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Mediating Rights-Based Conflicts: Making Self-Determination Negotiable

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Abstract. How can the international community more effectively prevent self-determination conflicts from escalating to violence? The most useful way is to make such conflicts "negotiable," rather than standing by while minority groups and governments square off against each other. To do this, the international community must (1) understand what causes the parties to choose violence; (2) understand the dynamics that make such conflicts intractable, including the rights claims; and (3) design interventions that create more favorable conditions for minority groups and governments to negotiate rather than fight. Drawing upon the analysis of two major self-determination conflicts, this paper argues that such interventions should: include a clearer statement from official international bodies about the conditions under which secession will be deemed acceptable under international law; provide a mediated process in which minority groups and governments can convene to discuss their concerns and interests; and foster collaboration between official and non-official third parties in these negotiations to draw upon the strengths of both in assisting minority groups and governments to work through their differences.

Keywords: self-determination, negotiation, conflict management, secession, Northern Ireland, Nagorno-Karabakh

Human rights and negotiation may seem, at first blush, mutually exclusive. If a "right" is an entitlement that is owed to you (Donnelly 2003: 8), then claimants would say it should never have to be compromised in a negotiation process. This is particularly salient in disputes involving self-determination, a "right" claimed by minority groups in nearly 50 active or recently settled but still contested armed conflicts world-wide.[1] How can a negotiation or broader conflict prevention and resolution process be structured to take these rights claims into account and yet allow for parties to reach a sustainable

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agreement? This article will explore that question as one element in a larger effort to analyze how conflict resolution and human rights work can be more synergistic in violent intrastate conflict (Babbitt, forthcoming).

It will first review the nature of self-determination claims and the ways in which impartial third parties might intervene in such conflicts. It will then provide an analysis of two case studies, Northern Ireland and Nagorno-Karabakh, in which third-party efforts have had differing results. Based on this analysis, it will then offer prescriptive recommendations of how mediation could be conducted differently in such cases, by being more mindful of the complementarity of human rights and conflict resolution processes and by integrating Track 1 and Track 2 efforts more explicitly.

The Nature of Self-Determination Claims

Woodrow Wilson brought the concept of self-determination to the Paris peace talks of 1919 to end World War I. As MacMillan (2001: 11) explains:

> Of all the ideas Wilson brought to Europe, this concept of self-determination was, and has remained, one of the most controversial and opaque. During the Peace Conference, the head of the American mission in Vienna sent repeated requests to Paris and Washington for an explanation of the term. No answer ever came. It has never been easy to determine what Wilson meant. 'Autonomous development,' 'the right of those who submit to authority to have a voice in their own government,' 'the rights and liberties of small nations,' a world made safe 'for every peace-loving nation which, like our own, wishes to live its own life, determine its own institutions': the phrases had poured out from the White House, an inspiration to peoples around the world. But what did they add up to?

Even Wilson himself said in late 1919, "When I gave utterance to those words [that all nations had a right to self-determination] I said them without the knowledge that nationalities existed, which are coming to us day after day." (MacMillan 2001: 12) The protection of group rights proved unworkable in the inter-war years, and the human rights regime that was constructed after World War II moved to protect individual rights rather than group rights. However, the concept of self-determination remained, explicitly woven into the new institutional post-war arrangements.

Self-determination is referred to first in Article 1(2) of the U.N. Charter. It states that one purpose of the United Nations is "to develop friendly relations among nations based on respect for the principle of equal rights and

self-determination of peoples, and to take other appropriate measures to strengthen universal peace." Likewise, Article 1(1) of the International Covenant on Civil and Political Rights (ICCPR), which followed as one of the implementing documents of the Universal Declaration of Human Rights, states: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

When self-determination claims are made by a minority group within a state, two obvious options are open to that state. The first option is to negotiate with the claimant group, seeking a peaceful resolution that meets the interests of both parties. This can include negotiations over secession (e.g. the Czech Republic and Slovakia) or over autonomy within the state (e.g. Russia in Tatarstan and Dagestan; Romania and its Hungarian minority; Spain in Catalonia). The second option is to refuse to negotiate, based on a refusal to acknowledge the claims as legitimate (e.g. Turkey and the Kurds; Russia in Chechnya). If the state chooses this latter approach, the claimants often escalate the conflict, sometimes violently, to force the government to accede to their demands and/or to elicit sympathy and support from outside actors. This latter course can lead to one side prevailing over the other (e.g. the Nigerian government over Biafrans, Eritrean separatists over Ethiopia) or, more commonly, to a stalemate (e.g. Sri Lanka, Sudan, Kashmir, Northern Ireland, Aceh/Indonesia, etc.).

When self-determination claims escalate to violence and reach stalemate, the result is often an intractable conflict. Such conflicts seem irresolvable; even when the "shape of a solution" emerges (e.g. two states for Israel/Palestine) and outside parties are trying to help the parties reach that solution, the parties can not seem to do so. The conflict drags on, sometimes for decades, with no one able to construct a path to settlement (Crocker et al. 2004).

Many conditions cause conflicts to become intractable; all of them occur in self-determination conflicts:

1. *Existential fears*. Many intrastate conflicts occur between identity groups (i.e., those based on shared kinship, history, language, religion, or cultural practices), of which one or more such identity groups feel that their very existence is threatened. When conflict takes on this existential dimension, the stakes are high. In-group solidarity becomes mandatory for continued acceptance by one's own group, and empathy toward the "other" group(s) is viewed as traitorous. Historical grievances over past discrimination or violence create a victim mentality and desire for revenge, and any outcome that does not punish the "other" is unacceptable (Kelman 1997).

