possibility of secession, there would be no absolute legal entitlement to it and no assumption that an agreement reconciling all relevant rights and obligations would actually be reached. It is foreseeable that even negotiations carried out in conformity with the underlying constitutional principles could reach an impasse. We need not speculate here as to what would then transpire. Under the Constitution, secession requires that an amendment be negotiated.[48]

On the second question, in which the Court was asked to consider whether a right to unilateral secession exists under international law, the Court said that it did not need to decide the "people" issue in the context of Quebec—the basis of the right to self-determination being that it belongs to all "peoples"—for a right to secession only arises in a colonial context or "where 'a people' is subject to alien subjugation, domination or exploitation; and possibly where 'a people' is denied any meaningful exercise of its right to self-determination within the state of which it forms a part."[49] It added:

> In other circumstances, peoples are expected to achieve self-determination within the framework of their existing state. A state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its internal arrangements, is entitled to maintain its territorial integrity under international law and to have that territorial integrity recognized by other states. Quebec does not meet the threshold of a

47. *Id.* at para. 151.
48. Reference Re Secession of Quebec, *supra* note 6, at para. 97.
49. *Id.* at para. 154.

> colonial people or an oppressed people, nor can it be suggested that Quebecers have been denied meaningful access to government to pursue their political, economic, cultural and social development. In the circumstances, the National Assembly, the legislature or the government of Quebec do[es] not enjoy a right at international law to effect the secession of Quebec from Canada unilaterally.[50]

After having rejected the contention that Quebec has a unilateral right to secede, the Court pronounced the "Effectivity" principle, that is, that regardless of the legality of the steps leading to the creation of a reality, reality counts and a *de facto* secession may result.[51] Thus, the Court acknowledged that "international law may well, depending on the circumstances, adapt to recognize a political and/or factual reality."[52]

The Court explained:

> Although there is no right, under the Constitution or at international law, to unilateral secession, that is secession without negotiation on the basis just discussed, this does not rule out the possibility of an unconstitutional declaration of secession leading to a de facto secession. The ultimate success of such a secession would be dependent on recognition by the international community, which is likely to consider the legality and legitimacy of secession having regard to, amongst other facts, the conduct of Quebec and Canada, in determining whether to grant or withhold recognition. Such recognition, even if granted, would not, however, provide any retroactive justification for the act of secession, either under the Constitution of Canada or at international law.[53]

On the third question, the Court said that "there is no conflict between domestic and international law to be addressed in the context of this Reference."[54]

To summarize the Court's contribution to the ongoing discourse on secession, three points are to be noted: one, the Court advised that Quebec does not have the right to unilaterally secede, although it clarified the situations in which the right would be present; two, the Court announced the "Effectivity" principle; and three by linking democratic rights and constitutional obligations, the Court acknowledged that after a "clear expression of a clear majority of Quebecers that they no longer wish to remain in Canada,"[55] negotiations could follow on the issue of secession. It, however, suggested that the outcome of any negotiated settlement would be a step in the direction of

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50. *Id.*
51. *Id.* at para. 140.
52. *Id.* at para. 141.
53. Reference Re Secession of Quebec, *supra* note 6, at para. 155.
54. *Id.* at para. 147.
55. *See supra* note 6, at 1344.

amending the Canadian Constitution. Thus, the appropriate provisions of the Canadian Constitution, the 1982 Constitution Act,[56] would apply. This would require resolutions by the House of Commons and Senate and by the legislative assemblies of at least two-thirds of the provinces that have, in aggregate, at least fifty percent of the population of all the provinces.[57]

Subsequent to the 1998 Supreme Court consideration of Quebec's claim to secede, the Parliament of Canada passed the *Clarity Act*[58] to define the wording of a question in any future referendum on a province's sovereignty by stating that "the House of Commons shall consider whether the question would result in a clear expression of the will of the population of a province on whether the province should cease to be part of Canada and become an independent state."[59] The Act also determines the majority threshold for such a decision as it states:

> In considering whether there has been a clear expression of a will by a clear majority of the population of a province that the province cease to be part of Canada, the House of Commons shall take into account:
>
> (a) the size of the majority of valid votes cast in favour of the secessionist option;
>
> (b) the percentage of eligible voters voting in the referendum; and
>
> (c) any other matters or circumstances it considers to be relevant.[60]

It is only upon satisfaction of these conditions that the government is to "enter into negotiations on the terms which a province might cease to be part of Canada."[61] For its part, the National Assembly of Quebec in December 2000 enacted an independent declaration setting out for the people and province of Quebec an affirmation of their freedom to determine their future and to adopt measures to legally establish this freedom. It provides that, "[w]hen the Quebec people is consulted by way of referendum under the Referendum Act, the winning option is the option that obtains a majority of the valid votes cast, namely fifty

56. Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, s. 43, 135 C. Gaz. 41, part 1 (relating to "any alteration to boundaries between provinces").

