

**NONEXCLUSIONARY CRITERIA AND STABILITY  
IN INTERNATIONAL POLICY MAKING ABOUT  
SECESSION CRISES**

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**ABSTRACT**

Violent and persistent inter-group conflict often results from antagonisms that arise between minority groups and central governments over the oppressive treatment of the minority group and over efforts by the minority group to secede from the parent state. The legal principles that have guided international involvement in these secession crises, namely self-determination of peoples and territorial integrity of the state, have not been effective or consistent inducements for resolution or prevention of the outbreak of conflict. This paper considers how international recognition of secessionist claims could be made dependent on whether the relevant minority group or central government lays out the most convincing plans for enhancing the welfare of the population, avoiding exclusionary policies, and promoting inter-group cooperation and stability rather than inter-group conflict and disorder.

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In recent times, dissemination of knowledge about the calamity of civil wars has provoked the international community to renew the search for ways of ending them and preventing their occurrence. Many civil wars are provoked by secession crises in which minority groups seek to secede from an existing state, state governments object to secession plans, and violent confrontation is the result. We argue that the principles embodied in international policy induce the actors in secession crises to engage in violent conflict to further their goals rather than seek peaceful resolution of their differences. Instead, we urge alteration of international policy to provide incentives for the adoption of peaceful behaviors and norms that can foster long-term cooperation and stability.

We hold few illusions about the ease with which stability can be secured in many regions of the world. In addition to the problem of counter-productive incentives, many regions of the world have recent histories of group antagonism and lack inter-group trust. As illustrated in the Balkans, institutions are often imposed in these low-trust regions even though they are designed to function effectively only where inter-group cooperation is found in abundance. Hence, their failure rate is high. Moreover, we acknowledge that some international power brokers may have self-regarding, disparate interests and lack cooperative impulses necessary for achieving

agreements that promote stable outcomes in a region.

Despite these obstacles, the authors propose here a remedy at least for those destabilizing situations that arise when a significant ethnic group perceives its best option for responding to group injustices perpetrated by the state of residence to be the formation of a new state and the leaders of the existing state are strongly opposed to the form of secession imagined by the aggrieved group. The remedy advanced here is designed to counter incentives found in international law that tend to produce malevolent outcomes in these secession crises and to address the special difficulties found in regions where groups have a recent history of antagonism and inter-group trust is lacking. Finally, the authors examine what contexts might be conducive to the implementation of the proposed remedy based on knowledge about past conflicts and about the nature of the human actors who would be involved in these situations.

We draw attention to empirical research on aspects of human nature that are especially relevant to understanding the behavior of international actors. This research, we believe, supports a view that international actors possess a broad repertoire of behaviors that can engender both cooperation and conflict. Moreover, behaviors actually exhibited by actors are constrained by incentive structures and by cues processed from a social context of past, present, and expected actions of other actors. Using this knowledge, we evaluate secession crises.

The paper proceeds in four sections. The first section briefly reviews the literature on international relations theory and human potential. The second section examines the concepts of territorial integrity of the state and self-determination of peoples and asks how well they have served as guidelines for formulating international policy on secession crises. The third section explores how the introduction of human welfare principles, especially those that contribute directly to stability and inter-group cooperation, might induce more benign outcomes. A

concluding section examines the problems to be found in the international system that might derail adoption of welfare principles and assesses prospects for improvement.

The analysis identifies three distinct actors – international communities, minority groups, and central governments. Minority groups tend to share the same goals of increased autonomy or independence and are responsive to the incentives generated by international law. Central governments tend to prefer that political power be centralized in the hands of state institutions and not be parcelled out to subsidiary units of the state. International communities refer to groups of nation-states that have cooperated within an international forum and arrived at an understanding that they share interests in a particular region of the world whether in economic matters, promoting stability or in promoting liberal democracy. We make no judgement about whether such communities originate as social constructions or from pursuit of material interests, but we do attribute to them the qualities of a “regime” – an aggregation of actors who share rules and decision-making procedures and are capable of regulating their collective behavior (Krasner 1983). We view such communities as the primary force in the formulation of international law. They vary in their membership, can be more or less formal, and include such institutions as the North Atlantic Treaty Organization, European Community, and the United Nations. International communities are generally capable of enunciating the most influential voice in a region of potential conflict.

Surely there are cases of potential regional conflict in the world for which no “international community” exists that meets the attributes set out above either because of a lack of common interest among nation-states or because nation-states lack ability to articulate a common, authoritative policy. Still, we think there are many regions in which an international community exists that draws upon international law in an effort to constrain its own collective behaviour and the behavior of the parties to secession crises.

## International Relations Theory and Human Potential

Before focusing on secession crises, we briefly discuss different perspectives on international systems and the potential behaviors of actors within such systems. Different perspectives yield different understandings of constraints imposed on and possibilities available to actors in the international system.<sup>1</sup>

To introduce these perspectives on international systems, we utilize Wendt's (1992: 400-01) typology of "security systems" in which he distinguishes the nature of international actors and the relations among them. He identifies three types of international security systems that can prevail in the world:

(1) A *competitive security system* has features that correspond to a realist's view in which sovereign states are the key actors in the international system, their primary interests are the rational pursuit of power, state actors are self-regarding and preoccupied by relative gains and losses in power and capability. Little trust exists among actors and war must always be treated as an imminent possibility. The system is anarchic in that no over-arching power exists to coerce cooperation, adjudicate disputes, enforce laws and agreements, or ensure peace among states.

(2) An *individualistic security system* reflects a neo-liberal vision in which states are again self-regarding but also concerned with absolute gains and, hence, with possibilities for cooperation. Alliances are always contingent, however, on individual calculations of gain.

(3) A *cooperative security system* is most in line with a constructivist vision in which positive interactions among states can lead to bonding and an identification with the “collective.” States act to obtain benefits for the collective community, not just an individual state. State actors in such a system share norms and are not prone to anticipate threats of war.

To Wendt, no one of these systems permanently characterizes the international system. The type of system that prevails at a given time and place depends on the practices of states and their interactions. Communal identities grow or fail to grow as a result of cooperative or conflictual practices and interactions. Moreover, these identities (or their absence) can be resilient and not easily altered in a short time frame. They often give the appearance of being durable or even permanent, though Wendt’s insight is that not any one of these systems is truly permanent nor is any system an inevitable end point of an evolutionary process.

We evaluate Wendt’s typology by asking about empirical support for the behavioral repertoires implied by the three systems. We also ask what type of system characterizes the international order at a given point in historical time or whether different systems are found in different regions.

### **Evidence for Behavioral Diversity**

Are behaviors implied by the three systems compatible with empirical knowledge about the nature and potential of human actions? By his own admission, Wendt’s conception depends upon an anthropomorphising of state actors. We believe this step is sensible and justified. The dynamics of state and sub-state behavior are traceable to humans acting within specific contexts.

How are humans capable of acting and do those capabilities correspond to the behaviors posited by the three systems? The bulk of biological, anthropological, and social psychological evidence points to capabilities for self-regarding behavior, other-regarding behavior based on reciprocation, and other-regarding behavior based on collective identity. Hundreds of laboratory experiments have been conducted that confirm self-regarding behavior in prisoner's dilemma, public goods games, and in common pool dilemmas.<sup>2</sup> This work has at least two implications for human behavioral repertoires and international actors: actors sometimes pursue goals that are consistent solely with their own welfare and they are frequently, though not exclusively, responsive to incentives that appeal to their self-interest.