2. *Leaders are unwilling or unable to choose negotiation as a viable alternative*. They may believe they can prevail if they continue the struggle;

they may gain politically or economically from the continuing conflict; or they may have radicalized their constituencies and will be politically vulnerable if they concede anything (Collier 2000; Kelman 1997).

3. The protracted nature of the conflict leads to *systemic distortions* within the structure of the country and the psychology of the people. The "other" has been the enemy for so long, cast as a demon at best and inhuman at worst, that negotiation with it becomes unthinkable. This has been termed a "conflict-habituated system" (Diamond 1999).

4. Extremists on one or both sides are unwilling to accept a deal of any kind with the other. They act as spoilers, willing to use violence to undermine any efforts at peacemaking.

5. *There is no concept of a "loyal opposition"*: a political group that opposes the government's policies but remains within the political system and does not attempt to take power by violence. Loyal oppositions rarely exist in countries with a "winner take all" political culture, in which the executive controls the allocation of all political, economic and social "goods" within the country. If your party runs the government, you get access to these goods. If your party is not in power, you have no access. Even if the government is elected, people have no confidence that officials will give up office when their term ends, or that later elections will be free and fair to allow alternative parties to take over. Therefore there is no incentive to be loyal unless one of your own "group" is in charge.[2]

6. *External parties*, such as kin states or diasporas, support factions within the conflict (financially, politically, militarily) and thereby keep the divisions active and strong (Crocker et al. 2004).

In self-determination conflicts, another key element causes intractability: groups claiming self-determination often perceive it not only as a right per se, but also as a *right to secession* protected by the international human rights covenants. Thus they believe they are entitled to independence and that they have adopted a legally supported claim. This can lead to extreme position-taking and hard bargaining, and the "right" of self-determination as expressed through secession becomes non-negotiable.

In fact, self-determination *as secession* is not a legal right. It was historically significant after World War I as a justification for breaking apart the 19th century empires, and again in the 1960s as a means of ending colonial empires. However, according to Hannum (1993), such justification does not extend to minority groups within states, as the members are protected as individuals by human rights conventions and by emerging norms of minority rights. The only possible current legal justification for secession might be the threat of genocide, when a group's continued survival is

explicitly in question (Hannum 1998; Buchanan 1991). Nonetheless, it is the *perception* of secession as a legal right, not its reality, that exacerbates the hardened negotiating stance that minority groups often adopt.[3] Governments respond with their equally non-negotiable claim of rights to territorial integrity, and the conflict continues unabated.

Intervention in self-determination conflicts

Because such conflicts are intractable, the parties involved can only rarely resolve the issues on their own. The conflict may become quiescent, but settlement will be impossible without outside intervention.

In the literature about intrastate conflict, the term "intervention" usually refers to military intervention by a third party.[4] I use the term differently here to include any political, economic, or military strategy adopted in an intrastate conflict by an external actor to move the disputing parties toward settlement. The strategy could be facilitative as well as coercive, and it could be undertaken by non-official as well as official actors.

One significant type of intervention is conducted by impartial third parties, who provide facilitation or mediation services. These, in turn, are of three varieties which differ according to the nature of both the parties and the intervener. In a Track 1 process, both the third party and the disputing parties are "official"; they represent states or international organizations made up of states.[5] In a Track 2 process, the disputing parties and the third party are non-official. The third party may be from an NGO, an academic institution, or a religious group, or may be an individual with international stature. The participants are influential members of the disputing communities, but not decision-makers. The theory is that such "influentials" are not constrained by the commitments of office and can therefore explore options in ways that official representatives cannot. They are not, however, empowered to make commitments on behalf of their communities, and therefore Track 2 processes are designed to encourage exploration and understanding, develop new ideas, and influence others. They are not designed to reach agreements.

Track 1 1/2 is a hybrid of the first two approaches. The disputing parties are represented by officials, but the third party is non-official. Such an arrangement can provide a more relaxed forum for negotiation; without mandated, formal rules of procedure, the disputing parties can interact in a more personal way. Also, Track 1 1/2 can more easily include actors whose legitimacy is contested, such as rebel groups or "terrorist" organizations.

Often such groups are not officially recognized by states or international organizations, so a Track 1 process mediated by officials is not politically feasible.[6]

Analyzing third-party processes

How effective has impartial third-party intervention been in meeting the challenges of self-determination conflicts? To explore this question, we looked at two case studies in which self-determination is a significant issue, Nagorno-Karabakh and Northern Ireland.[7] Both benefited from extensive third-party involvement, but Northern Ireland has made significant progress toward settlement while Nagorno-Karabakh has been essentially stalled since 1994. We were interested in analyzing the following questions: (1) When movement toward settlement occurred, what made such movement possible? (2) Where the process is stuck, what prevents progress? From this analysis, we generated hypotheses about ways in which the rights claims have impaired settlement, and how third parties might more effectively manage such disputes. Our findings were that two elements are necessary for progress: use of leverage by powerful states acting as impartial third parties; and attentiveness to the polity as well as to the leaders.

Engagement by Powerful States

Powerful global or regional state powers interested in moving the parties toward a negotiated settlement play significant roles. They can exercise leverage on the disputing parties, offering them "carrots" or threatening them with "sticks" that create incentives to change their calculation of priorities and interests.