57. *Id.* at s. 38(1)(a) and (b).

58. Clarity Act, ch. 26, S.C. 2000, 135 C. Gaz. 41, part I (Can.) (giving effect to the requirements for clarity as set out in the Opinion of the Supreme Court of Canada in the Quebec Secession Reference). [Hereinafter Clarity Act].

59. *Id.* at s. 1(3).

60. Clarity Act, *supra* note 58, at s. 2(2).

61. *Id.* at s. 2(4).

percent of the valid votes cast plus one."[62] The Clarity Act and this Act are obviously on a collision course. Stay tuned.

III. SELF-DETERMINATION IN KOSOVO AND EAST TIMOR

A. Kosovo

The nineteen-member North Atlantic Treaty Organization (NATO) intervened militarily in Kosovo, a province of Serbia, in the Federal Republic of Yugoslavia, in the first intervention of its kind undertaken by the Alliance.[63] Only pertinent aspects of that operation relating to the topic under discussion will be recounted here.

The Autonomous Province of Kosovo was granted special autonomy under the 1974 Constitution, which was later revoked in 1988-89 through constitutional changes under President Slobodon Milosevic. Milosevic's repressive policies led to the eventual crisis in Kosovo and NATO intervention.[64] The so-called "Contact Group," comprising France, Germany, Italy, Russia, the United Kingdom, and the United States, along with the Organization for Security and Cooperation in Europe (OSCE), the North Atlantic Council, and eventually the U.N. Security Council, became involved in discussions on resolving the deepening crisis. In March 1998, the Group proposed a comprehensive arms embargo on the Federal Republic of Yugoslavia (FRY), including Kosovo.[65]

Then on March 31, 1998, the U.N. Security Council adopted Resolution 1160 under Chapter VII of the U.N. Charter expressing "its support for an enhanced status for Kosovo which would include a substantially greater degree of autonomy and meaningful self-administration," and accepting the proposal by the Contact Group that the Kosovo problem should be solved on the principle of the territorial integrity of Yugoslavia.[66] The resolution threatened additional measures in case of the "failure to make constructive progress towards the peaceful resolution of the situation in Kosovo."[67]

The Security Council's request went unheeded, and, as the humanitarian situation further deteriorated, the Council, acting again

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62. Bill 99, ch. I, (4), S.Q. 46 (2000).

63. *See generally* Ved P. Nanda, *NATO's Armed Intervention in Kosovo and International Law*, 10 U.S.A.F.A. J. LEGAL STUD. 1, 1-25 (1999/2000).

64. *See generally* GREG CAMPBELL, THE ROAD TO KOSOVO: A BALKAN DIARY (Westview Press 2000); JULIE A. MERTUS, KOSOVO: HOW MYTHS AND TRUTHS STARTED A WAR (U. Cal. Press 1999).

65. U.N. Doc. S/1998/223 (1998); *See also* U.N. Doc. S/1998/272 (1998).

66. S.C. Res. 1160, U.N. SCOR, 53rd Sess., 3868th mtg. at para. 5, U.N. Doc. S/RES/1160 (1998).

67. *Id.* at para. 19.

under Chapter VII, adopted Resolution 1199, which demanded that the parties cease hostilities and, "enter immediately into a meaningful dialogue without preconditions and with international involvement, and to a clear timetable, leading to an end of the crisis and to a negotiated political solution to the issue of Kosovo."[68] It called upon Yugoslavia to facilitate "the safe return of refugees and displaced persons to their homes and allow free and unimpeded access for humanitarian organizations and supplies to Kosovo."[69]

The situation grew worse. After several warnings and attempts at negotiation, the Security Council, acting again under Chapter VII, adopted Resolution 1203 on October 24, 1998, aimed at protecting unarmed monitors who were overseeing the cease-fire from the ground.[70]