The efficiency of other-regarding behavior based on reciprocation has been persuasively demonstrated for small groups of actors who anticipate repeated interactions. Axelrod (1984) has developed the logic of reciprocation through simulation exercises while biologists and anthropologists (e.g., Trivers 1971, 1985; Hawkes 1992) have documented its actual development in primate societies and in human society from accounts of its importance in hunter-gatherer societies. In fact, a literature has developed in the international relations field that utilizes cooperation through reciprocation as the basis for explaining some very significant international phenomena (e.g., Rhodes 1993; Keohane, Nye, and Nye 2000).

Other-regarding behavior that derives from identification with groups has been researched by social psychologists and found to be spectacularly robust – easily provoked by group distinctions and markers that have even minimal meaning.<sup>3</sup> In sum, all of these behaviors have been confirmed in contexts where external coercion was absent. In the international arena then, despite a structure that permits anarchy, there is every reason to believe that the gamut of human behaviors that characterize each of the three systems are possible and will likely be

manifest at some place and time.

Fearon and Wendt (2001) argue that, at any given time, different regions may be characterized by different defining elements. The international system is rarely exclusively just one type of system. Cooperation and other-regarding behavior can characterize one region in the system while conflict and self-regarding behavior characterizes another region in the system. Trust, reciprocal cooperation, and cooperation based on an emerging European identity may characterize West European relations while a competitive, distrustful, self-regarding pattern characterizes relations among indigenous groups in the Balkans.

In-group/out-group theory even suggests that cooperative and conflictual elements may be necessary appendages of the same system. In-group cooperation is provoked and heightened by across-group hostility. Even the most casual observation of events in the USA following the September 11 attack on the World Trade Center would seem to confirm a process in which in-group cooperation (in the form of enhanced patriotism and nationalism) depends on out-group hostility (attacks by Al-Qaeda and derogation of American culture by Islamic fundamentalists). Attacks on Islamic culture by conservative groups in the USA, support for Israel, and the war on Iraq have obviously engendered solidarity among Muslims despite the diversity and decentralized structure of the Islamic world. Such processes are not likely the only source of cooperation, however, and the primary concern here, if not in the world, must be with the prevention of inter-group conflict, especially in its most violent forms. The policy challenge is heading off the activation of these group polarization processes even though they be attended by within-group cooperation. The world has little need for good Nazis.

### **The Development of International Law on Secession Crises**

Coming out of World War II, the victorious Allied powers set up institutions and

international law that reflected a realist view of a dangerous international world and focused on setting up incentives to prevent future inter-state wars. At the same time, they seemed to envision development of a cooperative security system in which the substance of international law would take on the form of norms that guide and shape harmonious relations among states. While not without success in discouraging inter-state war, this body of international law did not establish regional and sub-state peace and stability. Rather, it ended up creating incentives for sub-state conflicts and for violent attempts at resolving secession crises.

The cornerstones of international law that are most prominent in addressing both inter-state conflict and secession crises are the principles of “self-determination of peoples” and “territorial integrity of the state.” The concept of territorial integrity emerged in law after World War II in various documents including the United Nations Charter. It was enshrined in such documents to tout a principle that would discourage the type of inter-state aggression that set World War II in motion. It also became a useful principle for discouraging aggression against the new states that were being established through the process of decolonization. By creating an international responsibility backed up by force, the signatories to the United Nations made the territorial integrity principle the operative content of institutions for regulating, though not always consistently, relations among states.

The principle of self-determination has more elusive purposes, but initially appeared to buttress the idea of inviolable nation-states shaped around culturally similar peoples pursuing their independent political destinies. In the context of decolonization, the principles of territorial integrity and self-determination seemed entirely compatible.

In more recent years, however, application of the two principles has not been easily reconciled. International actors have increasingly taken an interest in the oppressive conditions that sometimes confront minority groups in a state and provoke secessionist movements. However,

supporting the redress of oppression by approving secessionist movements contradicts unqualified support for the principle of territorial integrity. To serve as a guide for policy, one or the other principle would have to be weakened. If an international community weakened the sanctity of territorial integrity by catering to grievances of these minorities groups, it might imperil regional or global stability. A relaxation of the territorial integrity principle implied that any state could justify aggression directed against another state by claiming mistreatment of some minority.

How then could international stability be maintained and support provided for the plight of oppressed groups? In the remainder of this section, we explore how the international community responded to this question by shaping the nuances of the concepts of territorial integrity and self-determination in international law and by attempting their reconciliation.

### **Territorial Integrity of the State**

After World War II the international community designed the United Nations to preserve peace and stability among nation-states.<sup>4</sup> The powers of the time regarded protection of the territorial integrity of states as the key to ensuring achievement of those goals. In the UN Charter they created appropriate incentives by prohibiting forced intervention in the affairs of other states and by prohibiting the general use of force except in the case of state self-defense.<sup>5</sup> The teeth in the incentive feature of the prohibition was demonstrated in the 1990 Gulf War when the UN Security Council authorized military intervention to reverse Iraq's invasion of Kuwait. Cold War stalemate and the need for unanimous consent among the permanent members within the Security Council produced a more common pattern, however, in which inter-state aggression was ignored (e.g., the 1980 Soviet invasion of Afghanistan and the 1983 US invasion of Grenada) or resolutions would be put before the Security Council and be vetoed (British veto of a resolution condemning British aggression in the 1982 Falklands/Malvinas War). Actions designed to punish violations of the

territorial integrity principle have been rare, but the existence of the norm and the slight prospect of enforcement has likely prevented other invasions from ever taking place.

### **Self-determination of Peoples**

In the decades immediately following World War II, the signatories of the UN Charter treated the principle of the territorial integrity of the state as transcendent over other principles embedded in the Charter. Nevertheless, the principle of self-determination would assume important normative significance and eventually acquire operative significance as well.

The concept of self-determination includes the idea that a people should have the opportunity to determine their own destiny. The international community has not consistently specified, however, which cultural and political elements a people should be able to control and how inviolate the principle should be. Should self-determination be regarded as a “right” that cannot be diminished by concern for other principles such as territorial integrity of the state or should it be regarded as one goal among many that can be put aside if the pursuit of other goals are deemed more compelling at a given point in time? Does self-determination mean that a people should have the opportunity to cultivate their own socio-economic and cultural development, to pursue self-government within a pre-existing state, or to assert their own independent political status on a piece of defined territory (or establish allegiance with a state of their choosing)? The real point of controversy appears to be over the type of political status to which a group might aspire, self-government or independence, and how one or the other status can be reconciled with protecting the territorial integrity of the state.

#### **1. Self-determination as a Right**

If the language in Article 1(2) of the UN Charter expressing the principle of "self-determination of peoples" is to be understood as a “right” of a group of people to choose their own political status rather than merely a claim with some degree of moral compulsion then it is less easily reconciled

with other inviolate principles. As a right, self-determination is a principle that cannot be diminished by competing concerns and deserves uncompromised efforts to bring about its realization. All other norms and rules in the UN Charter would have to harmonize with its requirements. As a mere moral claim, the principle of self-determination could easily be discarded and ignored in practice whenever competing concerns, especially concerns about not intervening in the affairs of another state, came to the fore.

Support for the position that “self-determination of peoples” constitutes a right accelerated within the United Nations in the fifties and sixties and is expressed in several UN documents. Res. 1514 (XV), December 14, 1960, and Res. 1803 (XVII) of the UN General Assembly (UNGA) refer to self-determination as a right and actually define circumstances where the right is not realized, namely, where people live under onerous conditions of subjugation. Other UNGA documents define self-determination as a right to be realized through independence and self-government.<sup>6</sup> At least as a matter of formal international law, the principle of self-determination as a right has been clearly expressed, though its harmony with the principle of territorial integrity of the state has not been settled.