In Northern Ireland, the British and Irish governments made increasingly important agreements on what would constitute self-determination for the North. The first "turning point" (Mitchell 1999: 16–20) came in 1985, when the Anglo-Irish Agreement affirmed that the majority of people in Northern Ireland would have to agree to any change of constitutional status, and that the Irish and British governments would consult through an Intergovernmental Conference to determine the best policies for administering the North. This signaled to the identity groups in the North that they could not play Britain and Ireland off against each other, nor would either country impose a settlement. The Downing Street Declaration of 1993 built upon these pledges by ". . . upholding the 'constitutional guarantee' for unionists that Northern Ireland would not cease to be a part of the UK without the consent of a

majority of its people, while presenting that as part of a new doctrine of Irish national self-determination in which the consent of both parts of Ireland, freely and concurrently given, would be required to bring about Irish unity" (Mitchell 1999: 19).

In addition, the British government declared that it had ". . . no selfish strategic or economic interest in Northern Ireland," and the Irish government pledged that ". . . in the event of an overall settlement, [it] will, as part of a balanced constitutional accommodation, put forward and support proposals for change in the Irish Constitution which would fully reflect the principle of consent in Northern Ireland."[8]

The Clinton Administration in the United States also took a strong interest in the conflict, and in 1994 issued a visa to Sinn Fein's Gerry Adams for a U.S. speaking tour. The implicit legitimacy that this action conferred on Sinn Fein eventually opened the way for it to enter negotiations alongside the other political parties, in spite of its links to the IRA (Mitchell 1999: 13). Many analysts have identified this more inclusive arrangement as being a key element in reaching an agreement. Until that time, both Sinn Fein and the IRA had been major impediments to any peacemaking efforts, but progress was possible once Sinn Fein began to participate in the process.

Implementation, however, has not gone smoothly. The major, and repetitive, stumbling block has been the decommissioning of weapons. Underlying this problem is the deeper issue of profound distrust. The IRA refuses to disarm completely until the Unionists implement the power-sharing provisions of the Good Friday Agreement and reform the civilian police; meanwhile, the Unionist political parties refuse to participate in the government as long as the IRA refuses to disarm. Four times since 1998 and continuing as of this writing, whenever the newly-created Executive was unable to function, the British government suspended the Northern Ireland government and resumed direct control from London.[9] In the meantime, violence in the so-called "interface" areas has continued,[10] and the physical "peace walls" in some of these areas have been built higher and longer to separate Catholic and Protestant areas "In Belfast, the barriers to harmony remain." *The Boston Globe*, July 6, 2003.[11]

Nagorno-Karabakh provides a counterpoint example. A small group of states from the OSCE, dubbed the Minsk Group, has been mediating this dispute since 1991. Though they have achieved a cease-fire, they have made little progress on the principle of self-determination. The OSCE has put forward several proposals, only to see them rejected by either Armenia or Azerbaijan. Although the Minsk Group co-chairs (United States, France, and Russia) are regional and global powers, they have not exercised sufficient

leverage to move Armenia and Azerbaijan to an agreement. The October 2005 International Crisis Group (ICG) report on Nagorno-Karabakh notes that while the co-chair countries have remained "steadily committed to resolution of the conflict," they have also been unwilling to apply pressure:

> The co-chairs have offered few incentives and disincentives to advance the process. What goes on in the negotiations does not affect the multi-million dollar cooperation and aid programs that U.S., Russia and the EU have with Armenia and Azerbaijan. A retired U.S. official said, 'there has to be a historical compromise but it's not going to happen without some incentives and some pressure from the mediators.' (ICG 2005b: 8)

In addition, earlier in the mediation process the co-chairs were actually pulling in different directions. Russia, attempting to maintain its regional influence, approached the parties separately to propose a peacekeeping arrangement different from that proposed by the Minsk group (ICG 2005b). This diffused the leverage of the mediators, who already lacked commitment and credibility, muting the effect that these powerful states might otherwise exert. ICG (2005b: 3) reports that now, however, these rivalries have abated.

The progress made in Northern Ireland, as opposed to the lingering stalemate in Nagorno-Karabakh, can thus in part be traced to the willingness of powerful states to exercise leverage with the disputing parties. Such carrots and sticks are necessary to push the leadership of each side to back down from their non-negotiable positions of commitment to secession or to territorial integrity. However, the leaders can still be constrained by their populations.

Responsiveness to the polity as well as to the leader

A notable element in the Northern Ireland peace process is how much it has employed Track 2 processes. Over the last 20 years, many local and international non-official efforts have been instituted to foster contact between the Protestant and Catholic communities, in hopes of breaking down the stereotypes and mistrust. In some ways, they have been successful. Most of the North is quiet and non-violent, and the referendum to support the Good Friday agreement passed with 74 percent of the vote (McWilliams and Fearon 1999: 63). However, tensions continue at the "interface" areas, where working-class Catholics and Protestants live side by side and perceive their relationship as inherently zero-sum. Here, the nationalist agendas still hold sway, former militants have turned to organized crime, and

the benefits of a peace agreement seem far removed from daily life. The Track 2 efforts in these areas have achieved less success than elsewhere. To believe that peaceful change is possible and will benefit them, people must not only change their views of the "other" through opportunities for direct contact and discussion, but also see improvements occurring in their daily lives (Jarmon, draft manuscript). In other words, for self-determination to be possible without secession, it must benefit the people as well as their leaders.