Clashes between Serb forces and the Kosovo Liberation Army guerillas intensified. Negotiations were held in Rambouillet, outside Paris, from February 6 to 23, 1999, and a second round in Paris from March 15 to 18, leading to the proposed Rambouillet Accords.[71] Under the Accords, the framework of basic principles was founded on the maintenance of territorial integrity of the Federal Republic of Yugoslavia and political autonomy for Kosovo.[72] President Milosevic, however, refused to accept the plan, which contemplated the establishment of a multinational implementation force with NATO at its core.[73] He also rejected the mechanism for the final settlement for Kosovo, to be determined by an international meeting three years into the future, convened primarily "on the basis of the will of the people" of Kosovo.[74] Clearly he realized that the ninety-percent majority ethnic Albanians would be the ones to determine Kosovo's status. Although the Kosovo Albanian delegation ultimately signed the proposed peace agreement, the Serbs did not.[75]

The Serbs made it clear that they were not going to negotiate further nor comply with any existing agreements and moved greater force into Kosovo, initiating their offensive against the ethnic Albanian

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68. S.C. Res. 1199, U.N. SCOR, 53rd Sess., 3930th mtg. at para. 3, U.N. Doc. S/RES/1199 (1998).

69. *Id.* at para. 4(c).

70. S.C. Res. 1203, U.N. SCOR, 53rd Sess., 3937th Mtg., U.N. Doc. S/RES/1203 (1998); *see* John M. Goshko, *U.N. Council Backs Kosovo Pact, Clears Way for NATO Intervention*, WASH. POST, Oct. 25, 1998, at A28.

71. Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, *available at* http://www.monde-diplomatique.fr/dossiers/kosovo/rambouillet.html (last visited Oct. 31, 2001). [Hereinafter Interim Agreement].

72. *Id.* at ch. 1, art. 1.

73. Interim Agreement, *supra* note 71, at ch. 7, art 1, para. 1(b).

74. *Id.* at ch. 8, art. 1, para. 3.

75. *See, e.g., NATO's Role in Relation to the Conflict in Kosovo, available at* http://www.nato.int/kosovo/history.htm (last visited Oct. 30, 2001).

Kosovars. Considering their effectiveness thwarted by the Serbs, the OSCE withdrew its verification mission on March 20. Envoy Richard Holbrooke tried one last time to coax Milosevic to sign the Rambouillet Accords on March 22, but this, too, failed, and NATO launched its air campaign, "Operation Allied Force," against Serbia the following day.[76]

The war dragged on for eleven weeks. Efforts at finding a political solution culminated on May 6, 1999, when the foreign ministers of the Group of Eight met in Bonn, Germany, and agreed on a set of principles to move toward a resolution of the Kosovo crisis.[77]

The Security Council ultimately resolved that the political solution to the Kosovo crisis would be based on the general principles adopted by the Group of Eight foreign ministers,[78] which included, along with an immediate and verifiable end to the violence and repression in Kosovo: the withdrawal of military forces from Kosovo; the establishment of an interim administration for Kosovo to be decided by the U.N. Security Council, and the safe and free return of all refugees and displaced persons to Kosovo; and a political process toward the establishment of an interim political framework agreement providing for a substantial self government for Kosovo based on the principles of sovereignty and territorial integrity of Yugoslavia.[79]

B. East Timor

The events in East Timor that led to the establishment of a multinational intervention force led by Australia are well known. Indonesia had used oppressive means for several years to quash all dissent to its occupation after the Portuguese left East Timor. Its military and militias had carried out a reign of terror. The important point for the present discussion is that eventually it was only with Indonesia's consent that the United Nations undertook a plebiscite, which finally led to East Timor's independence.

The U.N. General Assembly listed East Timor as a non-self-governing territory while it was a Portuguese colony, rejecting Portugal's contention that it was one of its "overseas provinces."[80] In

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76. *See id.* See *also* Editorial, *The Rationale for Air Strikes,* N.Y. TIMES, Mar. 24, 1999, at A26, col. 1; Jane Perlez, *Conflict in the Balkans: The Overview; NATO Authorizes Bomb Strikes; Primakov, In Air, Skips U.S. Visit,* N.Y. TIMES, Mar. 24, 1999, at A1, col. 6.