## 2. Self-determination and Political Independence

The idea that self-determination might imply a political status of sovereign independence took hold after World War II in the context of decolonization. By the 1960's the norm of the global international community was that colonial powers should divest themselves of their colonies. The actual political independence of those colonies was the natural outgrowth of divestiture. The UN General Assembly codified this idea and asserted that “self-determination of peoples” was synonymous with a right to both self-government and *independence* and that its pursuit would realize the purpose of the development of “friendly relations among nations.”<sup>7</sup> The equation of

independence with self-determination was also expressed in the Helsinki Final Act of 1975. In accepting the UNGA formulation the signatories confirmed their respect for the equal right of peoples to self-determination, which allows all peoples 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."

Despite these assertions, self-determination as a right to political independence stands in unavoidable and unresolvable opposition to the unabridged principle of territorial integrity of the state. A people cannot be guaranteed the opportunity to choose a political status up to an including an independent state while simultaneously guaranteeing existing states that their territorial integrity will never be violated unless, of course, the international community merely sidesteps implementation of at least one of the two opposed principles.

### **Reconciling Territorial Integrity of the State and Self-determination**

To reconcile them in practice, the international community has chosen to abandon strict adherence to one or the other principle. In the era of decolonization, the international community reconciled the principles by disregarding a view of self-determination as a right that extended all the way to independent political status. More recently, the international community has moved in the opposite direction and begun treating the principle of territorial integrity of the state as no longer inviolate under particular circumstances.

#### **1. Constraining the Concept of Self-determination**

In the era of decolonization, the international community faced the dilemma of wanting to grant political independence to former colonies without having to legitimize any and all secession movements within existing states. By opting for a view of self-determination as a right merely to self-governance, the international community was able to distinguish their treatment of colonies and

UN trust territories from their treatment of pre-existing states and, thereby, avoid destabilizing the regimes and territorial boundaries of the latter. Self-determination clearly implied *self-governance* of a people, but self-governance did not require political sovereignty over a separate piece of territory.<sup>8</sup> Independence was granted to former colonies not because political independence constituted a right but because colonial peoples and inhabitants of UN Trust Territories were denied self-governance under previous arrangements and independence was the most logical remedy for the denial of self-government (O'fuatey-Kodjoe 1994: 385). Hence, political independence could be offered to former colonies but denied to groups operating within pre-existing states on the grounds that the latter might already be exercising self-government as state citizens and, thus, self-determination (Quane 1998: 571).

Constraining the concept of self-determination in this way implied that a people had no inherent right to possess their own territory. Any people could exercise self-governance while the territory they governed remained in the ownership hands of the pre-existing state (Espiehl 1980: para 90). Consistent with international practice, the territorial integrity of states could still be held up as a paramount principle and used to deny any right to secession (Quane 1998: 558).

## 2. Relaxing the Inviolable Character of Territorial Integrity

More recently, the international community's response to the decomposition and composition of states in Eastern Europe and in the former Soviet Union has muddied the clear fit between principle and practice. In fact, the international community has recognized a preponderance of secessionist movements and claims to independence by groups that were minority groups within the boundaries of sovereign states.<sup>9</sup> In the cases of Croatia, Bosnia, and Kosovo, the international community has even undertaken some form of military intervention to support its policies. The justifications for these policies made it clear that a relaxation of the inviolable character of the principle of territorial

integrity of the state was taking place, especially in the US/European community. Henceforth, the territorial integrity of states could be violated when *international stability* was threatened by secessionist movements or disorder within states.

Recognition of the successor states of the Soviet Union and of the former Yugoslavia was based on the view that these states had dissolved internally through their own momentum and that a failure to accord them recognition would only invite advocates of the old regimes to attempt restorations through military conflict.<sup>10</sup> The shape of the new policies also became evident in the 1990 Gulf War against Iraq where coalition forces justified further military intervention in Iraq even after the Iraqi withdrawal from Kuwait on the grounds that Iraqi actions were destabilizing the Gulf region. In 2003, the US administration justified invasion of Iraq once again by noting the potential (in terms of weapons and intentions) that Iraq possessed for destabilizing the Gulf region *in the future*.

### **Assessing Efforts to Reconcile the Concepts**

Attempting to reconcile the concepts of territorial integrity of the state and self-determination by ignoring one of the other fails to provide perfect remedy for the problems they were meant to address. Ignoring self-determination results in ignoring oppressive conditions that many groups endure at the hands of central governments and that can ultimately lead to regional instability. Moreover, the international community forfeits any active role in encouraging internal democratization, protection of minority rights including the prevention of genocide, development, and peace-building within sovereign states (McCorquodale 1994; Charlesworth 1998; Rummel 1999). The alternative of ignoring the territorial integrity of states is barely an improvement. In such a world, states would have more license to invade other states in pursuit of territory and power. This situation would very likely heighten the prospects for the initiation

of inter-state wars -- the very reason that preservation of territorial integrity was first enshrined in international law.

Strategies with more obvious promise are those that relax rigid adherence to both principles but do not abandon them altogether. At the time of this writing, relaxing adherence to the territorial integrity of states whenever the events within a state threaten international stability is a formula clearly in vogue with the world's strongest military power, the United States. Hence, the strategy's consequences may very well be realized in practice. And again, the most likely outcome is that states will engage in more, not less, aggressive acts towards their neighbors. The idea of "threats to international stability" is rather vaguely defined and can easily be invoked to justify aggressive actions by external states and create all of the problems that result from abandoning the concept of preserving the territorial integrity of states altogether. Aggressive actions will be tolerated to a greater degree and security dilemmas in which states are more inclined to prepare for invasion and war will be more pervasive. To be of any use, the understanding of the concept of instability must be refined and made more specific to reduce uncertainty about when it applies and when it does not.

Relaxing concern for the territorial integrity of states when states appear to be in a process of dissolution is a strategy that by-passes the real issue and, in practice, creates a perverse incentive structure. The most important issue for the international community is how to respond to groups that confront onerous conditions within a state. By waiting until a state has actually dissolved as a result of those conditions means that the international community has forsaken responsibility until violent group conflict has already come to characterize the situation. The incentive problem is that oppressed minority groups within a state and the governments of unstable states typically would like to have the support, or in the latter case, the acquiescence of the international community. If dissolution is the key criterion permitting the involvement of the international community, then

central governments have incentives to engage in authoritarian methods to preclude both the fact and appearance of dissolution while groups inclined to make secessionist claims have an incentive to create both the fact and appearance of disorder so the international community views the state as being in a condition of dissolution. Central governments are thus induced to accentuate the conditions of oppression and, ironically, provide minority groups with greater reason to seek secession. Minority groups are induced to generate disorder and provide central governments greater incentive to behave in authoritarian ways to reign in the disorder.

Of course, these incentives are operative only when groups have knowledge or concern about international law and policy on secession issues and care about international support. In remote regions of the world, secessionist groups may well lack such knowledge and others may see international actors as ideological enemies whose support is not welcome. Still, the preponderance of secessionist groups are savvy about international policy and grasp the importance of international support. Some groups have even been known to invite the exercise of outrageous coercion against their own group in order to draw international attention to their plight. In Croatia's war of secession against the Serbs in 1991, Croat sharpshooters were reportedly ordered to operate from the walls of the Old City in Dubrovnik so that the Western world would be aghast at the wanton cultural destruction and occasional death caused by Serb shelling of cherished renaissance palaces (Stitkovac 1997: 165).