In Nagorno-Karabakh, far less has been done to bring civil society along in the negotiations process. Since the cease-fire in 1994, informal contacts between civil society members from Armenia and Azerbaijan could happen only outside of their respective countries, and such contacts were organized by international NGOs; examples include women's dialogues, training of university professors, and leadership training for political party members.[12] While this has begun the process of building trust between the two communities, only a few such programs exist and they are woefully inadequate to provide wide-spread support for political compromises by national leaders. According to ICG (2005a: 26):

> Nagorno-Karabakh has become the dominant symbol of nationhood and statehood, capable of harnessing tremendous emotional power. Many common people, particularly among the younger generations, no longer consider any coexistence there possible.

Critiques of third-party efforts

As the above discussion indicates, third-party efforts in self-determination disputes are far from optimal. Even when powerful states are willing and able to use their leverage, movement toward settlement is not assured; and even if a settlement is achieved, it is difficult to implement. If we recall the six contributors to intractable conflict identified earlier, at least four of these have not been addressed in the third-party interventions just discussed.

Track 1 actors are not sufficiently attentive to the need to change perceptions of the enemy

Because group identity and systemic distortions are inherently part of self-determination conflicts, any conflict resolution effort must focus as much on the psychological dynamics that underlay the conflict as on its structural components. Most of the people on both sides of these conflicts have learned to demonize one another. To reverse this, tolerance for differences in history

and culture must be integrated into the way people think and behave, as well as into the way society is structured. Track 1 1/2 and Track 2 efforts are usually more effective at taking on this task than are Track 1 processes, because they can provide a safer environment for learning and risk-taking than is possible in the formal Track 1 setting.

In our case studies, the countries that experienced weak or inconsistent Track 1 1/2 and Track 2 processes have not been able to address these psychological factors adequately. Even in Northern Ireland, with its substantial progress, people in the hardest-hit areas remain highly suspicious and fearful of the "other." Very little connects the Track 1 and Track 2 work, so whatever progress is made in Track 2 is not fully integrated into the political discussion. If this is true in Northern Ireland, it is even more evident in the cases where Track 2 work is less pervasive.

Nagorno-Karabakh is a good example. One expert sees in both the Armenian and Azeri societies a ". . . degree of suspicion that is deeply socially imbedded. Before the conflict, the Armenians from Nagorno-Karabakh got along better with the Azeris than with the Armenians in Armenia. But this has now changed."[13] Clearly the demonization of the "other" must be addressed before the populations in either country will accept any proposal for resolution. By all accounts, the most daunting task facing the two presidents is to prepare their publics for an eventual agreement, but not enough is being done in either country in this regard.

Leaders have insufficient incentives to adopt a moderate stance

For self-determination disputes to be negotiated, leaders on both sides must be willing to step back from inflammatory rhetoric and engage in discussions with their counterpart, with the good-faith goal of finding an agreement that meets at least some needs on each side. This is especially difficult when the issues are secession versus territorial integrity; framing these as "rights" creates hard-edged public positions that the parties feel are nonnegotiable. Having radicalized their constituents to believe that "giving in" on these issues is tantamount to treason, the leaders find their hands are tied even if they later see the advantages in negotiating a solution.

This problem exists in Nagorno-Karabakh. Leaders have begun to discuss options but their populations do not favor compromise. In Armenia, Levon Ter-Petrossian was forced to resign the presidency in 1998 because he seemed too "soft" on the Karabakh issue (Croissant 1998: 19). The current Armenian president, Robert Kocharian, is originally from Karabakh, so he takes a hard line on Karabakh's need to separate from Azerbaijan. Mindful

of the nationalist views within his country and the Armenian diaspora,[14] and of the possibility that opposition parties within Armenia are poised to condemn him for making any concessions (Martirosyan and Mis Ismail 2005), he has not explained the costs of continuing to reject any compromise arrangement. Thus Armenians continue to prefer the status quo over any proposal so far offered by the OSCE.

Likewise, top officials in Azerbaijan rejected a proposed deal, allegedly negotiated between Kocharian and the now-deceased Azeri President Heidar Aliyev in Key West, Florida in 2001, because it would mean giving up Nagorno-Karabakh.[15] Ambassador Cavanaugh, U.S. Special Negotiator for Nagorno-Karabakh and NIS Regional Conflicts, summarized the problem:

> I think there is potential now, and we have seen it in Florida, that they could find peace at the table. What is not clear is whether they can find a peace that will instantly or readily be embraced by the people of the region. The presidents have, in effect, gone ahead of their people. (Cavanaugh 2001: 11)

In July 2005, hopes for a settlement increased as the Minsk Group stepped up its activity in the region (Khachatrian 2005). However, as national elections approached in Azerbaijan in November 2005, little progress could be made on the Karabakh issue there. Now, with the legitimacy of the election results being questioned by international observers, it is not clear when the Azeri government will again be able to turn its attention to these peace talks, and to the compromises needed to conclude an agreement.

In comparing these two cases, the leadership in Northern Ireland would seem to have more incentive to refrain from extremist actions, and that has been increasingly demonstrated over time. With London again exercising governing authority, all the Northern Ireland political leaders would presumably like to see their new Executive up and running, independent of Britain, in order to secure the power of home rule and independent decision-making. This is critical, of course, to the Catholic community's desire for internal self-determination. But with implementation stalled, leaders have been tempted to take more hawkish stances – the Unionist parties as a way to pressure London to keep control until the IRA gives up its weapons and the Nationalist parties to maintain their stance against British intervention. The 2004 elections gave Sinn Fein and Ian Paisley's Democratic Unionist Party a majority of seats in the nascent Executive, indicating a polarizing of the electorate as faith in the Good Friday Accords wanes. And in February 2005, the IRA pulled out of ongoing negotiations, claiming "bad faith" by the British and Irish governments (Lavery 2005).