77. U.N. Doc. S/1999/516 (1999) [hereinafter Group of Eight Principles]. For an excerpt from the statement by the Foreign Ministers of the Group of Eight, see also AP, *Group of Eight's Kosovo Statement,* May 6, 1999, *available at* http://www.nytimes.com/library/world/europe/050799kosovo-g8-text.html (last visited Nov. 3, 2001).

78. S.C. Res. 1244, U.N. SCOR, 54th Sess., 4011th mtg., U.N. Doc. A/RES/1244 (1999).

79. Group of Eight Principles, *supra* note 776.

80. *See, e.g.*, G.A. Res. 1807 (XVII), U.N. GAOR, 17th Sess., 1149th mtg., U.N. Doc.

December 1975, the Indonesian military invaded East Timor, occupied the territory, and began to integrate it into Indonesia, a move condemned by the General Assembly in its Resolution 3485 of December 12, 1975.[81] Ten days later, the Security Council adopted another similar resolution, recognizing "the inalienable right of the people of East Timor to self-determination and independence" and calling upon the government of Indonesia "to withdraw without delay all its forces from the Territory."[82]

After the Indonesian Parliament incorporated Timor as Indonesia's twenty-seventh province, effective July 17, 1976, the General Assembly rejected Indonesia's claim of having integrated it into Indonesia, in a resolution adopted in December, 1976, since the people had not freely exercised their right to self-determination.[83] The General Assembly continued reiterating its position in resolutions until 1982.[84] The U.N. Secretary-General, however, continued his consultations with Indonesia and Portugal for a comprehensive settlement of the problem. Eventually, in May 1999, a set of agreements was concluded variously between Indonesia, Portugal, and the United Nations.[85]

The first agreement, between Indonesia and Portugal, provided for a request to the Secretary-General to put a proposal for special autonomy for the East Timorese people through a "popular consultation" process. However, if the people voted against the proposal, arrangements would be made to transfer authority in East Timor to the United Nations and the Secretary-General would institute a transition process leading towards independence. The second was a tripartite agreement that Indonesia and Portugal signed with the United Nations regarding modalities for the popular consultation of East Timorese through a direct ballot.[86]

A/5217 (1962).

81. G.A. Res. 3485, U.N. GAOR, 30th Sess., Supp. No. 34, 2439th Mtg., U.N. Doc. A/10034 (1975). The resolution deplored "the military intervention of the armed forces of Indonesia in Portuguese Timor," calling for an immediate withdrawal so as "to enable the people of the Territory freely to exercise their right to self-determination and independence."

82. S.C. Res. 384, U.N. SCOR, 30th Sess., 1869th mtg., U.N. Doc. S/Agenda/1869 (1975).

83. G.A. Res. 31/53, U.N. GAOR, 31st Sess., Supp. No. 39, at 125, U.N. Doc. A/RES/31/35 (1975).

84. The last of these was G.A. Res. 37/30, U.N. GAOR, 37th Sess., Supp. No. 51, at 227, U.N. Doc. A/RES/37/30 (1982).

85. Agreement Between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor, May 5, 1999, U.N. SCOR, 53rd Sess., U.N. Doc. S/1999/513, Annex I (1999); Agreement Regarding the Modalities for the Popular Consultation of the East Timorese Through a Direct Ballot, May 5, 1999, U.N. SCOR, 53rd Sess., U.N. Doc. S/1999/513, Annex II (1999); East Timor Popular Consultation, May 5, 1999, U.N. SCOR, 53rd Sess., U.N. Doc. S/1999/513, Annex III (1999).

86. East Timor Popular Consultation, May 5, 1999, U.N. SCOR, 53rd Sess., U.N. Doc.

The popular consultation occurred on August 30, 1999, and, despite a great deal of harassment by pro-integration Indonesian "militias," the voters overwhelmingly favored independence, with approximately ninety-eight percent of those registered voting with 21.5 percent for autonomy and 78.5 percent for independence.[87] This was followed by widespread violence waged by the militias with support of Indonesian military forces, resulting in many casualties, and eventually Indonesia's willingness to accept assistance from the international community.