Despite their savvy, contending groups in secession crises often adopt differing interpretations of the principles of self-determination and territorial integrity that are not consistent with actual international practice and that accelerate perverse outcomes. Most commonly, minority groups construe the legal principle of self-determination of peoples to mean that they, in fact, possess the right of secession from the state of which they are a part<sup>11</sup> -- an

understanding that clearly threatens the territorial integrity of the state. In contrast, central governments typically view the principle of the territorial integrity of the state as prohibiting the implementation of an understanding of self-determination that would permit minority groups to declare their own separate, sovereign, and independent political units.<sup>12</sup> Since both understandings of self-determination of peoples and territorial integrity of the state have international legal expression (Eliot 1991; Schreuer 1993; Grant 1997), the international law system contributes to ambiguity about what actions the international community will support or about the actions that minority groups and central governments should take. As a result, the contending parties often end up focusing on the principles that would lead each to their most favoured outcomes: secession in the case of minority groups and a centralized state in the case of central governments. Because these outcomes are at opposite and irreconcilable extremes, their separate pursuit is likely to generate conflict. Hence, the disparate implications of the principles of territorial integrity and self-determination as inviolate rights may promote internal armed conflict, especially when the effort to reconcile the principles is accomplished by anticipating dissolution of the state itself.

Existing legal formulations have neither managed to establish norms which would resolve the conflict between self-determination of peoples and the territorial integrity of the state nor have they consistently succeeded in preventing or settling outstanding disputes between minority groups and central governments. We argue that those formulations need to be altered so that their incentive properties are more likely to generate benign outcomes. In particular, we urge that the principles of territorial integrity of the state and self-determination of peoples not be expressed as blanket fundamental rights. The territorial integrity principle should be relaxed to allow for exceptions when international stability would otherwise be threatened by upholding it. However, the instability

conditions that provoke relaxation need clear and precise formulation so that they cannot be invoked as justifications for random interventions into the affairs of sovereign states. The self-determination principle should be relaxed with respect to inviolate claims to independent political status so that groups inclined to secession understand that independent political status for their groups cannot be taken for granted and that the alleviation of conditions of oppression will be the primary criteria for judging support for alternate political arrangements.

Appropriate incentive structures are extremely important in fashioning remedies for secession crises. However, human and state actors behave in nonrational as well as rational ways in the circumstances surrounding secession crises. Hence, remedies must also take into account nonrational sources. We believe that processes involving the acceptance of norms and establishment of inter-group trust as well as processes that affect the integration versus polarization of groups fit into these nonrational repertoires and will be explored in later sections along with reformulations of incentive structures.

Ahead, we propose some directions that international policy might take to avoid the violence and instability of secessionist wars and improve the conditions under which oppressed groups live. We offer suggestions for remedying some of the deficiencies of the above strategies, but by no means, do we claim to be offering a panacea for all potential secession crises. Some crises will develop rapidly and reach violent levels before the international community is able to act effectively and others will be beyond the reach of meaningful international influence. Still others will not coincide with the interests of international communities that are able to exert influence. Moreover, we make no claim to startling innovation in institutional design or international law. Rather, we recommend policies or strategies, some elements of which are already in use, that we believe should continue to be pursued even if emerging fashion does not recommend them or extraordinary patterns

of success do not currently attend them. The specific strategies and policies that we recommend are selected because they envision collective outcomes that are simply desirable on humanitarian or ethical grounds, that is, peace and the enhancement of human welfare and because they incorporate causes of desirable behaviors and avoid conditions that lead to instability and conflict. Our case is built on fairly recent accumulation of knowledge about human nature and the causes of human cooperation and conflict.

Specifically, we propose that international policies move in four directions. First, we propose that international law be altered in many instances so that counterproductive incentives are removed and replaced with human welfare criteria that can guide decisions about what groups or policies to support in secession crises. Second, in situations where inter-group trust is low, we urge the establishment of institutions that would compel groups to *compete* in the formulation and implementation of policies that adopt human welfare criteria in order to secure international support for their secession or counter-secession movements. Third, we propose that the content of welfare criteria be fashioned to take into account a compelling model of the causes of group conflict. Finally, we urge the construction of *regional* institutions for dealing with potential secession crises on the grounds that they are most compatible with engendering cooperative behaviors.

### **Human Welfare as Criteria for International Policy**

Placing more emphasis on human welfare criteria for determining international support for secessionist movements could facilitate resolution of many situations where minority groups suffer from oppression at the hands of a central government or ruling elite and where the potential for violent conflict exists between the two parties. There is an obvious aspect to this declaration – if the conditions that spawn secessionist movements are removed then there is no basis for group conflict.

However, the adoption of welfare criteria by international actors would not automatically transform the behaviors of the parties involved in these crises. The real question is how would all of these actors respond to the placement of welfare criteria at the core of international policy? We argue that the answer to that question depends to a crucial degree on three elements: the interests and goals of the relevant international actors; the existing context of relationships among the contending parties in a secession crisis; as well as on the precise nature of the welfare criteria being touted.

### **The Goals of International Actors**

Rarely do all of the relevant state actors agree on policy that would apply to a particular secession crisis. They may have pre-existing relations and interests that favor one or the other parties in the situation or they may be relatively indifferent to the crisis because it is remote from their borders and concerns. Still, the major actors in a particular region often find common ground in their preferences for the *outcome* of a secession crisis, typically, the maintenance of peace and stability. War is costly in terms of lives and resources and nearby countries rarely avoid shouldering part of its cost burden. At considerable expense, regional actors sometimes feel compelled to intervene. Sometimes, they contribute significant sums in the post-war rebuilding efforts. Even worse, war has a contagion effect and can inspire mistrust, heightened tensions, and the outbreak of war in neighboring countries. Hence, it is not surprising to find consensus in some regional communities in favor of promoting peace and stability.<sup>13</sup>

The Balkans is a case in point. All the major West European actors wanted the ethnic wars of the 90's to end in that region to avoid further costs of their involvement and to prevent the spread of conflict to nearby countries. International policies continually failed in the Balkans, but not for lack of consensus over the goals of peace and stability. In many regions a consensus of even that sort is lacking, and without it, adoption of any policy designed to promote peace and

stability is unlikely.

### **International Arrangements and Relations Between Contending Parties**

The effectiveness of policies that introduce welfare criteria is also shaped by the nature of prevailing relationships between the contending parties in a secession crisis and the commitment of those parties to interact with one another and consider improved relations. The international arrangements proposed here for dealing with secession crises have flexibility for coping with some of the alternate conditions that might characterize relations between the contending parties.

We believe these arrangements offer improved prospect for inducing behaviors that contribute to peaceful outcomes and at least some prospect for altering preferences in a direction more conducive to cooperation.

Again, we refer to Wendt's (1992) typology of security systems. In "cooperative" systems where trust and constructive relationships have characterized the history of relations among the participants in the system, welfare criteria can be presented and introduced into existing institutional structures and good faith pursuit of such criteria can be expected. In "competitive" and perhaps even in "individualistic" systems where inter-group trust is lacking, hostility typically characterizes relations between the parties and cooperation cannot be taken for granted. In these instances, welfare criteria might best be introduced as a competition between groups. An international community can make their support of or opposition to secession movements dependent on whether central governments or minority groups are most successful in convincing them that the previously existing state or the new state proposed by the secessionist movement is most likely to promote the welfare of affected populations.

By promoting human welfare criteria, the international community would induce minority groups and central governments within a state to move away from trying to create the conditions or

impressions of state dissolution or integrity and move them towards developing policies and programs that benefit their populations. Not only would political leaders have reason to advertise the welfare policies and programs that they had previously adopted but they now would have reason to contemplate policies and programs that might improve the welfare of the populations beyond levels currently envisioned.