However, after scandals linking the IRA to a high-profile bank robbery, Gerry Adams publicly called for the IRA to abandon its armed struggle. Finally, in September 2005, General John de Chastelain, chairman of the independent international commission monitoring decommissioning, certified that the IRA had put all of their weapons "beyond use" (BBC News 2005). After seven years, the stage may now finally be set for power-sharing and home rule.

Normative rules are not clearly or consistently applied

Because self-determination is often misinterpreted as being synonymous with secession, the international community only adds to this confusion by not clearly stipulating the conditions under which it will recognize new states. Thus many groups continue to hope that their self-determination claims for secession will be acknowledged and supported internationally. For example, while independence is being explicitly discussed for the Palestinians, no such discussion is happening about Kashmir. Although in 1947 a referendum on independence was promised when Kashmir first became part of India, it is no longer on the table as a viable alternative.

Similarly, when Slovenia and Croatia elected to leave Yugoslavia, the international community made no attempt to oppose them. But in Nagorno-Karabakh and Kashmir, where significant numbers of people in each area want to secede from their respective countries, the international community refuses to allow it.

Of course, contexts in these examples are quite different, so different measures may be warranted. But with the stakes so high in self-determination disputes and with the international community clearly called upon to confer legitimacy on self-determination claims, it is incumbent upon states and international organizations to set some parameters for what is acceptable.

Doing so involves the international community setting the "rules of the game": spelling out the standards for legitimacy of self-determination claims and ultimately state recognition, and thereafter enforcing them in some way. At the very least, these rules become significant reference points for garnering international support, even if they are not as directly enforceable as domestic or international law. United Nations General Assembly Resolution 1514 of 1960, which declared that all peoples have the right to self-determination and supported the right of colonial territories to become independent, was one such intervention. Another is the Badinter Commission, which laid out, albeit unsuccessfully, the conditions under which the former Yugoslav republics would be recognized as independent states (Pellet 1992: 178–185).

Such normative interventions have great potential impact. At best, they can create the standard against which the international community evaluates self-determination claims, and states' responses to them. For example, Hannum (2006) contends that the current international norm on self-determination does not support enforced changing of borders and instead favors autonomy arrangements and the protection of minority rights to address minority grievances. If leading states and international organizations were to articulate this more explicitly, some minority groups might give up on their secessionist agendas, seeing clearly that they would never be recognized as a legitimate state. The case of Northern Cyprus is a recent example. More clarity might also encourage existing states to respond to the grievances of their minority groups, since they would be reassured by international norms that decentralization or power-sharing is not a slippery slope to partition of their country.

The problem with such norm setting is that such norms have often been applied inconsistently, often in accord with the interests of large international actors. For example, the Badinter Commission found that Yugoslavia was in the process of dissolution, rather than confronting the reality that Slovenia and Croatia were seceding. That finding let it sidestep the difficult issue of determining whether or not such secession was "legal." The commission then recommended that the European states recognize only Slovenia and Macedonia, using the protection of minority groups as one criterion for making that determination. However, Germany lobbied for and obtained recognition of Croatia, against the commission's recommendation, and Greece successfully blocked the recognition of Macedonia. In both cases, strong state interests overruled the norms that the commission report could have established. Such circumstances undermine the effectiveness of international norms, for both states and minority groups.

Intervention occurs late in the conflict, after conditions of intractability have set in

Several major studies and reports on current sources of conflict escalation have concluded that the earlier in a conflict an intervention takes place, the more likely it is to succeed[16] – but interventions usually come very late. The two case studies confirm that third parties can rarely gain access to self-determination disputes until the disputing parties are facing intolerable costs.[17] Though the parties are more willing to get assistance at this late stage, the elements of intractability discussed earlier have set in, and the challenges the mediator faces are enormous.

A more effective approach

Drawing upon the insights from the comparison of these two cases, third-party interventions in self-determination conflicts could maximize their effectiveness by filling in the gaps discussed above. Such approaches are too often one-dimensional, involving Track 1 efforts without benefit of complementary Track 2 activity. And when the interventions come so late, settlements are much harder to achieve. A more coordinated, multi-track approach could rectify these discrepancies by adopting four improved practices.

Track 1: Clarifying Norms of External Self-Determination

Discussions of self-determination now refer to secession as "external" self-determination (i.e. outside the borders of the existing state) and arrangements within the borders of an existing state as "internal" self-determination. Track 1 actors, such as government officials or representatives of international organizations, must become more explicit and consistent about limiting the conditions under which they can accept *external* self-determination. This will require a clear statement, backed up by consistent behavior of international Track 1 actors, and supported by a U.N. resolution. The latter is crucial because it will set forth the criteria in writing, leading to more consistent application. These criteria might follow those suggested by Buchanan (2006), providing for a "highly constrained remedial right to unilateral secession" under certain restricted circumstances. Such a framework could dissuade some groups from pursuing independence if they knew they would not gain international support. Failing to formulate such criteria carries a high cost: it allows and even encourages such conflicts to widen and deepen.

It is possible that identifying such conditions would instead spur groups to more violence that would meet the requirements of repression or injustice and thus justify legal secession. For example, some believe that the Kosovo Liberation Army (KLA) did precisely that, in order to bring attention to the Albanian plight and strengthen Kosovo's case for independence from Serbia. One response to this concern is to put in place a conflict prevention mechanism that could assess and possibly intervene in such cases long before minority groups feel they have to turn to violence, and thus preserve the option of *internal* self-determination.