The Security Council responded by adopting Resolution 1264, in which it expressed concern with reports of flagrant violations of international human rights and humanitarian law in East Timor.[88] And, after determining that Chapter VII applied, the Council authorized the establishment of a multinational force—the International Force for East Timor—under a unified command structure, "to restore peace and security in East Timor, to protect and support UNAMET [United Nations Mission in East Timor] in carrying out its tasks and, within force capabilities, to facilitate humanitarian assistance operations. . . ."[89] States participating in the force were authorized by the Security Council "to take all necessary measures to fulfill this mandate."[90] Australia led the force.[91]

Subsequently, on October 25, 1999, the Security Council adopted Resolution 1272, again acting under Chapter VII,[92] under which it decided to establish a United Nations Transitional Administration in East Timor (UNTAET), "which will be empowered to exercise all legislative and executive authority, including the administration of justice."[93] The UNTAET's task has not been easy, since the task amounts to that of "nation-building," in the absence of any preexisting institutions there.[94]

After her visit to East Timor, Professor Ruth Wedgwood criticized the UNTAET's operation. She wrote that "the U.N. has underperformed and is still unprepared for the long-term security

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S/1999/513, Annex III (1999); Agreement Regarding the Modalities for the Popular Consultation of the East Timorese Through a Direct Ballot, May 5, 1999, U.N. SCOR, 53rd Sess., U.N. Doc. S/1999/513, Annex II (1999).

87. Press Release, United Nations, Assembly Hails Onset of East Timor's Transition to Independence; Creates New Haiti Mission, Calls on Afghan Parties for Dialogue (Dec. 17, 1999), U.N. Doc. GA/9691 (1999).

88. S.C. Res. 1264, U.N. SCOR, 54th Sess., 4045th Mtg., U.N. Doc. S/RES/1264 (1999).

89. *Id.* at para. 3.

90. *Id.*

91. S.C. Res. 1264, *supra* note 88, at 2.

92. S.C. Res. 1272, U.N. SCOR, 54th Sess., 4057th Mtg., U.N. Doc. S/RES/1272 (1999).

93. *Id.* at para. 1.

94. James Traub, *Inventing East Timor*, FOREIGN AFFAIRS, at 74 (Jul./Aug. 2000).

dilemma of that isolated nation of one million people."[95] However, it seems obvious that the goals of nation-building—establishing democratic institutions and ensuring political stability and economic viability—cannot be reached over a short period of time.

East Timor's long-awaited first democratic election was held on August 30, 2001 for an 88-member assembly that will draw up East Timor's first constitution in preparation for independence in 2002.[96] More than ninety percent of registered voters cast ballots.[97] On September 10, the United Nations electoral commission approved the vote as "free and fair."[98] The U.N. Transitional Administrator for the territory, Sergio Vieira de Mello, said, "Henceforward, East Timor will have an elected representative body working for the people to frame a Constitution that is of the people. . .[Until the new government is formed,] an East Timorese Council of Ministers will rule the territory under United Nations sponsorship."[99]

VI. CONCLUSION

As a concept, self-determination is undoubtedly complex and difficult to operationalize, although much has been written on the distinction between internal and external self-determination and as to who constitutes "a people" able to exercise the right.[100] Thus, the challenge for international lawyers is to clarify the normative content of the concept.

The difficulty of giving effect to the concept of self-determination is illustrated by the unheeded claims of many minority and indigenous groups on the ground that establish that their identity is not being protected by the state. The 1994 Draft Declaration on the Rights of Indigenous Peoples[101] and the various recent declarations on the rights

95. Ruth Wedgwood, Letter to the Editor, *Trouble in Timor*, FOREIGN AFFAIRS, at 197 (Nov./Dec. 2000).

96. *See generally World; in Brief*, WASH. POST, Sept. 7, 2001, at A22; *see also* Seth Mydans, *East Timorese Vote*, N.Y. TIMES, Sept. 2, 2001, sec. 4, at 2, col. 4.

97. Seth Mydans, *East Timorese Vote*, N.Y. TIMES, Sept. 2, 2001, sec. 4, at 2, col. 4.

98. Seth Mydans, *U.N. Certifies First Election in the Newly Born East Timor*, N.Y. TIMES, Sept. 11, 2001, at A15, col. 5.