For the international community, the issue would no longer be whether a central government is behaving so abysmally as to warrant suspension of non-intervention principles but rather a matter of evaluating a competition between the two sides. Evaluating the plans of the contending parties would be no easy matter. For example, plans for promoting equality may not always be consistent with plans for economic development. Thus, evaluations of human welfare may require very difficult assessments of tradeoffs between different components of welfare. The central point remains, however, that in this new legal environment, the contending parties would be competing to fulfil highly constructive ends rather than destructive ones.

We expect this new incentive structure to encourage alteration of preferences about outcomes and about the manner of interactions between the contending parties. The parties would be provided with positive inducements to find and support outcomes that are acceptable to all and to interact with each other in civil, peaceful, and cooperative ways. In the long run, the actual alteration of preferences would likely depend on forging the bonds of a new community of interaction that involves international actors as well as contending parties. In competitive systems, the level of interaction needed to foment bonding cannot be assumed to exist. Indeed, previously hostile parties must find resources within themselves merely to commit to direct interaction. In regions such as the Balkans, such commitments are still largely absent, but in El Salvador and Guatemala the commitments were apparently made. Peceny and Stanley (2001) attribute peace settlements and

the development of cooperative attitudes in those countries to the adoption of liberal norms by elites in those countries at the urging of virtually every external actor involved in the respective peace processes. With the right combination of incentives, interaction can at least be encouraged, and support institutions created that anticipate both the resilience of competitive attitudes and the possibility of transition to a cooperative environment.

### **Nonexclusionary Criteria and Stability**

Welfare criteria can be understood expansively as promotion of political democracy; economic prosperity; restraint in the exercise of coercive force against a citizenry; and especially, proactive inclusion of all groups in the consumption of the political, social, and economic resources of the society. These are criteria that much of the international community supports and attempts to encourage in other states. People living in political units where these criteria are promoted are simply better off than people living in states where they are not. If the international community were to adopt into law and policy the idea that support or denial of support for secessionist movements depends on whether the central government or the entity proposed by secessionist movements is more likely to promote the welfare of affected people as defined above, then the international community would be supporting criteria that has intrinsic and obvious merit. However, much of the logic of this analysis is predicated on the notion that significant elements of the international community have as goals the stability and relative peace of a region of the world that includes states confronting secession crises. The selection of welfare criteria should not, therefore, be based solely on what reforms would benefit relevant populations but on a combination of concerns about benefits to a population and measures that would reduce the likelihood of an outbreak of violent group conflict.

To have any chance of reducing the likelihood of conflict, measures need to be designed

with an accurate appreciation of the causes of group conflict. Below, we offer a model of group cooperation and conflict that, we hope, harbors such an appreciation and utilizes knowledge emerging in various disciplines about influences on actual human interaction. We then discuss how elements of the model can be incorporated into criteria for judging secession crises.

## 1. Elements of the Model

The model begins with the simple and plausible presumption that human groups and especially ethnic groups are capable of both inter-group cooperation and inter-group conflict. The model identifies two types of processes that are observable in nearly all cultures and in all historical periods and that move groups towards greater or lesser cooperation and greater or lesser conflict.

*Including* processes push groups toward greater cooperation and are denoted by alliance formation, the integration of previously distinct groups, and the moral upgrading of enjoining groups.

*Excluding* processes push groups towards greater conflict and are denoted by alliance break-up, differentiation of groups, and moral degradation of out-groups. Excluding processes refer to a series of actions in which one group attempts to remove another group from access to the political, economic, and/or social resources of society. Material resources, status, political power, identity, and existence are all resources that matter to groups and are the substance of including and excluding acts.

Excluding acts can be more or less extreme. At the mild end of the scale are informal social acts of discrimination against members of a group as when families urge their children to seek marriage partners within their own ethnic group. More serious acts of exclusion involve economic and political discrimination. Denying members of an ethnic group access to a particular profession or keeping them from the opportunity to purchase goods in particular stores are blatant acts of economic exclusion. Banning members of an ethnic group from voting or running for political

office or refusing to appoint them to government offices are serious forms of political exclusion. Extreme forms of exclusion include ethnic cleansing, that is, physical removal of individuals in a targeted ethnic group from access to resources and from the society itself. The individuals can be cast out as refugees to another land or they can be murdered by virtue of their membership in a specific ethnic group.

Excluding acts typically create inequality. As group members are deprived of resources, they tend to have fewer resources relative to the group doing the excluding. Inequality can exist as a long-standing background condition perpetrated ages ago and never successfully rectified or as a condition actively imposed on a group in a current environment. In either case, but especially in the latter case, inequality can serve as a source or provocation for group conflict.

Excluding acts also tend to provoke direct responses from the out-group, that is, the group targeted for exclusion. The range of rational and nonrational responses include protesting or attempting to acts of exclusion, retaliating or responding in kind, or preparing to engage in group conflict to remedy the consequences of exclusion. When a group perpetrates violence or conflict on another group, it is committing acts of exclusion, often provoked by the excluding acts of the other group. The outbreak of group conflict may be viewed as both the culmination of an excluding process (killing is the ultimate excluding act) and the causal consequence of some prior set of excluding acts.

An additional source of provocation for group conflict is the process of demonization. The degree of opposition between groups is influenced by the objective and perceived levels of inequality but also by the extent to which one group attempts to depict another as being morally inferior. This process of moral degradation is evident when members of one ethnic group begin to perceive and cast members of another group as being inferior in terms of moral rectitude and human

worth.<sup>14</sup> Once it is well under way, the process of moral degradation establishes a rationale for one group to exclude another from the resources of a society. Groups deserve to be excluded from resources precisely because they are morally inferior. Demonization can be seen as preparation for exclusion but also as an expression of exclusion in so far as the demonized group loses *status* in the society as a result of its depiction as an inferior group.

The processes affecting group conflict can be placed in a schema as follows:

INSERT FIGURE 1 ABOUT HERE

Extreme excluding acts are likely to have more effect than mild ones. The relationship having the most immediate significance for the outbreak of group conflict is the one designated by the arrow from excluding acts to responses from the out-group.

## 2. Incorporating Elements of the Model into Judgement Criteria

We propose that the criteria used by international actors to judge whether to support secession efforts focus on the causes of group conflict. States and secessionist groups should develop plans to forestall excluding acts, inequality, and demonization attempts. Programs and policies of this sort might include laws and institutions that protect “minority rights,” that is, ban excluding acts based on ethnic or religious attributes. They also might include laws and institutions that redress inequalities that are experienced by minority groups as well as bans on the use of mass media to demonize members of a specific ethnic or religious group. Of course, off-the-shelf solutions for the whole gamut of exclusion problems are not easily identified and will need to be developed through experience and research. Still, the application of tentative remedies needs to continue as long as the threat of violent group conflict remains. Accordingly, the development of criteria for evaluating secession and anti-secession proposals should be viewed as subject to change as we expand knowledge about general causes and particular circumstances.

What types of remedies should be pursued in the short-term? Knowledge is meager even about the *types* of exclusion that contribute most as provocations for inter-group conflict. Still, extreme forms of exclusion such as ethnic cleansing and murder certainly stand out as likely candidates for significant influence. Hence, laws and institutions that give special attention to these acts of exclusion probably deserve high priority in criteria for judgements about support decisions. Furthermore, *political* exclusion tends to influence so many other forms of exclusion, it too should receive special attention.

Remedies that short-circuit the processes of exclusion as well as the consequences of those processes should also be encouraged. A common practice in deeply divided societies is to install consociational political arrangements in which power is shared among the major contending parties but little is accomplished in terms of engendering cross-group trust. In the aftermath of the Bosnia-Herzegovina conflict, the Dayton Accords stipulated consociational political practices that allowed the hostile groups to avoid developing any meaningful positive interactions. Essentially, Serbs, Croats, and Muslims were left to rule their own particular territories and simply veto any policies developed at the national level. As a result, cross-group trust remains at a very low level.