Track 1: Supporting Internal Self-Determination

In addition to defining the limits of *external* self-determination, Track 1 actors must support ways to find *internal* self-determination options, those that maintain the territorial integrity of the existing state. They can best do

this by creating a position, either within the U.N. secretariat or regional intergovernmental organizations, analogous to that of the High Commissioner on National Minorities (HCNM) of the Organization for Security and Cooperation in Europe (OSCE). Created by the OSCE as a conflict prevention mechanism, the HCNM has worked well in many countries of Central and Eastern Europe to address the concerns of both governments and minority groups before such concerns escalated to violent self-determination claims (Chigas 1996).

"Early" is a key word in the HCNM's mandate:

> To provide 'early warning', and as appropriate, 'early action' at the earliest possible stage in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but . . . have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating States . . . (Kemp 2001: 12)

Although nothing in the HCNM's mandate explicitly requires a normative framing for its work, its placement within the OSCE itself implicitly recognizes that human rights and minority rights principles are an integral component of this mechanism.[18] It is important to stress, however, that the High Commissioner was not conceived of as an advocate for minority groups; hence the title High Commissioner *on* rather than *for* National Minorities. This was done to preserve the idea of the HCNM as a security and conflict prevention mechanism, and also to assure the OSCE member states that the role was not to be an adversary of governments, but instead to advise both minority groups and governments on how to avoid escalatory confrontation. Thus, from the beginning, the HCNM was to integrate a rights-based and a conflict resolution-based approach. Its role has been described as that of a "normative intermediary" (Ratner 2000: 591) in that the High Commissioner has relied upon human rights conventions as a framework for the recommendations he makes to both governments and minority groups.

The HCNM's work in Romania shows how this integrated process operates. In the wake of Romanian independence from the Soviet Union and rising repression of its Hungarian minority, key issues were language and education rights for the Hungarians in Romania, and Hungarian participation in national politics (Horvath 2002). The issue of minority-language use in public administration and education had sparked violent clashes in 1990 and threatened to again trigger crises in 1995 and 1998. Exacerbating this trend was increasing nationalist tendencies in the Romanian government, and the interest of the Hungarian Democratic Federation of Romania (UDMR) in regional autonomy (Kemp 2001: 237–8).

Max Van der Stoel, who held the position of High Commissioner from its inception in 1992, began visiting Romania in 1993 and continued working there throughout his ten-year term. He also visited Hungary, the "kin state" of the minority, helping to diffuse tensions created by Hungarian government support for the Hungarians in Romania. He began by encouraging the Romanian government to adopt legislation on minorities and education, and helped to expand the duties of the Advocate of the People, an ombuds position established by the 1991 constitution. He later made specific legal recommendations for a Law on National Minorities, drawing from several OSCE, Council of Europe, and U.N. documents. When the Romanian government enacted a controversial Law on Education in 1995, he diffused the tension it created in a public statement simultaneously reassuring the Hungarian minority of the new possibilities that this opened for creative policy development and reminding the government of its obligations ". . . pursuant to international standards" (Kemp 2001: 238). Along with the non-governmental Foundation on Inter-Ethnic Relations, he provided seminars, training programs, and roundtable discussions on implementing minority rights, education opportunities for minorities, and OSCE procedures and legal frameworks on inter-ethnic relations (Horvath 2002).

Finally, van der Stoel worked to improve relations between Romania and Hungary, diffusing their disagreement on the interpretation of group rights for minorities and paving the way for the 1996 signing of the Hungarian-Romanian Treaty of Friendship and Cooperation (Horvath 2002). By 1997, Romania had also created a Department for the Protection of Ethnic Minorities, and representatives of the Hungarian minority first held ministerial posts in the government elected in November 1996 (Kemp 2001: 239).

An in-depth analysis of this case, undertaken by The Centre for OSCE Research at the University of Hamburg, found that the High Commissioner played a critical role in diffusing crisis situations in 1995 (after the new education law) and in 1998 when the Hungarian political party threatened to leave the government. In both circumstances, he changed the frame of the debate and helped both sides see new possibilities.

A senior statesman in a similar position at the United Nations or any of the regional or sub-regional inter-governmental organizations could provide such a service globally or regionally. If placed at the United Nations, such a High Commissioner could have deputies for each region who are knowledgeable and have local credibility. The office's title need not refer specifically to "national minorities," but should reflect an explicit dedication to helping prevent conflicts within states from becoming violent.[19] The potential benefits are considerable:

(1) The office(s) would provide a crucial, ongoing forum for confidential discussion and framing of issues, and an open door to take advantage of "ripe" moments when governments and minority groups are prepared to take constructive steps toward one another. It could create the sustained mediator engagement that is crucial in these conflicts, and, more importantly, the possibility of early intervention before violence escalates and hardens the positions of the disputing parties.

(2) A High Commissioner and his/her staff could provide both education and advice to governmental and minority group leaders. Combining expertise in both conflict resolution and human rights, the office could educate government leaders about the benefits of acknowledging and responding to the needs of their minority populations; similarly, it could encourage minority group leaders to explore alternative ways of achieving justice and greater political power, based on the positive experiences of groups in other countries. All parties could be introduced to innovative models of power-sharing, moving away from mechanistic solutions that give equal numbers of positions to each group and focusing instead on developing an understanding of and reliance on the concept of a "loyal opposition."[20] This educational function is crucial: in conflict-prone states, governments and groups rarely know about progress being made in similar situations worldwide. Such information, supplied by a trusted intermediary, might spur more creative thinking about local options.