99. *Id.*

100. *See, e.g.*, Eric Kolodner, *Essay: The Future of the Right to Self-Determination*, 10 CONN. J. INT'L L. 153 (1994); Ruth L. Gana, *Which "Self"? Race and Gender in the Right to Self-Determination as a Prerequisite to the Right to Development*, 14 WIS. INT'L L.J. 133 (1995); Jon M. Van Dyke, Carmen Di Amore-Siah, Gerald W. Berkley-Coates, *Self-Determination for Nonself-governing Peoples and for Indigenous Peoples: The Cases of Guam and Hawaii*, 18 HAWAII L. REV. 623 (1996), Michele L. Radin, *The Right to Development as a Mechanism for Group Autonomy: Protection of Tibetan Cultural Rights*, 68 WASH. L. REV. 695 (1993).

101. U.N. Doc. E/CN.4/Sub.2/1994/2/Add.1 (1994).

of minorities, such as the U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,[102] the Council of Europe's 1995 Framework Convention Regarding the Rights of National Minorities,[103] and the earlier 1991 Report of the Conference on Security and Co-operation (now Organization of Security and Co-operation in Europe) Committee of Experts on National Minorities,[104] attest to the world community's insistence that these groups have the right to the protection of their identities and that they have the opportunity to participate effectively in the political and economic life of their states to develop their culture, language, religion, traditions and customs.

As to external self-determination and the claim to secession and an independent state, it is fair to conclude that the United Nations and its member states do not support claims for unilateral secession. The latest developments, especially after Kosovo and East Timor, and in the light of the Canadian Supreme Court's pronouncement relating to the claim for Quebec's secession, however, indicate that there could be exceptional circumstances which might lead to the acceptance of a claim to unilateral secession. One such exception on which there is consensus, but which has passed into history, is in the colonial context. The second exception is undemocratic, authoritarian regimes, which are not "representative," thus not providing the opportunity for the "people" to participate effectively in the political and economic life of the state, especially when there is a pattern of flagrant violations of human rights. This is the exception recognized by President Clinton in his Quebec speech, as noted earlier, and by the Supreme Court of Canada.

Along with the substantive criteria,[105] it seems essential to consider suitable procedures—weighted majority in favor of secession and waiting period between secessionist referenda, for example—as well.[106]

Professors Paul Williams and Michael Scharf have recently applied

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102. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, G.A. Res. 47/135, U.N. GAOR, 47th Sess., U.N. Doc. A/RES/47/135, *reprinted in* 32 I.L.M. 911 (1993).

103. Council of Europe, Framework Convention for the Protection of National Minorities, Feb. 1, 1995, § II, art. 5, *reproduced in* 34 I.L.M. 351, 354 (1995) ("Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any actions aimed at such assimilation.").

104. Conference on Security and Co-Operation in Europe: Report of the CSCE Meeting of Experts on National Minorities, *reprinted in* 30 I.L.M. 1692, 1695 (1991).

105. Margaret Moore examines the just cause, choice and national self-determination theories of secession in *The Ethics of Secession and a Normative Theory of Nationalism*, 13 CAN. J.L. & JURIS. 225 (Jul. 2000). *See also* MARGARET MOORE, NATIONAL SELF-DETERMINATION AND SECESSION (1998).

106. Daniel M. Weinstock discusses these in *Toward a Proceduralist Theory of Secession*, 13 CAN. J.L. & JURIS. 251 (Jul. 2000).

a useful approach in the Nagorno Karabagh/Azerbaijan situation, combining "intermediate sovereignty" and "earned recognition" to achieve self-determination.[107] Intermediate sovereignty contemplates a negotiated grant of a level of sovereignty for a period, during which both sides would establish a system of protection of human rights and minority rights and "engage in a series of defined confidence building measures."[108] This would take place with the support of the international community in preparation for full independence. Earned recognition would follow, including a process of determination by an international mechanism to give effect to the latter of two referenda within Nagorno Karabagh, with the final result being recognition by the international community as an independent state.[109]

To reiterate, we have not heard the last of secession. The need to clarify both substantive and procedural criteria for determination of the validity of secessionist claims is paramount.

107. Memorandum Prepared by the PUB. INT'L LAW & POL'Y GROUP and the NEW ENG. CTR. FOR INT'L LAW & POL'Y, *The Nagorno Karabagh Crisis: A Blueprint for Resolution,* (June 2000), *available at* http://www.nesl.edu/center/pubs.nagorno.pdf (last visited Oct. 31, 2001) (on file with the Denver Journal of International Law & Policy).

108. *Id.* at 41.

109. *Id.*