In other societies that lacked inter-group trust, innovative institutions have been adopted that are designed for the very purpose of encouraging trust and, ultimately, norms that would discourage exclusionary behaviors. In 1980's Nigeria, rules were adopted that required multi-ethnic support for candidates to gain electoral victories. To be elected to the office of president, for example, a candidate was required to secure a minimum of 25 percent of the vote in two-thirds of the 19 Nigerian states (Diamond, 1990). Since different ethnic groups dominated in different states, a candidate had to appeal to more than one ethnic group to have any hope of a

victory. Such appeals cultivated positive, cross-ethnic interactions. Nigerians succeeded in electing at least one president through these rules though a military coup rendered the experiment short-lived.

Laws and policies that affect inequality vary in degree – some are aimed at ensuring equality of opportunities in the present, preventing the future development of marginal inequalities, or remedying the effects of past inequalities. The latter type of policy is typically the most controversial since it appears to discriminate in the present against members of groups that have enjoyed privilege in the past. Hence, remedies for group inequality are fraught with difficulties if not contradictions and can themselves be sources of group conflict. Which type of remedy for inequality is best at preventing group conflict in the short and long run is, again, a matter for empirical investigation and may depend on the peculiarities of a given secession crisis.

Laws that ban the use of mass media to demonize members of a specific ethnic group often contradict concerns for unadulterated free speech, a condition often regarded as a human right. But undiluted free speech protections tend to be luxuries of societies that are not rife with inter-group distrust and the immediate prospect of violent group conflict. These protections are possible only because hate speech that is thereby allowed can have only limited impact. In such societies the preponderant trend in attitudes is group toleration and inclusion rather than exclusion. Hence, educational curricula and practices that encourage values consistent with these objectives also need to be encouraged in order to foster voluntary practices and to encourage the popular legitimacy of institutions and laws that oppose exclusion and encourage redress of inequalities. Institutions sometimes fail precisely because the values being inculcated through educational processes run counter to the values embedded in laws and institutions that encourage inclusion. Toleration, compromise, individual and group trust are values that need to be taught as well as embedded in

legal statements.

The presence or absence of institutional means of consolidating power affect the dispositions of leaders to attempt ethnic manipulations in the form of exclusion or demonization and illustrate the importance of legitimacy. When political elites cannot be assured by institutional rules that their positions in the political system can be upheld through regularized procedures (competitive elections with adhered to timetables and meaningful limitations on recalls of victors) and for regularized terms of office, and that their retirements will be safe, then they become tempted to make populist appeals to consolidate and maintain political support. Unfortunately, populist appeals to provoke support for a leader are often successful when they are aimed at rallying the support of one ethnic group against another through demonization. Radical Hutu elites took power in Rwanda by mobilizing the Hutu majority against the Tutsi minority who were portrayed as virtual web-footed demons (Mamdani 2001). Serbian leaders inside Serbia and Bosnia rose to power and maintained it by describing the nefarious aims of Albanians and Muslims and even disseminated false stories of Muslim assaults on Serb villages (Udovicki and Stitkovac 1997).

The short-lived nature of the Nigerian experiment also points to the importance of establishing the legitimacy of constitutional rules. Legitimacy refers to the acceptance by political elites and by significant sections of the population of the rules of the political game and the outcomes of those rules. Rules need to lead to effective policies, be perceived as reasonably fair by political actors, and be in place for a sufficient length of time for parties to have confidence that the rules will operate into the future. The elaborate set of protective rules in force and the legitimacy of those rules in India are sometime cited as reasons why Indian leaders are constrained in inciting ethnic violence despite the incredible cauldron of ethnic groups that

exist there and that live in impoverished conditions. Educational programs need to encourage and complement the acceptance of appropriate constitutional rules including rules that allow leaders to have reasonable and delimited expectations about their entry, roles, and tenures in the political system as well as security in their exits from it.

Legitimacy is difficult to establish and easily lost. The periods most vulnerable to lost legitimacy are ones in which old rules are under challenge and new ones not yet established. New rules imply that the positions of old elites may be threatened either because those positions will not exist in the new order or the skills required for effective competition in the new order are not characteristic of the old elites. Hence, the old elites fear the loss of political power and status and may be motivated to engage in ethnocentrism to forestall the structural changes envisioned. Serbian leaders whose careers were advanced under the old communist regime very likely experienced and imagined losses of status and political power as Yugoslavia disintegrated and reformist programs were advanced. Disintegration made their co-optation into a new order infeasible and reform movements threatened the usefulness of their political skills.

Transitional periods such as those attending the demise of communist regimes in Europe are perhaps inevitable and the risks posed by new orders unavoidable. Hopefully, anticipation of those risks may allow policymakers to mitigate them and demand of actors in secession crises that they refrain from populist appeals based on exclusionary acts and demonization rhetoric.

### **Reconciling Nonexclusion, Self-Determination and Human Rights**

Scant attention has been paid in international policy to prohibiting exclusionary actions *per se*. Even less attention has been paid to making support in secession crises conditional on one or the other group's performance on an exclusion/inclusion dimension. Still, the idea of banning

exclusionary actions overlaps with the concepts of self-determination and human rights and these latter concepts figure prominently in international law.

### 1. Overlap between Self-determination and Nonexclusion

The point of overlap between self-determination and banning exclusion rests on political power. Self-determination is about the exercise of sovereign power by an independent state or by a self-governing group. Any group that sees itself as distinct from a majority group that controls a state's government may easily perceive itself excluded from the exercise of sovereign power. Indeed, exclusion from the exercise of sovereign power often ends up being the paramount issue in secession crises. Its attraction to an oppressed people is an obvious one because sovereign power implies the capability to remedy all other acts of exclusion perpetrated against a group.

Still, implementation of an unrestricted right to self-determination understood as political independence would lead to global instability with the borders of states being constantly subject to revision. Moreover, many minority groups live and thrive within the borders of a state without feeling the necessity of seeking sovereign status precisely because they are treated inclusively with respect to other resources of the society. Hence, denial of political independence need not equate with the practice of other forms of political exclusion nor with the practice of social and economic exclusion. This distinction is fundamental to the policy recommendations of this article -- independence is a status to be supported only if proposals to the international community are superior with respect to avoiding most other forms of political, social, and economic exclusion. We treat political independence as the least sacred of all forms of inclusion and the one to which people are inherently least entitled.

Our position is strengthened further by recognition that groups who achieve sovereign political status often end up engaging in exclusionary acts, sometimes extreme ones, against minority groups living within the new political borders. The evidence is casual but this pattern of exclusion against minorities in foundling states seems more the norm than the exception. Under the proposed remedy, secessionist groups would need to counter this prospect and develop convincing plans for the inclusion of minority groups to warrant any independence claim.

## 2. Overlap between Human Rights and Nonexclusion

Nonexclusion and human rights concepts overlap to an even greater degree. According to Henkin (1990) the concept of human rights refers to claims by individuals on the state that must be respected and include both “immunities” from the inappropriate acts of government and “entitlements” in the form of goods and services that governments are obliged to provide to all. All individuals have the “right” to be free of government interference in their private lives and in their freedoms of speech; assembly; opportunities for life and work; protection from arbitrary arrest, torture, imprisonment; and pursuit of cultural and group identities. Governments are expected to provide education, health, and decent standards of living. And in guaranteeing immunities and providing goods, governments do so for all individuals and are not to discriminate by nationality, ethnicity, religion or any other distinguishing feature of individuals. Individuals all across the world are equal in their possession of these human rights. Hence, implementation of human rights is tantamount to a universal prohibition of acts of exclusion. The argument that all individuals possess human rights implies that no person should be excluded from the resources of society based on their group identity.