(3) Establishing an office dedicated to problem-solving on minority issues would signal that the concerns of these groups are being taken seriously, but in the context of the territorial integrity of states and international human rights law. Thus it would make clear the possibilities and constraints for both governments and minority groups, and act to find solutions within an acceptable international framework. This also means using "constructive coercion" when necessary: providing incentives for states and minority groups to engage in constructive problem-solving rather than adversarial confrontation, and imposing sanctions if they fail to take constructive action. An approach that combines carrots and sticks can show how to use international norms clearly and consistently as a basis for settling such conflicts.

Any new High Commissioner, whether regional or global, would certainly face challenges. The position requires someone with global or regional credibility, diplomatic sophistication, political savvy, and a collaborative working style. Staff members need regional expertise as well as experience in international law, and conflict analysis and resolution. Finally, the OSCE experience demonstrates that the office would need some kind of political or economic leverage in order to be taken seriously. In the OSCE context,

leverage was provided indirectly by the carrot of potential EU membership for those states deemed to have paid sufficient attention to resolving their own minority issues. It would be difficult to replicate that kind of incentive in other regions, but the facilitative nature of the office is key; it should not be replaced by one imbued with enforcement powers. Excessive coercion will only increase the likelihood of resentment and confrontation from both governments and minority groups. Perhaps the biggest challenge will be finding credible, context-specific ways to exercise constructive coercion, should it become necessary.

Track 1 1/2: Support for Track I work

Non-governmental groups could play a critical role in fostering a multi-track approach. In a Track 1 1/2 mode, they could provide support for the High Commissioner role described above. As "subcontractors" on a specific dispute, they could do background research to pave the way for the High Commissioner's involvement and provide ongoing support as the intervention proceeds. They could also keep abreast of interventions and current innovations in self-determination arrangements elsewhere, to support the office's educational function.

As independent actors, NGOs could also conduct negotiations with decision makers in less "official" settings than even a High Commissioner could create. In some circumstances, the parties might prefer this lower profile as a substitute for or a complement to work proceeding at the Track 1 level. Financial support for such Track 1 1/2 work is not easy to come by, so it is often underwritten by a Track 1 actor.[21] Such organizations must have expertise in both conflict resolution and human rights – and credibility in the region of the dispute. As there is no "credential" to certify expertise, qualified Track 1 1/2 organizations are best identified by their previous work and the experience of their principal staff members.

Track 2: Systemic work to create understanding

Track 2 work focuses on non-governmental actors within the disputing groups. The operating assumption is that "bottom-up" approaches create receptivity in civil society for conciliatory gestures toward the "other" group, and can also put pressure on reluctant decision makers to take positive steps toward the "other."

Track 2 processes, such as dialogue groups and training workshops, can create better understanding of the other's needs and fears and increase negotiating skills so that parties can reach more creative agreements. In the con-

text of self-determination concerns, NGOs can play an educational role at the civil society level to deepen the reach of new ideas, such as the power of a loyal opposition or innovations in power-sharing arrangements. Leaders with educated constituencies will find it much easier to "sell" possible agreements and to provide viable alternatives to extremist groups that claim nothing will work.

As with any controversial issue, self-determination conflicts generate their share of extremists. Sometimes they appear in diaspora populations that make up for their physical absence by being very confrontational and unyielding in supporting nationalist agendas. NGOs can contribute positively to the self-determination discussion by working with these populations, to foster more moderate views and potentially, in turn, provide a support base for moderate leaders back in the home country.

Table 1 summarizes the respective roles for Track 1, Track 1 1/2, and Track 2 actors in mediating self-determination conflicts.

Table 1. Roles in Mediating Self-Determination Conflicts

Track 1	• Clarify international norms on external self-determination
	• Support internal self-determination
	• Consistently apply international norms
	• Adopt/adapt model of OSCE HCNM by UN or regional IGOs
Track 1 1/2	• Support for Track 1 through:
	➢ Background research
	➢ Tracking self-determination disputes globally
	➢ Non-official convening of Track 1 actors
Track 2	• Create forums for dialogue/communication across conflict lines
	• Training
	• Educational programs on conflict resolution, human rights

Revisiting the Case Studies

How would this integrated mediation approach have helped in Northern Ireland and Nagorno-Karabakh? These cases have been festering for decades, rooted in grievances and claims for self-determination that governments have sought to suppress and minority groups have then escalated through violent means. Ideally the approach I suggest would have begun before such escalation occurred, as an explicit violence prevention mechanism. However human rights norms are more potent now than in the decades when these conflicts had their origins. Given this new reality, it is now possible to think of creating a more consistent normative framework within which self-

determination issues could be discussed. Within such a framework, it would be easier to put into place the other elements of the systemic approach I have outlined. In fact, just as the HCNM did in Europe, a global or regional High Commissioner could help both to construct such norms and to strengthen those that already exist.

Applying this idea in Nagorno-Karabakh, while it is too late for the "early" intervention just described, it is crucial for the Minsk Group to use its leverage more effectively now in creating room for the political leaders to compromise and still save face. In addition, Track 2 efforts are crucial to change the climate in which political leaders are operating. Without some ability to be flexible, the leaders of both Armenia and Azerbaijan cannot engage in negotiations that truly address the self-determination claims. Also in this case, the people asking for self-determination – the Armenians of Nagorno Karabakh – must be allowed to participate in negotiations if the results are to be sustainable. This will require some change in the positions taken by Azerbaijan. Large states such as the United States, Britain, and Russia can look for ways to create the incentives for such change.

In Northern Ireland, George Mitchell found ways to act as the "normative intermediary." He proposed principles that guided the negotiation process, thus creating a set of criteria by which parties were either included or excluded from discussions based on their actions and good faith efforts at coexistence. No mechanism, however, has directly confronted the basic distrust that has developed over decades and which continues to undermine implementation of the peace agreement. The Good Friday Agreement avoided some of the most sensitive human rights concerns of each community: economic equity for the Catholics, preservation of cultural identity and security for the Protestants. At this stage, perhaps another normative intermediary could interject these issues into the negotiations, allowing both sides to tackle the root causes of the violence.

Conclusion

Although self-determination is alive and well as an aspiration of many identity groups, it need not lead to violence and civil war. By better understanding the dynamics that create the escalation to violence and the elements of these disputes that can lead to intractability, the international community can design more effective intervention strategies than those being utilized at present. Such strategies are not panaceas for stopping violent secessionist movements from growing, or for halting repressive government

actions that can create such violent resistance. But we can do better in learning from past successes and failures, and expanding upon existing successful models, such as the OSCE HCNM.

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Notes

1. The Minorities at Risk Project at the University of Maryland identified 48 armed conflicts as of winter 2003 that have self-determination questions at their core. Accessible at: http://www.cidcm.umd.edu/inscr/mar/
2. The notion of a loyal opposition is one of the keys to the operation of a democracy. See discussions about power-sharing, peaceful transfers of power, and decentralized control in Zakaria (2003).
3. In an empirical analysis using the Minorities at Risk data set from the University of Maryland (see endnote 1), Erin Jenne concludes that strong minority groups (i.e. those with external military support and/or a history of autonomy) are more likely than weak minority groups to use self-determination claims as a mobilizing device to gain leverage against the state. However, she also concludes that, given the deadliness of wars over self-determination, the principle is more than a means to an end. See Jenne (2006).
4. See, for example, much of the literature on humanitarian intervention, such as Damrosch (1993).
5. The 2000 Camp David meeting, at which the U.S. government mediated directly between Yasir Arafat and Ehud Barak, is a quintessential Track 1 mediation effort. Because the disputing parties are represented by official decision-makers, the assumption is that such a process has the potential to deliver a binding agreement. Discussions may take place with public knowledge, as in the Camp David process, or in a "back channel," away from public scrutiny. The Oslo Process during the early 1990s would fit the latter description; officials from both sides came to a secret negotiating table to agree on the Declaration of Principles.
6. The Community of Sant' Egidio conducted a very well known Track 1 1/2 process that helped to end the civil war in Mozambique. See Hume (1994).
7. The analysis of these case studies was undertaken with the support of a grant from the Carnegie Corporation of New York. The project, "Negotiating Self-Determination," was conducted by Hurst Hannum and Eileen Babbitt at the Fletcher School from 1999–2002.
8. The Downing Street Declaration, 15 December 1993, paragraphs 4 and 7. Reprinted in *Accord* (1999: p. 70).
9. "Britain to Take Control of Northern Ireland." *New York Times.* Oct. 14, 2002.
10. The interface areas are where working-class Catholics and Protestants live in adjacent communities, separated for decades by physical barriers.

11. The initial group included France, Turkey, Germany, Armenia, Azerbaijan, Nagorno-Karabakh, the United States, Italy, Russian, Sweden, and Czechoslovakia. Currently the United States, Russia, and France chair the group.
12. These programs have been sponsored by organizations such as Partners for Democratic Change and Conflict Management Group.
13. Off-the-record discussion on Nagorno-Karabakh, 15–16 September 2000, The Fletcher School of Law and Diplomacy, Medford, MA. This discussion was part of a research project on self-determination, funded by the Carnegie Corporation. It included scholars, policy analysts, and diplomats with direct experience in Armenia, Azerbaijan, and the South Caucasus. Their participation was predicated on confidentiality of the discussions, so no direct attribution can be made.
14. Symposium on Nagorno-Karabakh. See fn. 13.
15. The alleged deal included granting independence to Nagorno-Karabakh in exchange for the returning of most Armenian-occupied land to Azerbaijan plus a corridor linking Azerbaijan with an Azeri enclave in Armenia. See de Waal (2004).
16. The U.N. Secretary-General's Agenda for Peace in 1992 called for an emphasis on preventive diplomacy, as did Michael Lund's seminal study of violence prevention in 1996, the report of the Carnegie Commission on Preventing Deadly Conflict (1997), Bruce Jentleson's follow-on to the Carnegie Commission report (1999), and the 2001 Report of the U.N. Secretary General on the Prevention of Armed Conflict. *A More Secure World: Our Shared Responsibility*, released in December 2004, places particular emphasis on conflict prevention in the areas of potential threat to international peace and security.
17. See I. William Zartman's concept of the "mutually hurting stalemate (Zartman, 2000)."
18. Conference on Security and Cooperation in Europe: Final Act. Helsinki, 1975. Accessed at http://www.osce.org/documents/mcs/1975/08/4044_en.pdf.
19. Max Van der Stohl has commented on the drawbacks of having the phrase "national minorities" in the office's title.
20. Without exposure to the loyal opposition concept, newly forming democracies find it hard to believe they can construct a government in which power is not totally concentrated at the top. Governments not only need examples of how such mechanisms can work; they also need assistance in putting such structures into practice. More importantly, civil society must demand this kind of structure from its political elites.
21. Examples include the support of the Community of Sant' Egidio's work in Mozambique by the U.S. and Italian governments, and the Swiss and Norwegian governments' support for the Centre for Humanitarian Dialogue in Geneva.

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