Despite this congruity, the parallels between excluding acts in our model of conflict and the concept of human rights are not exact. A human rights perspective tends to focus on equality across all individuals as a defining objective while our conflict model is concerned primarily with discriminatory treatment across groups. Human rights theory stresses the obligations of governments to provide specific types of goods and services, while the conflict model merely emphasizes the importance and impact of fair and unfair distributions of whatever goods government happens to provide. Finally, the conflict model considers how excluding acts based on group identifications affect stability, while human rights theory is concerned with obligations and immunities as absolute ends. As "rights" efforts to achieve these ends cannot or should not be compromised, sacrificed, or made a lower priority in efforts to realize other concerns such as stability. Based on appeals to morality or philosophical imperatives, human rights theory does little to accommodate tradeoffs among desirable objectives. This inflexibility, we argue, makes human rights theory less useful as a guide to international policy formulation than a model grounded in study of human behaviors and potentialities with respect to conflict and cooperation.

### 3. History of Institutions Addressing Human Rights and Exclusion

Despite these disparities, the considerable remaining overlap between the concept of human rights and nonexclusion makes some aspects of the historical development of the concept of human rights and its place in international law and practice instructive for understanding how the international community has dealt with group exclusion and secession crises in the past and might deal with them in the future.

Some aspects of human rights entered into international agreements as early as the 17th

century when Catholic and Protestant countries signed reciprocal treaties that exchanged guarantees of decent treatment for their co-religionists. In the 19<sup>th</sup> century, European powers signed similar treaties that protected favored minorities from exclusionary treatment. Though planting the seeds of such concerns, these treaties were not forged out of a concern for general human rights but rather out of fear of war and international instability (Henkin 1990: 14-15). Clearly, a belief in the connection between the prohibition of exclusion and international stability is not solely a modern phenomenon.

Since World War II, covenants inspired by the nonbinding UN Declaration of Human Rights and the UN Charter article 55 have served as the principal institutions through which international action in the interests of human rights has taken place (Henkin 1990: 23-24). The successful ones have tended to be regional in nature, voluntary in constitution, and based on expectations of stable interaction and reciprocal exchange -- features in keeping with knowledge about how group cooperation emerges. According to Henkin (1990: 23) the most successful of these regional institutions are the European Commission on Human Rights and the European Court of Human Rights. These institutions have collected reparations and taken actions to alter the behavior and laws of member states who were judged to be in violation of various human rights standards encompassing torture and inhumane treatment; abridgements of freedom of the press; and restricted access to education.

Two international treaties focus on specific types of exclusionary actions -- the UN Convention for the Prevention and Punishment of the Crime of Genocide and the Framework Convention for the Protection of National Minorities (European Treaty Series, No. 157). The 1948 Genocide Convention forbids the most severe form of exclusion, namely genocide. The

Convention details punishments for violations of prohibited actions, but has not been applied in international practice. Most consequentially, international actors have studiously avoided using the word “genocide” in describing global situations that could easily fit the Convention’s technical definition of the term. The global array of signatories apparently have not wanted to invoke the enforcement provisions of the Convention and their own legal obligation to act even in obviously genocidal situations such as developed in Rwanda in 1994 (Schabas 2000, 2001: 607-8; Power 2002: 358-364), Iraq in 1993 (Power 2002: 224-226) and Bosnia in 1992 (Power 2002: 257-258, 288-293).

A regional treaty, the Framework Convention for the Protection of National Minorities (European Treaty Series, No. 157) was established by the Council of Europe in 1994 and activated in 1998. This treaty agreement was designed specifically to *prevent* abuses of minorities rather than punish or repress them after they occurred (Hofman 2001). A voluntary agreement of mostly European states, the Framework Convention obliges signatory governments to submit to an Advisory Committee reports on the status of minorities in their countries with respect to: minority group discrimination; promotion of equality; preservation and development of minority cultures; minority access to political and economic resources; and attempts at forced assimilation of minorities – criteria largely congruent with the nonexclusionary conditions of the group conflict model. The Advisory Committee evaluates these reports, sends them to the Committee of Ministers for further commentary, and is empowered to interact with state governments and other state actors to encourage remedies for deficiencies.

The Framework Convention provides no material incentives or “teeth” for encouraging compliance. Rather, it depends on the impact of interactions with the Advisory Committee,

other states in the region, and on the publicity associated with publication and dissemination of the reports and commentaries. Hence, it relies on the processes of social pressure and status-recognition, cooperative bonding through interaction, and conformism.<sup>15</sup> The future effectiveness of the Framework Convention should serve as an interesting test of the relative import of these processes in contrast to the material incentives utilized by other institutions.

Historically, very few institutions have been created that provide a framework for international responses specifically to secession crises. An exception is the Badinter Commission initially created by a declaration of the European Community (EC) in August of 1991 to adjudicate the division of assets of former Yugoslav republics and make recommendations to the EC. At the EC's Hague Conference its functions were expanded to include recommendations to the EC about whether to recognize the independence of former Yugoslav republics.<sup>16</sup> Recommendations were to be based, in part, on requirements that those seeking recognition show progress in establishing rule of law, political democracy, protection of human rights, and guarantees for the "rights" of ethnic, national, and minority groups (Woodward 1995: 184).

The Badinter Commission demonstrated both the possibilities for effective real-world policy making and the challenges in making such institutions operational. The Commission was established by a regional body, the EC, and could, therefore, tap into an existing institution whose members shared an experience of positive, reciprocal interactions and who held a common interest in fomenting peace and stability in the region. The initial motivations for establishing the Commission reflected these common interests. Moreover, the criteria established by the Commission for bestowing recognition included specific prohibitions of exclusionary actions based on group identification.

Unfortunately, misperception of the volatility of the situation, the pursuit of particularistic interest on the part of one of the member states, and the rush of events undermined the activity of the Commission before it could perform as intended. In 1991, German leaders recognized the independence of Slovenia and Croatia, two former Yugoslav republics, without utilizing the procedures and criteria just established for the Badinter Commission (Woodward 1995: 184-189). This decision and the need to respond to the horrors of the wars that followed forced the member states to disregard the intended functions of the Badinter Commission and left everyone to ponder what conditions will be needed to maintain institutions capable of settling secession crises.

### **Caveats and Conclusions**

Our conclusions can be summarized as follows: international actors concerned with achieving stable and peaceful resolutions of secession crises should base their decisions about supporting secession efforts on whether secessionists or state governments have the best and most credible plan for distributing society's resources in a nonexcluding, nondiscriminating way because exclusion, especially extreme exclusion like ethnic cleansing and genocide, is the primary source of group conflict. Over the long run, regional institutions are most likely to be successful in promoting welfare and stability because their members are most likely to have common interests and to engage in repeated interactions that make cooperation through reciprocation possible. In areas that are experiencing a secession crisis and that have low levels of inter-group trust, regional international actors should consider imposing as a remedy a competition over plans for promoting welfare and nonexclusionary allocations of resources because the antagonistic groups there do not operate in a climate of trust and cannot be expected,

in the short run, to develop cooperative relations. It is better to have them compete when they cannot cooperate but in a way that makes them think about how best to promote the welfare of all.

Below, we discuss concerns about how well the remedies proposed here might work. They fall into two categories: (1) limits in our knowledge about processes of exclusion and about operation of proposed remedies and (2) misalignment of interests in the pursuit of stability and peace.

### **Knowledge Limits**

In part, the success of welfare/nonexclusion plans depends on the extent to which they truly are counters to processes that provoke conflict. We have argued that many elements of the remedies proposed here are supported by the results of research on human behaviors and potential. Yet much remains unknown about exclusionary processes and their impact on group conflict. Do demonization and exclusion processes both need to be activated before group conflict breaks out? Or, is each process by itself capable of setting off a conflict? How do these processes influence each other? How are they activated? How resilient are they as part of the human repertoire? What precise role does the degree and type of inequality play in setting off group conflict? Answers to these and other questions will help policy makers refine criteria for discouraging group conflict and promoting peace and stability.

We also lack empirical information about the likely success of the remedy proposed here for resolving secession crises. In practice, how well will international institutions work that base recognition policy on welfare/nonexclusion criteria? The question is not answerable from available information or data because the international community has not maintained any such institutions.

The Badinter Commission, designed to grapple with secession issues in the Balkans, incorporated many of the prescriptions offered here, but was abruptly undermined and ceased its adjudicating function. As with any untried policy or institution, the virtue of remedies proposed here must rest with the logic of supporting arguments.

### **Misalignment of Interests**

These remedies apply only to sets of various nation-states that have cooperated within an international forum and arrived at an understanding that they share interest in promoting stability in a particular region of the world. Adopting welfare/nonexclusion principles into international law would not immediately transform all nation-states participating in such an international community into peace-loving entities nor resolve all secessionist issues confronting the international community. The international community will continue to be beset by problems in which the interests of actors are not equally configured towards the goals of cooperation and an equitable peace. These misalignments of interest can be manifest in the problems of: accurately evaluating welfare proposals and practices of central governments and minority groups within a state; determining what actions the international community should take as support for the deserving side; and fashioning responses to political actors who are oblivious to resources that the international community could bring to bear on their situations.

As a means to curry the favor of the international community, minority groups and central governments might create false impressions of their willingness and ability to further the welfare of their peoples. In response, the international community would need to develop criteria in its evaluation process that enables the recognition of false claims and that facilitates substantiation of the claims made by the various parties. A long-term process is desirable, since extended periods of

time would be needed to assess the commitment of parties to the plans that they have put forth. Success in using the welfare criterion may even depend on the ability of the international community to establish its use as central to an ongoing process rather than as an *ad hoc* response to a crisis situation. Of course, no process is likely to be foolproof in establishing the accuracy of claims, but something akin to the process described here itself should encourage minority groups and central governments to develop plans for improving the welfare of their populations and to provide convincing evidence of their intentions and good practices. These behaviors ought correlate highly with actual improvement in human welfare and should divert time and attention away from making plans for hostile and violent conflict.

Once the international community has decided which side to support in secessionist struggles, questions will remain about what type and level of support should be put forth. Answers will depend on the individual interests of states who comprise the international community as they contemplate actions in a given situation. Some states may find the resolution of a brewing conflict to be more germane to their own interests than do other states. Some states are richer than others, more able to supply relevant resources, and more willing to support vigorous interventions than are poor states. Problems in reconciling the interests of states that comprise the international community may even result in a provision of resources that is not high enough to tip the balance in favor of the political actor(s) that the international community supports. Their actions may thus prove futile.

Some political actors may simply choose to ignore the resource capabilities of the international community, especially in countries where resource capabilities are already quite large compared to those that the international community might muster. The effect of the international community on

the Tibet/China situation would likely be minimal because of the power capabilities, both domestic and as an international actor, already possessed by the Chinese government. The *current* impact of the international community is minimal in any case and one might hope that the international promotion of human welfare/nonexclusion principles might at least encourage powerful actors such as the Chinese to rethink their less-than-humane policy approaches and to reshape those policies to accord more closely to international norms.

In sum, the net advantages of introducing a welfare/nonexclusion criteria into international law and making it the basis for an international community's policies about secessionist movements seem to outweigh the net advantages of most existing criteria. The adoption of human welfare/nonexclusion criteria as final arbitrating concepts in international policies and expressions of support should encourage peaceful rather than violent competitions and make some mark on improvement of human welfare.

International actors need not be rigidly committed to a specific set of criteria or support for a particular political configuration. They can expect to alter criteria to accommodate *changes* in the group fissions that are likely to develop in future societies and in the welfare-improving stances of those groups and to respond appropriately as knowledge accumulates about the criteria most likely to encourage welfare and stability.

## **Endnotes**

<sup>1</sup> Our purpose here is confined to isolating some of the premises of these views that we believe are warranted and useful for the present analysis. For excellent reviews of the various schools of thought see Art and Jervis (1999)

and Carlsnaes, Risse, and Simmons (2002).

<sup>2</sup> See Dawes (1980), Isaac, Walker, and Thomas (1984), and Kim and Walker (1984) for reviews of many of these studies.

<sup>3</sup> A large series of experiments known as “minimal group research” document these phenomena. Billig (1976) provides an excellent summary of this research.

<sup>4</sup> See, for example, UN Charter, Article 1/1 and 2/4 and Resolution 2625 (XXV) 24 October 1970.

<sup>5</sup> UN Charter: Chapter 1, Article 2, Section 4; Section 7; Article 51; UNGA Resolution 2625 (XXV).

<sup>6</sup> Article (1) of both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights both express the idea that all peoples have the right to self-determination and by virtue of this right they freely determine their political status.

<sup>7</sup> UNGA resolution on Principles of International Law Concerning Friendly Relations and Co-operation among States.

<sup>8</sup> Pomerance (1982); Hobsbawm (1990); Hannum (1990) find support for this position in Articles 1(2), 73 and 76 of the UN Charter.

<sup>9</sup> The European Community’s recognition policy is set out in the declaration of December 16, 1991, on guidelines for the recognition of new States in Eastern Europe and the Soviet Union. I.L.M. 1992, 1486.

<sup>10</sup> Arbitration Commission of the European Community, Opinion no. 1 in the Case of Yugoslavia, states that the federation of Yugoslavia was dissolving and that the federal organs were no longer representative. See also Wildhaber (1995: 68).

<sup>11</sup> Such groups can cite the documents in note 6.

<sup>12</sup> Central governments can cite the U.N. General Assembly Declaration of 1970 on Friendly Relations which states that: "Nothing in the foregoing paragraphs shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples ...

(Resolution 2625 (XXV), October 24, 1970).

<sup>13</sup> We recognize that the pursuit of peace and stability is sometimes regarded as as part of an effort by the major powers to perpetuate a neo-colonial oligopoly of international power (Roberts 1991). We do not explore this complex issue in this article except to say that we are convinced that there many contexts where no significant groups of people (excepting military commanders) benefit from the outbreak of war. The proposals advanced here are at least consistent with measures aimed at reducing group inequality and place a premium on avoiding the costs and horrors of violent group conflict.

<sup>14</sup> Often, the targeted group is described as possessing inferior intellectual capabilities though sometimes the opposite is observed as when members of the out-group are portrayed as having superior “cunning” – a trait that includes a nuance of moral depravity. Demons may be smart but they are always evil.

<sup>15</sup> Boyd and Richerson (1985, 1989) have argued for and developed evidence supportive of the powerful impact of conformity in shaping human attitudes and behaviors.

<sup>16</sup> Even though the Commission was clearly addressing secession issues, the European Union was concerned about the appearance of violating or encouraging violations of the territorial integrity of a state, namely, Yugoslavia and so declared that Yugoslavia was, in fact, in “dissolution.” Hence, the issues were not, by definition, secession issues, but rather about who to recognize and what borders to recognize (Woodward 1995: 187, 250).